

Regional Law of Tuscany, April 27, 2009, n. 19 (BURT 6 May 2009, n. 15)
Discipline of Regional Ombudsman

Regional Council has approved,
The Chairman of the Executive promulgates the following law:

Preamble

Having regard to Article 117, fourth paragraph, of the Constitution;

Having regard to Article 56 of the Statute;

Having regard to the Regional Law 2 February 2007, n. 1 (Postponement of the term of Office of the Regional Ombudsman in the first implementation of Article 56 of the Statute);

Having regard to the opinion of the Council of local authorities, expressed in the sitting of 13 December 2006;

Considering as follows:

1. the need to adapt the existing rules of the regional Ombudsman with the provisions of the new Statute, developing evolutionary elements of this figure who has gained in our region a long-standing and wide experience, dealing with a multitude of specific cases and stakeholders nationally and internationally;
2. the need to define and qualify in this discipline a new kind of Ombudsman, evaluating, alongside the traditional functions relating to maladministration, also the functions of proposal for the achievement of goals of good performance, transparency and equity of public administration, the role of connection and mediation between individuals and the administration, the role of assisting immigrants and persons who have more difficulties in their relationship with the public administration;
3. the need for a more exact legal definition of the specific activity of the Ombudsman by defining the concept of maladministration, today absent at regional and national level, which constitutes the peculiar condition for the possibility of action by Ombudsman;
4. the opportunity to enhance social relief of the Ombudsman, expecting the possibility that the intervention of the Ombudsman is required not only by individuals in reference to a specific case but also by collectives stakeholder who, starting from some specific cases, attained widespread importance of the interests involved, in which the intervention of the Ombudsman constitutes an answer whose scope goes beyond the specific case examined;
5. the opportunity to dictate specific provisions to define more precisely the scope of Ombudsman's intervention in areas of particular social importance, in which already for a long time ombudsmanship is, moreover, very active, such as healthcare, if it have not been effectively exhausted the internal procedures of protection already provided by regional law, as well as in regard to dealers or managers of public services and to protection the right of access;
6. the opportunity to enhance the network of local ombudsman and to establish its discipline;

following law is approved

Chapter I - Finality and ambit of application

Art. 1 - Object.

1. This law sets out the rules of the Regional Ombudsman and of the Regional network of Ombudsman, according with article 56 of Tuscany Region Statute and with principles about ombudsman expressed by United Nations, Council of Europe and other international organizations.
2. Regional Ombudsman, hereinafter named Ombudsman, exercise its functions independently and is not subject to any hierarchical or functional control.
3. Ombudsman has administrative autonomy and independent accounting.

Art. 2 - Functions of Ombudsman

1. Ombudsman guarantees everyone non-judicial protection in cases of maladministration, as defined by article 5, and exercises other functions as defined by law, concurring, including through formulation of proposals, with public authorities to pursuit of improving good performance, impartiality, transparency and equity. For this purpose Ombudsman also performs mediation between stakeholders and public administrations, in order to achieve a consensual composition of the question submitted for its attention. The Ombudsman helps individuals who are in a particular state of social distress, to facilitate the exercise of their rights in relations with the public administration and especially in administrative proceedings which they are interested.
2. Ombudsman acts as a Guarantor of the taxpayer, with reference to regional taxes, according to the rules established by regional law.
3. In its activities, Ombudsman is inspired on principles of fluency, informality and cooperation with the administrations interested.

Art. 3 - Intervention towards the Region, of the regional corporate body and of other subjects

1. Ombudsman acts towards the Region, the regional institutions and companies, the health organizations whit public participation working in the regional territory, the health organizations accredited and public institutions supervised by the Region.
2. Ombudsman may act, within limits of the article 8, paragraph 5, towards of municipalities, provinces and mountain communities, where municipal or provincial ombudsman hasn't been instituted or appointed.
3. Ombudsman may act, within the limits and the formality established by state law, against the peripheral offices of the State.

Art. 4 - Intervention towards the dealers or managers of public services

1. Ombudsman take action towards dealers or managers of regional public services pursuant to this Law, to regional legislation disciplining public services and to provisions disciplining such intervention by the concessions or conventions of management.
2. Ombudsman take action towards dealers or managers of national public services within

limits and as prescribed by the laws of the State.

3. Ombudsman acts towards the dealers or managers of local public services in collaboration with network of local ombudsman.

