



PROVEDOR DE JUSTIÇA

Na defesa do Cidadão: perceber para prover

Statute of the Ombudsman

(free translation)

Law No. 9/91, of April 9

(as amended by Law No. 30/96, of August 14, Law No. 52-A/2005, of October 10,
and Law No. 17/2013, of February 18)

The Parliament, in compliance with articles 164, sub-paragraph d), 167, sub-paragraph l), 168, sub-paragraph b) and 169, paragraph 3, of the Constitution, decrees as follows:

CHAPTER I

General principles

Article 1

Duties

1. In accordance with the Constitution, the Ombudsman is a State body elected by the Parliament whose main duties shall be to defend and to promote the rights, freedoms, guarantees and legitimate interests of the citizens, ensuring, through informal means, that public authorities act fairly and in compliance with the law.

2. The Ombudsman may also act as an independent national institution for monitoring the implementation of international treaties and conventions on human rights, when designated for that purpose.

3. The Ombudsman ensures cooperation with similar institutions and with European Union and international organizations for the support and promotion of citizens' rights, freedoms and guarantees.

4. The Ombudsman shall have complete independence in the performance of his duties.



Article 2

Scope of activity

1.The activities of the Ombudsman shall focus namely on the activity of the services integrated in the central, regional and local public administration, the Armed Forces, the public institutes, the public companies or the companies whose capital is mostly public, the concessionaires operating public services or exploiting state property, the independent administrative bodies, the public associations, including professional bodies, and the private entities exercising public authority powers or providing general interest services.

2.The scope of activity of the Ombudsman may also include relations between natural persons in a special power relationship, within the scope of protection of rights, freedoms and guarantees.

Article 3

Right to complaint

Citizens, including natural and legal persons, may submit complaints to the Ombudsman concerning actions or omissions by public authorities. The Ombudsman shall examine such complaints and address the public bodies concerned, making appropriate recommendations which are not legally enforceable in order to prevent and remedy injustice.

Article 4

Autonomy

1.The Ombudsman may also act on his own initiative, defending and promoting the citizens' rights, freedoms and guarantees as well as their legitimate interests, particularly the most vulnerable citizens on account of their age, race or ethnicity, gender or disability.

2.The Ombudsman acts regardless of administrative and judicial remedies provided for in the Constitution and in the law.



CHAPTER II

Statute

Article 5

Appointment

1.The Ombudsman shall be appointed by Parliament by a two third majority of the Members present, provided that the said majority is higher than the absolute majority of the Members in office.

2.The appointment may only fall upon a citizen who meets the conditions required for being elected a Member of the Parliament and who enjoys a well-established reputation of integrity and independence.

3.The Ombudsman shall take office before the Speaker of Parliament.

Article 6

Duration of the mandate

1.The Ombudsman shall be elected for a period of four years and may be re-elected only once for a similar period of time.

2.His mandate having reached an end, the Ombudsman shall nevertheless remain in office until his successor takes office.

3.The appointment of the Ombudsman shall take place within the last thirty days of the term of office of the incumbent Ombudsman.

4.Where the Parliament has been dissolved, or is out of session, the appointment shall be made within fifteen days of the first sitting of the new Parliament or of the new session, unless an extraordinary session of Parliament session is convened for such purpose.

Article 7

Independence and irremovability



The Ombudsman shall be independent and irremovable and his duties shall not be discontinued before the end of his mandate, save where otherwise established in the present law.

Article 8

Immunities

1.The Ombudsman shall not be civilly or criminally held liable for his recommendations, remarks or opinions nor for any other act carried out within the performance of his duties.

2.The Ombudsman shall not be detained or arrested without the authorization of the Parliament, save for a crime punished by imprisonment of more than three years and if caught in flagrante delicto.

3.Where criminal proceedings are brought against the Ombudsman and the latter is definitively accused, the Parliament shall decide whether or not to suspend him from office so that the proceedings can be continued, save in the case of a crime punished by the sentence mentioned in the previous paragraph.

4.In the case referred in paragraph 2 above, the imprisonment of the Ombudsman entails his suspension from office during the term of imprisonment.

