

## **THE CROATIAN PARLIAMENT**

**1761**

According to Article 89 of the Constitution of the Republic of Croatia I hereby issue

### **THE DECISION ON THE PROMULGATION OF THE OMBUDSMAN ACT**

I hereby promulgate the Ombudsman Act, adopted by the Croatian Parliament at the session held on 29 June 2012.

Class: 011-01/12-01/75

Reg.No.: 71-05-03/1-12-2

Zagreb, 3 July 2012

The President of the  
Republic of Croatia  
Ivo Josipović, m.p.

# THE OMBUDSMAN'S ACT

## I. GENERAL PROVISIONS

### *Subject matter*

#### Article 1

This Act regulates the scope and mode of work, the conditions for the appointment and relief of duty of the Ombudsman and his/her deputies as well as cooperation with the Ombudsperson for children, Ombudsperson for gender equality and Ombudsperson for persons with disabilities (hereinafter: special ombudspersons).

### *The Ombudsman*

#### Article 2

(1) The Ombudsman is a commissioner of the Croatian Parliament for the promotion and protection of human rights and freedoms laid down in the Constitution, laws and international legal acts on human rights and freedoms accepted by the Republic of Croatia.

(2) The Ombudsman shall perform other duties determined by special laws.

### *Gender neutrality in expressions*

#### Article 3

Words and conceptual collocations that have gender significance regardless of whether they are used in the Act in masculine or feminine gender relate equally to masculine and feminine gender.

## II. PRINCIPLES

### *Promotion and protection of human rights and freedoms*

#### Article 4

The Ombudsman shall promote and protect human rights and freedoms and the rule of law by examining the complaints of the existence of unlawful practices and irregularities with respect to the work of government bodies, bodies of local and regional self-government units, legal persons vested with public authority and legal and natural persons in accordance with special laws (hereinafter: the bodies).

## Article 5

In the field of promotion of human rights and freedoms, the Ombudsman shall monitor the status and point out to the need for their protection. He shall also carry out research and analytical activities and keep and update the relevant databases and documentation, inform the public and interested parties regularly and timely, actively promote and maintain cooperation with civil society organisations, international organisations and scientific and research institutions, and promote the alignment of legislation with international and European standards and its consistent application.

### *Constitutionality of laws and other regulations*

## Article 6

(1) The Ombudsman shall monitor the alignment of laws and other regulations with provisions of the Constitution of the Republic of Croatia and international legal acts which are part of the internal legal order of the Republic of Croatia.

(2) The Ombudsman shall be entitled to file a request to initiate the proceeding of a review of conformity of laws and other regulations and general acts falling within his/her competence with the Constitution according to the Constitutional Act on the Constitutional Court of the Republic of Croatia and the Administrative Dispute Act.

### *Autonomy and independence of the Ombudsman*

## Article 7

(1) The Ombudsman shall perform his/her duties with independence and autonomy. Any form of influence on the Ombudsman's work shall be forbidden.

(2) In the exercise of his/her powers, the Ombudsman shall act in accordance with the constitutional and legal provisions and international legal acts on human rights and freedoms accepted by the Republic of Croatia.

(3) In the performance of his/her duties the Ombudsman shall adhere to the principles of fairness, equality and morality and shall act impartially and in accordance with standards of good administration.

(4) In the performance of duties falling within his/her competence the Ombudsman shall cooperate with the public and especially with associations promoting citizens' interests, the academic community and the media.

(5) In the performance of duties falling within his/her competence the Ombudsman may ask for assistance from scientists, experts and institutions.

### *Immunity and conflict of interests*

#### Article 8

- (1) The Ombudsman and his/her deputies shall enjoy immunity as do members of the Croatian Parliament and the provisions of the Constitution of the Republic of Croatia on the immunity in the Croatian Parliament shall be applied appropriately.
- (2) The office of the Ombudsman and his/her deputies shall not be compatible with the performance of any other public or professional duty and membership in a political party.

### *Access to information and obligation of confidentiality*

#### Article 9

- (1) The Ombudsman shall be entitled to all information as well as to access all data and documents belonging to bodies as referred to in Article 4 of this Act while performing his/her tasks and according to the Data Protection Act.
- (2) The Ombudsman, his/her deputies, civil servants and employees at the Ombudsman Office shall be bound by regulations on the secrecy and protection of data during and after their terms of office, irrespective of the way in which they gained knowledge of these data.