Chapter II - Functions and tasks of protection

Art. 5 - Maladministration – Definition

1. There is maladministration when:

- a) a due act has been omitted or delayed without motivation;
- b) an act has been enacted or format or an activity has been exercised in a manner irregular or illegal;
- c) has verified the violation of the principles relating to provision of public services dictated by provisions for the protection of users;
- d) there has been absence of a response or refusal of information;
- e) in every other case has not been respected the principles of good administration.

Art. 6 - Assistance on request

1. Ombudsman may intervene at request of individuals and organizations who complain, in relation to their rights and interests, in cases of maladministration by entities referred to in Articles 3 and 4.

2. Ombudsman may also intervene when requested by committees, groups, associations and social groups who complain, in relation to their rights and collective interests, in cases of maladministration by entities referred to in articles 3 and 4. Ombudsman promotes, also through information activities, participation in procedure by the greatest number of holders of rights and collective interests.

3. Application to the Ombudsman is not subject to any formality.

4. If application is not filed in writing, officer who receives the application verbalize it

5. Ombudsman evaluates the foundation of the request and in case of a negative assessment, notify interested person why his claim has been dropped

6. Ombudsman intervenes both during administrative procedure as well as when administrative act has been already adopted.

7. Application for judicial or administrative review does not preclude or restrict faculty to application to Ombudsman. Application to Ombudsman in order to exercise right of access suspends deadline for submission of judicial review to Region Administrative Tribunal, in accordance with rules of article 25, paragraph 4, of Law 7 n. 241, August 7, 1990 (New rules on Administrative procedure and on the right of access to administrative documents)..

Art. 7 - Office action.

1. Ombudsman may intervene on its own initiative, if he finds cases of maladministration in activities carried out by entities referred to in articles 3 and 4.

Art. 8 - Investigation.

1. Ombudsman invite administrations or parties involved to provide all the information and explanations considered necessary.
2. The Ombudsman has power to:
 - a) view any acts or documents relating to subject of his intervention and obtain copies and also acquire information through regional information retrieval systems;
 - b) send for officer responsible for the complaint, alone or jointly to the interested parties, in order to experience the conciliatory intervention in accordance with article 10;
 - c) access any office in order to carry out investigations which are necessary;
 - d) ask competent bodies to provide to adoption of act, when a due act has been illegally omitted.
3. The functionary responsible of Administrative procedure has duty to appear before the Ombudsman in order to examine the claim. He has to provide any information, clarification and the documents required in writing by Ombudsman, within twenty days, or on the other hand, motivate disagreement to thesis represented or conclusions reached by Ombudsman.
4. Ombudsman can't be opposed office secrecy.
5. With reference to activities of municipalities, provinces, mountain communities, where it is not established or named municipal or provincial Ombudsman, Ombudsman exercises only powers referred to in paragraph 2, letters a) and b) of this article, by sending appropriate reporting to administration concerned in case he gets no response from responsible of administrative process offices consulted. Article 14, paragraphs 2 and 3 doesn't apply.

Art. 9 - Protection of privacy and of the data.

1. Ombudsman is bound to secrecy on news that he acknowledges and that have to remain secret or confidential, in accordance with the provisions regulating the matter
2. Communication of personal common data to authority different from the one directly concerned is limited to cases where this is in interest of the owner of data, in order to remove obstacles when it is not possible avoid communicate such data in order to involve Regional office in more broad process of modification of rules concerning the case object of the claim.
3. Any other communication or dissemination of data outside administration directly interested is given in statistical form, or when it is necessary to refer to individual case, anonymously, limiting to the maximum the disclosure of data that could lead to identification of person concerned.

Art. 10 - Conciliatory action.

1. Ombudsman try, if possible, to get consensual solution of claim submitted to him.
2. In order referred to in paragraph 1 may also promote an agreement pursuant to l. 241/1990 and subsequent amendments

Art. 11 - Result of interventions.

1. Ombudsman, as soon as he ends up his investigation, issue his reliefs and recommendations to entities referred to in Articles 3 and 4 and fixes, where appropriate, a term for definition of procedure.
2. Administration is required to explain factual and legal basis in case it's decided not to compel also in part, with Ombudsman's observations.
3. If term Ombudsman gave to compel his recommendation expires without any answer, or in case Ombudsman does not consider elements disclosed relevant or decisive pursuant to

paragraph 2, he can notify failure to competent regional bodies. He can also request President of Regional Council activation of substitutive powers in case of Article 8, paragraph 2, letter d).

4. Ombudsman informs stakeholders of progress and result of his action, indicating any actions that they can take further in administrative or judicial office.