Article 9

Privileges, rights and guarantees

The Ombudsman shall have the same rights, honors, precedence, rank, remuneration and privileges as a minister, including those provided in Law No. 4/85, of April 9, particularly in paragraphs 1 and 2 of its article 12.

Article 10

Cabinet of the Ombudsman

1.A cabinet of the Ombudsman is hereby set up, providing direct and personal assistance to the Ombudsman.



2.The staff of the cabinet shall consist of one head of cabinet, three advisers and four personal secretaries.

3.The staff of the cabinet is freely appointed and dismissed by the Ombudsman.

4.The rules applicable to the appointment and to the remuneration of the staff of the ministerial private cabinets, as well as those concerning guarantees and duties, shall apply to the staff of the Ombudsman's cabinet.

Article 11

Incompatibilities

1.The Ombudsman shall be subject to the same incompatibilities that apply to court of law judges in office.

2.The Ombudsman may not hold any position within the bodies of political parties or associations, nor may he engage in any public partisan activities.

Article 12

Duty of confidentiality

1.The Ombudsman shall maintain the secrecy in respect of the facts that come to his knowledge in the performance of his duties where such secrecy is required by the nature of such facts.

2.(Repealed).

Article 13

Employment guarantees

1.The Ombudsman shall not be prejudiced as regards the stability of his employment, his career or his social security scheme.

2.The period of time actually served as Ombudsman shall be taken into account, for all due purposes, as if it were served in the incumbent's position of origin; it shall also be taken into account for purposes of retirement and pension, even if the job position held at the time of the appointment did not confer the right to such benefits.

3.The Ombudsman shall benefit from the general social security scheme.



Article 14

Identification and free pass

1.The Ombudsman shall be entitled to a special identification card issued by the secretariat of the Parliament and signed by its President.

2.The identification card shall entitle the bearer to both free pass and access to all premises of the central, regional, local and institutional administration, of civil and military services, and all other entities under the control of the Ombudsman.

Article 15

Vacancy of office

1.The Ombudsman's duties shall only cease before the four-year term lapses in the following cases:

- a) Death or permanent physical disability;
- b) Loss of the requirements for being elected a Member of the Parliament;
- c) Supervening incompatibility;
- d) Resignation.

2.The grounds for the Ombudsman's cessation of duties are verified by the Parliament, in accordance with its Rules of Procedure.

3.In case of vacancy of the office, a new Ombudsman must be appointed within the following thirty days, in compliance with the established in article 6, paragraph 4, above.

4.The legal provisions concerning retirement on grounds of age shall not apply to the Ombudsman.

Article 16

Deputy Ombudsmen

1.The Ombudsman may, at any time, appoint and dismiss two deputies chosen from among individuals holding an adequate university degree and having a well-established reputation for integrity and independence.



2.The Ombudsman may delegate to one of his deputies the duties relating to the rights of the child, so that those duties will be especially carried out.

3.The Ombudsman may delegate to his deputies the powers referred to in articles 21, 27, 30 to 34, and 42 and may also appoint the deputy responsible for ensuring the running of the office in case of early cessation or interruption of the Ombudsman's duties.

4.The provisions of articles 11, 12, 13 and 14 above shall apply to the deputy Ombudsmen.

Article 17

Assistants

1.The Ombudsman shall be assisted in the performance of his duties by coordinators and advisers.

2.The organization of the coordinators and advisors departments, as well as its relationship with the Ombudsman's cabinet and with the Office of the Ombudsman general secretary, is governed by regulation approved by the Ombudsman and published in the official journal.

3.Delegations of the Office of the Ombudsman in the Autonomous Regions of the Azores and Madeira may be established by regulation approved by the Ombudsman and published in the official journal.

Article 18

Powers of authority guarantee

The Ombudsman, the deputy Ombudsmen, the coordinators and the advisers are considered public authorities, including for criminal law purposes.

Article 19

Assistance from other authorities

All authorities and agents of authority must assist the Ombudsman as required for the proper performance of his duties.