## III. ELECTION OF OMBUDSMAN AND DEPUTIES

### *Ombudsman's election*

#### Article 10

- (1) The Ombudsman shall be appointed by the Croatian Parliament for a term of eight years with the possibility of reappointment.
- (2) At the latest six months before the expiry of the Ombudsman mandate, or no later than 30 days after the termination of office due to other reasons, the Croatian Parliament shall publish a public call to propose the candidates for Ombudsman.
- (3) The Committee for the Constitution, Standing Orders and Political System, with prior opinion of the Committee for Human Rights and Rights of National Minorities of the Croatian Parliament, shall propose at least two candidates for Ombudsman according to the received applications from the public call and it shall be submitted to the Croatian Parliament.

### *Requirements for election of the Ombudsman*

## Article 11

A person fulfilling the following requirements may be appointed as Ombudsman:

- a Croatian citizenship with permanent residence on the territory of the Republic of Croatia,
- a completed integrated undergraduate and graduate university degree in law
- a minimum of 15 years of professional work experience
- a distinguished expert enjoying a reputation among the public as a person of high moral principles who protects and promotes human rights and freedoms and the rule of law,
- a person who has not been convicted for criminal offences and against whom no criminal proceedings have been instituted for criminal offences subject to *ex officio* prosecution,
- a person who has not been a member of any political party.

### *Election of the Ombudsman's deputies*

## Article 12

(1) The Ombudsman shall have at least three deputies.

(2) The deputy Ombudsman shall be elected by the Croatian Parliament for a term of eight years, with the possibility of reappointment. The Ombudsman shall propose candidates for his/her deputies to the Croatian Parliament within 30 days after the termination of a public call for application.

(3) A person fulfilling the following requirements may be appointed as Deputy Ombudsman:

- a Croatian citizenship with permanent residence on the territory of the Republic of Croatia,
- a completed undergraduate and graduate university degree or integrated undergraduate and graduate university degree,
- a minimum of 8 years of professional work experience
- a distinguished expert enjoying a reputation among the public as a person of high moral principles who protects and promotes human rights and freedoms and the rule of law,
- a person who has not been convicted for criminal offences and against whom no criminal proceedings have been instituted for criminal offences subject to *ex officio* prosecution,
- a person who has not been a member of any political party.

(4) At least one deputy Ombudsman shall have a completed integrated undergraduate and graduate university degree in law.

(5) The Ombudsman shall at latest within three months after the election of deputies appoint his/her substitute in cases referred to in Article 14, paragraph 1 of this Act.

(6) In case of termination of duty of the Ombudsman his/her deputies shall perform the duty of the Ombudsman until the election of a new Ombudsman and his/her deputies.

(7) The principle of gender equality shall be ensured in the process of election of the Ombudsman's deputies.

### *The oath*

#### Article 13

Prior to taking office, the Ombudsman and his/her deputies shall take the following oath before the Croatian Parliament: "I swear that in my work I shall observe the Constitution and the laws and respect the legal order of the Republic of Croatia and that I shall perform my duties fairly, honourably and conscientiously, acting in the citizens' best interests."

### *Temporary inability to perform the duties and relief of duty of the Ombudsman and his/her deputies*

#### Article 14

(1) In cases of temporary inability or termination of duty of the Ombudsman before the expiration of the term of office for which s/he was elected, one of the deputies of the Ombudsman, referred to in Article 12, paragraph 5 of this Act shall replace the Ombudsman until the cessation of a temporary inability or election of a new Ombudsman.

(2) The Ombudsman shall be relieved of his/her duty by the Croatian Parliament before the expiration of the term of office upon his/her own request, if due to a change in the circumstances he/she no longer fulfils the requirements for appointment provided for in Article 11 of this Act, if he/she is prevented from performing his/her duties for a period of over six months or if he/she does not perform the duty according to this Act.

(3) The Ombudsman shall be relieved by the Croatian Parliament with a prior opinion of the Committee for Human Rights and Rights of the National Minorities and the Committee for the Constitution, Standing Orders and Political System.