5. In case of intervention on collective request referred to in article 6, paragraph 2, the information activity referred to in paragraph 4 is also made in respect of community of potential interested parties

Art. 12 - Intervention to protect right of access.

1. Ombudsman, in case of a request for intervention to protect the right of access under current regulations, if recognizes that access has been illegally refused or delayed, notify it to person who holds that acts to he provide to reconsider the refusal, expressed or implied.

2. Access is allowed if the entity that holds the documents does not give off, within thirty days from the communication of the Ombudsman, the reasoned decision confirming the refusal.

3. Ombudsman intervenes to protect right of access, in accordance with article 25, paragraph 4, of l. 241/1990, also on acts of Provinces where have not been established provincial Ombudsman and on acts of the Municipalities, where have not been established nor the municipal Ombudsman or the Ombudsman of the respective Province.

Art. 13 - Assistance and protection for immigrants and persons in particular state of discomfort.

1. Ombudsman assists and supports, at their request, people who are in situations of particular social discomfort, dependent on economic, cultural and social integration reasons, and assists them in administrative proceedings which may have interest. Ombudsman carries out the same activities in favor of immigrants.

2. In accordance with principle of loyal cooperation between public administrations and between these and the managers of public services, Ombudsman works with entities referred to in Article 3, to carry out all actions and behaviors in order to ensure, according to criteria of care, equity and adequacy, performance towards against immigrants and people in a position of personal and/or social discomfort.

3. Constitution of action in criminal process civil action concerning cases regulated by Law 5 febbraio 1992, n. 104 (Framework-law for the assistance, social integration, and rights of persons with disabilities), compete to the Ombudsman, if the Municipality or Province with territorial jurisdiction have not proceeded to institution or the nomination of his own Ombudsman.

4. Regional Attorney service assists Ombudsman in front of the Court.

Art. 14 - Cooperation with Ombudsman

1. Authorities towards which Ombudsman promotes his are required to lend fair cooperation and facilitate task for achievement of purposes of this Act.

2. In case of non-cooperation by responsible for the procedure, by office managers or by other officials however asked to carry out tasks of this Act, Ombudsman informs the administration from which the person involves depends on in order such behavior could get

negative valuation by managers of that administration or could be object of disciplinary procedure.

3. In case disciplinary or evaluation proceedings for such behaviors are carried out their result are communicated to Ombudsman.

Chapter III - Ombudsmanship in health protection contest

Art. 15 - Internal protection of rights within health agencies

1. Anyone has to be granted the right to non judicial protection of his rights within the sanitary and social sanitary contest. This kind of protection has to be granted inside health agencies by specific offices for protection of service users rights and shall be granted by Ombudsman as well according to the ways this law provides. A specific discipline of this contest will be provided by a specific Regulatory act of Regional Government, in which participation of voluntary and protection of rights of ill person associations has to be granted as well. Non judicial protection of rights has to be applied to any public health agencies operating within Tuscany Region territory as well as to private health organization offering their services to the public at the same condition of public agencies due to specific agreements with public health system.

2. Ombudsman can act towards private sanitary institution as well, with power to refer any violation he finds out to Public institution responsible to authorize such institution to work in sanitary field, as well as professional orders and associations.

3. Ombudsman has to inform the applicant about any other possible remedy that can be applied to his/her claim.

Art. 16 - Relationship among health agencies internal protection of rights system and ombudsmanship

1 Ombudsman and people working inside health agencies internal protection of rights office cooperates among each other in order to integrate and cooperate in protection of ill person rights.

2. In order to integrate among each other, to simplify protection of rights process and to avoid double intervention, the ombudsman sent all claims received to health agencies responsible for those claims and agencies inform the ombudsman of their findings about the claims they receive from his office.

3. Ombudsman can ask in any moment information about the enquiry concerning claims he send and urge the health agency whether internal enquiry is slow or no answer is get.

Art. 17 - Ombudsman competences

1. Ombudsman has power to intervene:

a) whenever health agencies aren't answering him within the terms internal agency act for claims provides or no internal procedure has been activated;

b) in all cases claims concerns malpractice problems and the applicant is not satisfied with the answer he got from health agency involved.

2 Agencies send the Ombudsman, informing applicants about it, all claims they got about malpractice.

3. Ombudsman and health agencies cooperate in order to settle up a system to monitor their activity of protection of rights through and integrated system and to promote actions in order to change general organization rules and training of personnel concerning problems they faced with in their activity.