CHAPTER III

Mandate

Article 20

Competences

1. The following shall be within the Ombudsman's competence:

- a) To address recommendations to the competent bodies with a view to correct illegal or unfair acts of public authorities or to improve their services and the administrative procedures followed by those services.
- b) To point out shortcomings in legislation, to issue recommendations concerning its interpretation, amendment or revocation, or to suggest the drafting of new legislation; such recommendations or suggestions shall be forwarded to the Speaker of Parliament, to the Prime Minister and to the Ministers directly involved and, should it be the case, to the Presidents of the Regional Legislative Assemblies and to the Presidents of the Autonomous Regions Governments;
- c) To issue opinion, upon request of the Parliament, on any matter related to its activity;
- d) To promote the divulgation of the content and the meaning of each of the fundamental rights and freedoms, as well as of the purposes of the Ombudsman institution, its means of action and how to appeal to it;
- e) To intervene, in accordance with the applicable law, in the protection of collective or diffuse interests whenever public authorities or companies and services of general interest, regardless of their legal status, are involved.

2. The Ombudsman shall be a member of the Council of State.

3. The Ombudsman may request the Constitutional Court to declare the unconstitutionality or illegality of any legal provisions, in accordance with article 281, paragraph 1 and paragraph 2, sub-paragraph (d), of the Constitution.



4.The Ombudsman may request the Constitutional Court to rule on cases of unconstitutionality due to a legislative omission, in accordance with article 283, paragraph 1, of the Constitution.

5.The recommendations addressed to the Parliament and to the Legislative Assemblies of the Autonomous Regions shall be published in their respective official journals.

Article 21

Powers

1.In the performance of his duties, the Ombudsman shall have the following powers:

- a) To make, with or without prior notice, inspection visits to any area of activity of the central, regional and local administration, including public services and civil and military prisons, companies and services of general interest, whatever its legal status, or to any other entities under his control, to hear their bodies and officials and to request them such information and documents as he may deem adequate;
- b) To undertake such investigations and enquiries as he may deem necessary or convenient, where he may use, for the purposes of collecting and producing evidence, all reasonable means, provided that such means do not collide with the rights and legitimate interests of citizens;
- c) To search, in cooperation with the competent bodies and services, the solutions which best serve the protection of the legitimate interests of citizens and the improvement of the Administration's activity.

2.Without prejudice to the provisions of the following article, the Ombudsman's actions and intervention shall not be limited by the resort to the judicial and administrative remedies foreseen in the Constitution and in the law, or by the pendency of any of the said remedies.

Article 22

Limits



1.The Ombudsman shall not have the power to annul, revoke or amend decisions of public authorities and his interventions shall not suspend any time limits, in particular those laid down for administrative and judicial appeals.

2.The sovereign bodies and the government bodies of the Autonomous Regions shall not be subject to the Ombudsman's inspection and supervision, save for their administrative activity and for the acts performed under the superintendence of the Public Administration.

3.Any complaints relating to judicial activities which, due to their very nature, do not fall outside the Ombudsman's scope of activities shall be dealt with through the High Judicial Council, the High Council of Public Prosecution and the High Council of the Administrative and Fiscal Courts, as applicable.

Article 23

Report and cooperation with the Parliament

1.Every year, until April 30, the Ombudsman shall send a report to the Parliament on his activities, indicating his initiatives, the complaints received, the actions undertaken and the results achieved, and such report shall be published in the official journal of the Parliament.

2.The activity referred to in article 1, paragraph 2, shall be described in an independent annex to the report mentioned in the preceding paragraph and referred by the Ombudsman to the international body to which it concerns.

3.If he deems convenient, and at their request, the Ombudsman may participate in the work of parliamentary committees for the purpose of dealing with matters within his competence.

CHAPTER IV

Procedure

Article 24

Initiative



1.The Ombudsman shall perform his duties either in response to complaints referred to him by citizens, either separately or jointly, or on his own initiative in response to facts that he becomes aware of by any other means.

2.The complaints addressed to the Ombudsman depend neither on the complainant's direct, personal and legitimate interest nor on any time limits.

Article 25

Submission of complaints

1.Complaints may be submitted orally or in writing, even in the form of a simple letter, fax, electronic mail or other means of communication and they must include the identity and the address of the complainant and, whenever possible, his signature, as well as the identification of the entity addressed.

2.The complaints submitted orally shall be officially written down into a formal document that the complainant shall sign, if he is able to.