(4) The deputies of the Ombudsman shall be relieved of their duties by the Croatian Parliament on the proposal of the Ombudsman.

(5) The deputy Ombudsman shall be relieved of his/her duty by the Croatian Parliament before the expiration of the term of office upon his/her own request, if due to a change in the circumstances he/she no longer fulfils the requirements for appointment provided for in

Article 12 paragraph 3 of this Act or if he/she is prevented from performing his/her duties for a period of over six months.

#### IV. POWERS AND OBLIGATIONS OF THE OMBUDSMAN

##### *Recommendations, opinions, proposals and warnings*

##### Article 15

The Ombudsman shall render recommendations, opinions, proposals and warnings to the bodies as referred to in Article 4 of this Act.

##### *Reports to the Croatian Parliament*

##### Article 16

(1) The Ombudsman shall submit a regular annual report to the Croatian Parliament. The annual report contains the evaluation of the overall status of the protection of rights and freedoms in the Republic of Croatia, the evaluation of the status related to certain forms of violation of the rights of individuals or specific social groups, the conclusion on the extent to which the authorities as referred to in Article 4 of this Act acted in accordance with previous recommendations, opinions, proposals and warnings of the Ombudsman and the Ombudsman's list of recommendations to remedy systemic deficiencies and irregularities that lead to violations of constitutional and legal rights of citizens.

(2) The Ombudsman may also submit to the Croatian Parliament special reports on certain issues within his/her competence, particularly in cases where constitutional and statutory rights of higher level and importance have been jeopardised.

(3) The Ombudsman shall submit the annual report at the latest at the end of the first quarter for the previous calendar year.

(4) Annual and special reports shall be published on the website of the Ombudsman and shall be available to the public in another appropriate way.

##### *Participation in the work of the Croatian Parliament*

##### Article 17

(1) The Ombudsman may, if s/he considers it to be necessary after monitoring the status within his/her scope, indicate the need for the adoption and amendments of acts and other regulations to the Croatian Parliament. S/he may indicate the need of alignment of laws and bylaws with international standards and the Constitution of the Republic of Croatia.

(2) The Ombudsman shall participate in the work of working bodies of the Croatian Parliament and shall participate in the sessions of the Croatian Parliament when issues falling within his/her competence are debated.

### *Relationship with the Government of the Republic of Croatia*

#### Article 18

(1) The Ombudsman may point out to the Government of the Republic of Croatia the need for adopting acts, bylaws, strategies, programmes and other acts concerning the protection of human rights and freedoms and ensuring the rule of law.

(2) The Ombudsman shall participate in the proceeding of drafting the regulations within his/her scope.

(3) State administrative bodies are obliged to publish the information on possibilities to address the Ombudsman on their internet websites.

### *The Ombudsman and the public*

#### Article 19

(1) The Ombudsman shall regularly inform the public through the media and internet website, by way of organising public debates and events, publishing reports and other appropriate means.

(2) The Ombudsman shall inform the public on the perceived phenomena of violations of human rights and freedoms and established violations of the constitutional and statutory rights.

(3) In applying the principle of publicity the Ombudsman shall cooperate with public information services and other media. Public institutions in the area of informing, founded by public authorities, are obliged to enable the Ombudsman to officially address to the public in an appropriate way without compensation.

(4) Statistical and other aggregate data collected and processed by the Ombudsman shall be made available to the public in an appropriate way.

(5) Reports on individual cases may be published only in accordance with regulations on the protection of personal data.

## V. PROCEEDINGS OF THE OMBUDSMAN



## *Initiation of proceedings*

### Article 20

- (1) Anyone who considers that the bodies as referred to in Article 4 of this Act have jeopardised or violated, through their illegal or irregular work, his/her constitutional or statutory rights and freedoms may lodge a complaint to the Ombudsman with the aim of initiating a proceeding.
- (2) The Ombudsman may also on his/her own initiative initiate a proceeding for the purpose of investigating individual or recurrent violations of constitutional and statutory rights and freedoms.
- (3) If the Ombudsman intends to initiate a proceeding on his/her own initiative or on the proposal of a person whose rights have not been violated, it is necessary, in order for the proceeding to be initiated, to obtain the consent from the person whose constitutional or statutory rights and freedoms have been directly jeopardised or violated, except if it is related to the protection of children welfare or in cases where the Ombudsman learned of the case through the media or if the case is urgent.
- (4) No one shall be discriminated against or called to account for having addressed to the Ombudsman.