4. Ombudsman cooperates with Tuscany Region, health agencies, university, professional orders and association and association for protection of rights to promote definition of damage compensation concerning claims he received through alternative dispute resolution mechanism

Art. 18 - Process for malpractice cases:

1. Ombudsman can exercise all powers of article 8, besides:

a) he may ask for a specific report about the claim to the health agency involved;
b) he may use cooperation of physician, especially of forensic physicians, in order to investigate malpractice hypothesis. He has to consult physician from public agencies different from the one involved with the claim and he can stipulate special agreements for such activities;

c) he can send, if interested person delegates him, his claim to professional orders if he finds out question he's investigating about could have a deontological implication as well.

2. Ombudsman can investigate general issues concerning the claim he received, even with the cooperation of sanitary personnel quoted above at point 1 lett. b).

Chapter IV - Network of local ombudsmanship

Art. 19 - Promotion of the network

1. Ombudsman promotes, in cooperation with local Institutions and the Council of Local Autonomies, initiatives useful to promote development and quality of ombudsmanship and adoption of discipline granting any local ombudsman autonomy, independence, adequate equipment and personnel, equitable salaries.

2. Ombudsman promotes the network of local ombudsmanship with aims to cooperate among different local ombudsman and between them one and Regional Ombudsman and to stress knowledge of activity and functions of ombudsmanship within Tuscany Region.

3. Region promotes and encourages associated activity of local ombudsman's functions by means of rules of regional laws.

Art.20 - Permanent Conference of local Ombudsman.

1. At least twice in a year Regional Ombudsman convenes Permanent Conference of local Ombudsman in order to examine common problems and to promote initiatives to develop and improve ombudsmanship.

Art. 21 - Relationships with other agencies of Ombudsman

1. Ombudsman establishes cooperation and exchange of information with other Regional Ombudsman, European Ombudsman, Commissioner for human right of Council of Europe and other International agencies of Ombudsman.

Chapter V - Requirements and procedures for the appointment

Art. 22 - Requirements for the nomination and reasons for exclusion.

1. Anyone in possession of degree and a qualified professional experience at least five years, of self-employment or management position in public or private institutions or as representatives of associations and social organizations, carried out in defense of the rights of citizens or otherwise legal administrative field, may be appointed Ombudsman,.
2. Is not possible to appointed ombudsman:
 - a) members of National Government and Parliament, Provincial and Regional Presidents, Mayors, Regional, Provincial, Municipal Councilors or Councilors of community of mountain villages;
 - b) members of leading bodies at national, regional, local political parties or trade unions;
 - c) General director, Medical director, Administrative director, the social coordinator of health agencies;
 - d) employees of Tuscany Region, directors, general managers and employees of agencies, institutions, consortia, companies that depend by Tuscany Region or are subordinate to control or supervision of the Region.

Art. 23 - Incompatibility.

1. The office of Ombudsman is incompatible with any self-employed or employed activity of any trade or profession and any other political or administrative function as well as causes of exclusion occurred. The incompatibility are applied to the regional councilors too.
2. In case President of Regional Council, finds out the existence or occurrence of a case of incompatibility, due to notification by third parties or on his own, invites the Ombudsman to remove the reasons of incompatibility. If the cause is not removed within ten days from reception of notification, Ombudsman shall be revoked from his office by resolution of the regional Council.

Art. 24 - Term of office and extension functions .

1. The Ombudsman holds office for six years and can not be reappointed.
2. The Ombudsman continues in the exercise of their duties for ninety days from the expiration of its term or for a shorter period is specified in Office of the successor.

Art. 25 - Causes of earlier termination

1. Office of Ombudsman shall cease before expiration provided by article 24, paragraph 1, by resignation, death, permanent incapacity, revocation or cancellation.
2. Regional Council, with a majority of two thirds of its members, may approve withdrawal of the Ombudsman for grave reasons.
3. Upon occurrence of cases referred to in paragraph 1, election of the Ombudsman is placed on agenda of next session of first Regional Council. During the period of completion of procedures for appointment under Article 26, position of Ombudsman is temporarily filled by Secretary General of the Regional Council, without right to the allowance referred to in Article 27.

Art. 26 - Appointment of Ombudsman.

1. Articles 5, 7 and 8 of Law February 8, 2008, n. 5 (Rules regarding appointments and nominations and renewal of the administrative competence of the Region) are the rules for the procedure for the appointment of Ombudsman.
2. The candidate who gets the vote of two thirds of the members of the Regional Council is appointed Ombudsman. After three unsuccessful vote, the candidate receiving the majority vote of members of the Regional Council is elected Ombudsman.