3.The complaints may be submitted directly to the Ombudsman or to any official of the Public Prosecution Office, who shall immediately forward them to the Ombudsman.

4.Where a complaint is not properly submitted, its replacement shall be determined.

5.Confidentiality about the complainant identity is guaranteed whenever requested and if it is justified for security reasons.

Article 26

Complaints conveyed by the Parliament

The Parliament, its parliamentary committees and its Members may hear the Ombudsman and request him to take whatever steps may be necessary to deal with the petitions or the complaints sent to them.

Article 27

Preliminary examination of the complaints



1. A preliminary examination of the complaints shall be made with a view to decide upon their admissibility.

2. The following complaints shall be dismissed immediately:

- a) Complaints with no possibility of identification of the complainant, in case his identification is essential to the enquiries, or the entity addressed;
- b) Manifestly unfounded or *mala fide* complaints;
- c) Complaints outside the Ombudsman's competence.

3. The decision to open a proceeding, as well as preliminary rejection decisions, must be brought to the knowledge of the complainant by the most rapid and effective means

Article 28

Investigation

1. The investigation shall consist of requests for information, inspections, examinations, inquiries or any other reasonable procedure that does not collide with the fundamental rights of citizens and it shall be undertaken through informal and swift means, without being subject to procedural rules on the production of evidence.

2. Actions within the investigation process shall be carried out by the Ombudsman and his staff, but they may also be requested directly to Public Prosecution officials or any other public entities with priority and urgency if necessary.

Article 29

Duty to cooperate

1. The bodies and officials of the entities mentioned in article 2, paragraph 1, are under the obligation to provide the Ombudsman with every information and clarification that the latter may request from them.

2. The entities mentioned in the preceding paragraph shall fully cooperate with the Ombudsman, namely by providing information, and shall undertake inspections through the competent offices, making documents and files available for examination, and sending them to the Ombudsman, if so requested.



3.The above provisions shall not prevail either over the legal restrictions with respect to the confidentiality of judicial investigations or over the higher interest of the State, when duly justified by the competent bodies, in issues relating to security, defense or international relations.

4.The Ombudsman may stipulate, in writing, a time limit of no less than 10 days for the fulfilment of an urgent request.

5.The Ombudsman shall be entitled to order any worker or representative of any of the entities referred to in paragraph 1 by means of a request addressed to the competent hierarchical authority, or any incumbent of anybody subject to his control to be present at his Office, or at any other place it may indicate based on the circumstances, so as to obtain the requested cooperation.

6.Unjustified non-compliance with the duty to cooperate established in paragraphs 1, 2, 4 and 5 of this article by a worker or a representative of any of the entities referred to in paragraph 1, shall constitute a crime of disobedience, notwithstanding the applicable disciplinary proceedings.

Article 30

Statements

1.The Ombudsman may request statements or information from any citizen whenever he deems them necessary for establishing the facts.

2.The mere duty of confidentiality of any citizen or entity, which is not derived from the Constitution or the law, does not prevail over the duty to cooperate with the Ombudsman within his competence.

3.Absence from work shall be deemed justified when determined by the duty to be present before the Ombudsman.

4.Where a convened person refuses to make a statement or to be present at the designated date and time, the Ombudsman may summon the persons to be heard by registered mail, and subsequent unjustified absence or refusal to make a statement shall constitute a qualified crime of disobedience.



5.Travelling and other expenses authorized by the Ombudsman at the request of the convened person shall be borne by the Office of the Ombudsman out of its budget.

Article 31

Dismissal of complaints

1.Complaints shall be dismissed:

- a) Where they are not within the Ombudsman's competence;
- b) Where the Ombudsman deems the complaint unfounded or that there are not sufficient grounds to justify any proceeding;
- c) Where the invoked illegality or unfairness have already been remedied.

2.The dismissal decision must be must be brought to the knowledge of the complainant by the most rapid and effective means.

Article 32

Forwarding to other authorities

1.Where the Ombudsman deems that a judicial or administrative remedy, especially provided by law, is available to the complainant, he may simply refer the complainant to the competent authority.

2.Irrespective of the established in the preceding paragraph, the Ombudsman shall always inform the complainant of the judicial remedies within his reach.