## *Filing complaints and proceeding upon complaints*

### Article 21

- (1) The complaint shall be lodged in writing or orally, and it shall be recorded.
- (2) The complaint shall usually contain the name and surname of the complainant or of the person whose rights have been violated, his/her home address or address at which he/she receives mail, as well as circumstances and facts on which the complaint is based, the indication of the body that jeopardised or violated the right, information on whether a legal remedy has already been used and when it was filed, and the complainant's signature.
- (3) Persons whose freedom of movement has been restricted shall lodge a complaint and receive an answer from the Ombudsman in a sealed envelope the contents of which shall not be subject to any restrictions or inspection.
- (4) A complaint sent via email shall obligatorily contain the complainant's postal address. Only information which does not contain confidential data may be exchanged via email.
- (5) Complaints filed with the Ombudsman shall be exempted from all duties and administrative fees.

(6) The provisions of this Article on the content and form of complaint shall not apply to complaints filed by children and persons who, due to their invalidity or illness, cannot fulfil the provisions on the content and form of complaint.

## Article 22

(1) The Ombudsman shall not take action where judicial proceedings are ongoing, except if it is apparent that the proceedings in question are being unnecessarily delayed or that powers are manifestly abused, in which cases he/she may request an explanation from the president of the competent court.

(2) If the explanation referred to in paragraph 1 of this Article is not provided in a timely manner, the Ombudsman shall inform the president of the Supreme Court of the Republic of Croatia.

(3) The Ombudsman shall be entitled to freely decide whether he/she will accept the complaint into consideration and to which extent. He/she may not take action with respect to a complaint, in particular in the following cases:

- if the case in question concerns issues that are the subject of ongoing proceedings, except when proceedings are being unjustifiably delayed or in cases of manifest abuse of power,
- if the deadline for an appeal provided for by special regulations is still open,
- if the complainant failed to lodge an appeal within the legally prescribed deadline,
- if three years have elapsed since the occurrence of an irregularity or the adoption of a decision by the bodies as referred to in Article 4 of this Act, except in cases where the Ombudsman deems that the issue in question is of greater importance for human rights and freedoms.

(4) The Ombudsman will notify in the shortest possible period of time the complainant of the reasons referred to in paragraph 3 of this Article for not considering his/her complaint.

## *Summary proceedings*

## Article 23

The Ombudsman shall consider a complaint without conducting an investigation when, on the basis of facts stated in the complaint and submitted documentation, it can undoubtedly be ascertained that the complainant's constitutional or statutory rights have been jeopardised or violated.

## *Investigation*

### Article 24

- (1) When the Ombudsman conducts an investigation, he/she shall request the necessary explanations, information and documentation from the bodies as referred to in Article 4 of this Act to which the complaint refers.
- (2) The Ombudsman shall determine the deadline according to the circumstances of the case by which the bodies as referred to in Article 4 of this Act shall be required to comply with his/her request.
- (3) If the body as referred to in Article 4 of this Act does not submit the requested explanations, information and documentation by the set deadline, the Ombudsman shall notify the authority that shall monitor the said body from Article 4 of this Act and may also notify the Croatian Parliament and the public.

## *Duty of cooperation and provision of assistance*

### Article 25

The bodies as referred to in Article 4 of this Act shall ensure the access to all data, information and acts related to the filed complaint, or provide all the necessary assistance to the Ombudsman at his/her request.

## *Case report*

### Article 26

- (1) When the Ombudsman concludes the investigation of a complaint in which s/he established the violation of the right, he/she shall draft a case report which shall be delivered to the body to which the complaint refers and to the complainant.
- (2) The case report shall contain a description of the facts and circumstances of the investigated case, an assessment of whether the complainant's constitutional or statutory rights have been violated and the manner in which the rights were jeopardised or violated.
- (3) In the case report the Ombudsman shall, where possible, recommend or propose to the body the way the threat or the violation of the right in question may be averted.
- (4) The Ombudsman may propose to initiate a criminal, misdemeanour or disciplinary proceeding if during the performance of duty s/he establishes that the complainant's rights

have been violated with elements of a criminal offence, misdemeanour or a breach of working discipline.