Art. 27 - Allowances and expenses¹

1. Ombudsman has right to the same compensation payable to Tuscany Parliament members, excluding deductions of compulsory retirement under Article 4, paragraph 1, of Law 9 January 2009, n. 3 (Consolidated text of rules on directors and members of the Regional Council)²
2. Ombudsman is entitled to be reimbursed, in the same way provided for Tuscany Parliament Members, for cost of meals, accommodation and transportation for journeys he makes for his institutional activities, including travel from place of residence to the place of his office see.
3. Ombudsman has also right to have recognized expenses and allowances for missions to carry out its activities in the cases and measures planned for members of Regional Parliament.

Art. 28 - Annual Report and relations with the Regional Council

1. Ombudsman reports to the President of the Regional Parliament and the President of the Regional Government, the Presidents of the Senate and Chamber of Deputies, by 31 March each year, his activity report, that could provide also his suggestions to prevent cases of maladministration.
2. Ombudsman report is discussed by Regional Parliament, according to rules of procedure of Regional Parliament.
3. Parliamentary committees may hear the Ombudsman for further details about contents of his report or in exercise of his functions. Ombudsman has a right to be heard by Committee responsible for Institutional Affairs in order to report about general aspects of its function, and the other board committees regarding aspects of his business that invest their expertise.
4. Regional Ombudsman can be heard in public meetings by the Regional Council.
5. In cases of particular importance and urgency, Ombudsman may submit special reports to President of the Regional Parliament and the President of the Regional Government. The President of the Regional Parliament has to inscribe the discussion of such reports on the agenda for discussion and possible determinations.

¹ Article replaced by art. 40, L.R. December 14, 2009, n. 75. The original text was as follows: "Article 27. Allowances. 1. It is for the Ombudsman for a monthly allowance equal to the monthly charge payable to councilors, net of statutory deductions provided for in Article 4, paragraph 1, of Law 9 January 2009, n. 3 (Consolidated text of rules on directors and members of the Regional Council).

² For the reduction of the fee referred to in this paragraph see Art. 1, paragraph 1, letter d), L.R. December 29, 2010, n. 64. See also paragraph 2 of that Article.

6. Annual and other reports are published in Official Bulletin of Tuscany Region after they have been discussed by Regional Parliament.

7. Ombudsman can provide any information about his activities and results of investigations carried out, also using the information structures of the Regional Council.

Chapter VI – Place, organization, personnel, finances

Art. 29 – See

1. The Ombudsman is based at the Regional Council of Tuscany

Art. 30 - Organization and personnel

1. The Bureau of the Regional Parliament, after consulting the Ombudsman, provides him with adequate resources for the functioning of his office mainly about staffing, allocation of staff, facilities. The staff is assigned to the functional dependencies of the Ombudsman.

2. Ombudsman may be assisted by regional offices and, within the limits of the budget chapter on the costs for his activity, by professionals registered on the list of existing technical advisers in offices of the judicial districts of the Court of Appeal Tuscany, or other professionals if that is appropriate in relation to the type of investigation that has to be carried out.

Art. 31 - Financial resources

1. In time for the preparation of financial balance by the Regional Parliament, Ombudsman elaborates, each year, a program of activities for his next year activities with an indication of his financial requirements.

2. The Parliamentary Presidency Bureau, once examined Ombudsman program and heard him, determines the financial resources to be included in the budget proposal of the Regional Council.

3. Expenses are engaged and paid by the Ombudsman office Manager, in accordance with decisions taken by Ombudsman under the program, according to procedures and rules laid down, even for the purposes of reviewing decisions of executives, accounting for regional Parliament.

Chapter VII – Transitory and final disposition

Art. 32 - Abrogation

1. The regional law 12 January 1994, n. 4 (New Ombudsman discipline), is abrogated.

Article 33 - Transitional provision.

1. Ombudsman in office at time of coming into force of this Law shall assume the functions of the law until the expiration of his mandate, as adjusted pursuant to Regional Law 2 February 2007, n. 1 (Postponement of duration of office of the Regional Ombudsman in the first implementation of Article 56 of the Statute).

2. Until the entry into force of the regulation referred to in Article 15, paragraph 1, continue to be carried out, as applicable, the directives approved by Deliberation of Regional Government May 17, 2004, n. 462 (Regional directives for the protection of customers of the health service of Tuscany) and subsequent amendments.

3 This law is published in the Official Gazette of the Region. It is compulsory to anyone to observe and to point out it as law of the Tuscany Region