Article 33

Less serious cases

In less serious and non-continuous cases, the Ombudsman may simply address a critical remark to the body or the services involved or dismiss the case upon receiving explanations.

Article 34

Preliminary hearing



Except as established in articles 30 and 32, the Ombudsman must always hear the bodies and the officials at stake and allow them to provide every clarification required before addressing any recommendation.

Article 35

Disclosure of offences and publicity

1.If sufficient evidence of criminal, disciplinary or regulatory offences arises in the course of the proceeding, the Ombudsman shall inform, as the case may be, either the Public Prosecutor or the authority that is hierarchically competent to start disciplinary or regulatory proceedings.

2.Where the circumstances so require, the Ombudsman may decide to issue statements or to publish information concerning the conclusions reached in the proceedings or any other matter related to his activity, using, if necessary, the State-owned media for that end, and benefiting in any event from the legal regime governing the publication of official statements, according to the respective laws.

Article 36

Preclusion of appeal

Without prejudice to the provisions of article 44, the Ombudsman's acts may not be appealed and they may only be the object of a complaint addressed to the Ombudsman himself.

Article 37

***Mala fide* complaints**

Where it is established that a complaint has been lodged with *mala fide*, the Ombudsman shall forward the matter to the competent official of the Public Prosecution Office for a criminal proceedings in accordance with the law.

Article 38

Recommendations



1.The Ombudsman's recommendations shall be addressed to the body with the power to correct the illegal or unjust act or to remedy the wrongful situation caused by its services.

2.The body to which a recommendation is addressed shall, within sixty days upon its receipt, inform the Ombudsman of its position on the issue.

3.Non-compliance with a recommendation must be duly grounded.

4.If recommendations are not complied with, and whenever the assistance requested is not forthcoming, the Ombudsman may address the competent superior or, should it be the case, to the supervising minister.

5.If the executive body of a local council does not comply with the recommendations of the Ombudsman, he may address the its deliberative assembly.

6.Should the Administration act in defiance of his recommendations or should it refuse to cooperate as requested, the Ombudsman may address the Parliament stating the reasons behind his actions.

7.The Ombudsman's conclusions shall always be transmitted to the bodies or officials involved, and if resulting from a complaint to the complainants.

Article 39

Exemption from expenses, stamps and lawyer

Procedures before the Ombudsman shall be exempt from costs and stamps and do not require the intervention of a lawyer.

CHAPTER V

Office of the Ombudsman

Article 40

Autonomy, premises and objective

1.The purpose of the Office of the Ombudsman is to provide the technical and administrative support necessary for the Ombudsman to perform the duties established herein.



- 2.The Office of the Ombudsman shall have administrative and financial autonomy.
- 3.The Office of the Ombudsman shall have its own premises.

Article 41

Staff

The Office of the Ombudsman shall have its own staff, in accordance with the organic law establishing the said office.

Article 42

Administrative and disciplinary powers

The Ombudsman shall have the power to perform any acts concerning the appointment and the professional situation of the Office of the Ombudsman's staff and to take disciplinary action against such staff.

Article 43

Budget

- 1.The Office of the Ombudsman shall have an annual budget prepared in compliance with its organic law.
- 2.The budgetary appropriations of the Office of the Ombudsman shall be contained in the budget of the Parliament.
- 3.For the purpose of authorizing expenses, the Ombudsman shall have powers similar to those of a minister.

Article 44

Judicial appeals

The Ombudsman's decisions within his powers regarding the management of the Office of the Ombudsman may be appealed to the Supreme Administrative Court in accordance with the applicable law.



CHAPTER VI

Final and transitional provisions

Article 45

Remittance

The designation «Office of the Ombudsman» shall for all due purposes replace the designation «Services of the Ombudsman» contained in the legislation in force or in any other legally valid acts.

Article 46

Amendments to the law establishing the Office of the Ombudsman

Within 180 days from this date, the Government shall, by means of a Decree-law, make the necessary amendments to the organic law establishing the Office of the Ombudsman, i.e., Law No. 10/78, of March 2.

Article 47

Repeal

Law No. 81/77, of November 22, is hereby repealed.