### *Information on the undertaken measures*

#### Article 27

(1) The bodies as referred to in Article 4 of this Act shall notify the Ombudsman, within the time limit set by him/her, of the measures undertaken as a result of his/her proposal or recommendation.

(2) If the bodies referred to in Article 4 of this Act do not notify within the set time limit the Ombudsman on the measures undertaken or if they do not act in accordance with his/her recommendation or proposal, the Ombudsman shall inform thereof the body authorised for supervision of the bodies as referred to in Article 4 of this Act.

(3) If the body that conduct the supervision does not notify, within the open deadline on the established facts and undertaken measures, the Ombudsman shall inform thereof the Government of the Republic of Croatia.

(4) In the case of a more serious violation of or threat to the citizens' rights, the Ombudsman may notify the Croatian Parliament and the public of the failure of undertaking measures in accordance with his/her recommendation or proposal.

(5) The Ombudsman may propose to the head of the body as referred to in Article 4 of this Act the initiation of an appropriate proceeding against a person who through his/her unconscientiously actions has violated a constitutional or statutory right and who has failed to undertake, on the proposal of the Ombudsman, appropriate measures to lessen or remedy the resulting harm. The head of the body is obliged to inform the Ombudsman on the initiation of the proceeding for breaches of the official duty within 30 days from the day of receipt of the proposal.

### *Inspection*

#### Article 28

(1) The Ombudsman may at any time and without prior notification inspect the premises where the persons deprived of liberty are placed, premises where persons whose freedom of movement has been restricted and specific groups whose rights and freedoms the Ombudsman protects. The Ombudsman shall be entitled to inspect all the premises of bodies in which he/she is carrying out the inspection.

(2) After having carried out the inspection, the Ombudsman shall draft, if necessary, a report which he/she shall submit to the body referred to in paragraph 1 of this Article and to the authority responsible for supervising the said body. If the report contains recommendations and/or remarks, the body referred to in paragraph 1 of this Article and the supervising

authority shall immediately, or within a period of 30 days at the latest, inform the Ombudsman of the actions undertaken pursuant to his/her report.

(3) The Ombudsman may inform the Croatian Parliament and the public if none of the bodies as referred to in paragraph 2 of this Article inform the Ombudsman on the undertaken measures.

(4) The Ombudsman is entitled to communicate with anyone who might provide him/her with information regarding suspicions of human rights violations in the body or institution being inspected without the presence of the employee of the body or institution referred to in paragraphs 1 and 2 of this Article.

(5) The Ombudsman shall periodically inform the public on the conducted inspections in special reports which he/she publishes on his/her website.

## VI. THE OMBUDSMAN'S OFFICE

### *Organisation of the Ombudsman's office*

#### Article 29

(1) In order to perform the activities under the competence of the Ombudsman, the Ombudsman's Office shall be established as a professional service.

(2) In the framework of the Ombudsman's Office special organisational units for each area shall be established.

(3) Internal organisation of the Ombudsman's Office shall be regulated by the Standing Orders of the Ombudsman.

(4) The seat of the Ombudsman's Office is in Zagreb. The Ombudsman may establish regional offices dislocated from the Ombudsman's headquarters.

### *The Standing Orders and the Ordinance on the internal order*

#### Article 30

(1) The Ombudsman shall adopt the Standing Orders which shall be approved by the Croatian Parliament and published in the "Official Gazette".

(2) The Standing Orders shall regulate the internal organisation of the Ombudsman's Office, methods of work of the Ombudsman and his/her deputies, the way of planning and working, the methodology of drafting annual and special reports, the scope, number and election of the Council for Human Rights and other issues relevant for performing the Ombudsman's duties.

(3) The Ombudsman shall adopt the Ordinance on the internal order which shall regulate the number and profile of the Office staff necessary for performing the duties, description of their assignments and professional requirements for their posts, as well as their authorities and responsibilities and other relevant issues.

(4) The Ombudsman may, according to this Act and the Standing Orders, adopt other acts necessary for proper performance of the Ombudsman's activities.

## VII. THE OMBUDSMAN'S COUNCIL FOR HUMAN RIGHTS

### Article 31

(1) The Council for Human Rights (hereinafter: The Council) is an advisory body that considers and proposes strategic guidelines in the field of promotion of human rights and freedoms, ensures permanent cooperation in the field of human rights and freedoms between the Ombudsman, civil society, academic community and media and considers other issues of importance for the work of the Ombudsman in the field of promotion of human rights and freedoms.

(2) The members of the Council for Human Rights shall be appointed by the Ombudsman from among representatives of the civil society, national minorities, academic community and media for a period of four years. The members shall not receive any compensation for their work in the Council.

## VIII. COOPERATION OF OMBUDSPERSONS IN PROMOTION AND PROTECTION OF HUMAN RIGHTS

### Article 32

- (1) The Ombudsman and special ombudspersons are obliged to mutually cooperate in the field of promotion and protection of human rights in accordance with the principle of compatibility, mutual respect and efficiency in protection and promotion of human rights.
- (2) Ways and methods of cooperation shall be stipulated in the Agreement on mutual cooperation. The agreement shall especially regulate planning of joint activities, performance in individual cases and inspections, continued holding of meetings, joint appearance in the public, cooperation with the media, cooperation in drafting reports and analysis as well as in educating of their staff.

## IX. FINANCING OF THE OMBUDSMAN

### Article 33

The financial resources for the performance of the Ombudsman's duties shall be provided in the State Budget of the Republic of Croatia.

## X. TRANSITIONAL AND FINAL PROVISIONS

### *Election of the Ombudsman and deputies*

#### Article 34

- (1) Upon the entry into force of this Act the Croatian Parliament shall initiate the procedure of election of the Ombudsman.
- (2) The Ombudsman nominated according to the stipulations of this Act shall initiate the election procedure of the deputy Ombudsman referred to in Article 12, paragraph 1 of this Act within eight days after assuming the office of the Ombudsman. The Ombudsman shall propose the candidates for deputies to the Parliament within 30 days after the termination of a public call for applicants.

### *Adoption of executive regulations*

#### Article 35

- (1) The Ombudsman shall within at latest 90 days after the entry into force of this Act submit the Standing Orders, made in accordance with the stipulations of this Act and other acts regulating its competence, for an approval to the Croatian Parliament.
- (2) The Ombudsman shall adopt the Ordinance on the internal order at latest within 60 days after the entry into force of the Standing Orders referred to in paragraph 1 of this Article.
- (3) Until the entry into force of regulations referred to in paragraph 1 and 2 of this Article the Standing Orders of the Ombudsman ("Official Gazette" 71/97) as well as the current Ordinance on the Internal Order shall be in force.

### *Merging of the Center for Human Rights*

#### Article 36

- (1) Upon the entry into force of this Act, the Ombudsman shall take over the activities, assets, equipment, archives and other documentation, operating resources of the Centre for Human Rights.
- (2) Upon the entry into force of this Act, the employees of the Center for Human Rights shall be transferred to the Ombudsman's Office and assigned to appropriate positions in accordance with the qualifications, expertise, skills, abilities, work experience and the earlier work results until the adoption of the Ordinance on Internal Order as referred to in Article 35, paragraph

2 of this Act.

(3) The Ministry of Justice shall, on behalf of the Croatian Government, implement the procedure of deleting the Center for Human Rights from the court registry within one month from the date of the entry into force of this Act.

*Entry into force of the Act*

Article 37

(1) Upon the entry into force of this Act the Regulation on the establishment of the Centre for Human Rights (“Official Gazette” 65/05 and 19/10) shall be declared null and void.

(2) Upon the entry into force of this Act the Ombudsman Act (“Official Gazette” 60/92) shall be declared null and void.

(3) Upon the entry into force of this Act the Ombudsman Act (“Official Gazette” 125/11) shall be declared null and void.

Article 38

This Act shall enter into force on the day of publishing in the “Official Gazette”.

Class:

713-01/12-01/01

Zagreb, 29 June 2012.

CROATIAN PARLIAMENT

President of the Croatian Parliament

Josip Leko, m.p.