



DEFENSOR DEL PUEBLO

**ORGANIC ACT REGARDING THE OMBUDSMAN**



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**ORGANIC ACT 3/1981, APRIL 6th, REGARDING  
THE OMBUDSMAN**

*(Official Gazette number 109 dated May 7th, 1981)*

**PART ONE: Appointment, removal and  
conditions of office**

**CHAPTER ONE**

*Nature and Appointment*

**Article 1.** The Ombudsman<sup>1</sup> is the High Commissioner of Parliament<sup>2</sup> appointed by it to defend the rights established in Part I of the Constitution, for which purpose he may supervise the activities of the Administration and report thereon to Parliament. He shall exercise the functions entrusted to him by the Constitution and this Act.

**Article 2. 1.** The Ombudsman shall be elected by Parliament for a term of five years, and shall address it through the Speakers of the Congress and the Senate, respectively.

2. A Joint Congress-Senate Committee shall be appointed by Parliament, to be responsible for liaison with the Ombudsman and for reporting thereon to their respective Plenary Sessions whenever necessary<sup>3</sup>.

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<sup>1</sup> The name of the Ombudsman in Spanish is «El Defensor del Pueblo» (The Defender of the People), the title given in article 54 of the 1978 Spanish Constitution.

<sup>2</sup> The name of the Spanish Parliament is «Las Cortes Generales» (the General Assembly) the title given in the 1978 Spanish Constitution; it comprises a Lower House, the Congress, and an Upper House, the Senate.

<sup>3</sup> Drafted according to Organic Act 2/1992, March 5th, amending Organic Act 3/1981 Regarding the Ombudsman, for the purpose of establishing a Joint Congress-Senate Committee for liaison with the Ombudsman, the Preamble of which is as follows:

«Organic Act 3/1981, April 6th, which established the legal framework for the Ombudsman, provides in Article Two, section 2, for the creation of two Committees responsible for liaison with the Ombudsman, in the Congress and Senate respectively.

Although it is true that on certain occasions both Committees may, and under some circumstances must, hold joint meetings, the fact that the usual form of procedure is independent often hinders the relationship between the Parliament as an institutional whole comprising two Houses, and the Ombudsman who is their High Commissioner.

With a view to correcting this deficiency and seeking to establish a more efficient relationship with the irreplaceable institution of the Ombudsman, it would seem advisable, as long as it does not contravene the Constitution, to

3. This Committee shall meet whenever so jointly decided by the Speakers of the Congress and the Senate and, in all cases, in order to propose to the Plenary Sessions the candidate or candidates for Ombudsman. The Committee's decisions shall be adopted by simple majority<sup>4</sup>.

4. Once the candidate(s) has or have been put forward, a Congressional Plenary Session shall be convened at least ten days thereafter in order to elect the Ombudsman. The candidate obtaining the votes in favour of three-fifths of the Members of Congress, and subsequently ratified by the Senate within a maximum of twenty days and by this same majority, shall be appointed.

5. Should the aforementioned majorities not be obtained, a further meeting of the Committee<sup>4</sup> shall be held within a maximum of one month in order to make further proposals. In such cases, once a three-fifths majority has been obtained in Congress, the appointment shall be made when an absolute majority is obtained in the Senate.

6. Following the appointment of the Ombudsman, the Joint Congress-Senate Committee<sup>4</sup> shall meet again in order to give its consent prior to the appointment of the Deputy Ombudsmen proposed by the same.

**Article 3.** Any Spanish citizen who has attained legal majority and enjoys full civil and political rights may be elected Ombudsman.

**Article 4. 1.** The Speakers of the Congress and the Senate shall jointly authorize with their signatures the appointment of the Ombudsman, which shall be published in the «Official State Gazette».

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establish a single Committee in Parliament, responsible for liaison with the Ombudsman and comprising members of both the Congress and the Senate.

This is the purpose of the present Organic Act amending Organic Act 3/1981 which in accordance with its ranking is limited to establishing the aforementioned provision regarding a unified Committee, while its system of appointment and operation defers to the internal statutes of Parliament, as does the Act hereby amended.»

<sup>4</sup> Drafted according to Organic Act 2/1992, dated March 5th.



2. The Ombudsman shall assume his office in the presence of the Procedures Committees of both Houses meeting jointly, and shall take oath or formally promise to perform his duties faithfully.

## CHAPTER II

### *Dismissal, Resignation and Replacement*

**Article 5.** 1. The Ombudsman shall be relieved of this duties in any of the following cases:

1. Resignation.
2. Expiry of his term of office.
3. Death or supervening incapacity.
4. Flagrant negligence in fulfilling the obligations and duties of his office.
5. Non-appealable criminal conviction.

2. The post shall be declared vacant by the Speaker of Congress in the event of death, resignation or expiry of the term of office. In all other cases it shall be decided by a three-fifths majority of the Members of each House, following debate and the granting of an audience to the person concerned.

3. Upon the post becoming vacant, the procedure for appointing a new Ombudsman shall be commenced within one month.

4. In the event of the death, dismissal or temporary or permanent incapacity of the Ombudsman, and until Parliament makes a subsequent appointment, the Deputy Ombudsmen, in order of seniority, shall fulfil the duties of the post.

## CHAPTER III

### *Prerogatives, Immunities and Incompatibilities*

**Article 6.** 1. The Ombudsman shall not be subject to any binding terms of reference whatsoever. He shall not receive instructions from any authority. He shall perform his duties independently and according to his own criteria.

2. The Ombudsman shall enjoy immunity. He may not be arrested, subjected to disciplinary proceedings, fined, prosecuted or judged on

account of opinions he may express or acts he may perform in carrying out the duties of the office.

3. In all other cases, and while he continues to perform such duties, the Ombudsman may not be arrested or held in custody except in the event of in flagrante delicto; in decisions regarding indictment, imprisonment, prosecution and trial the Criminal Division of the High Court has exclusive jurisdiction.

4. The aforementioned rules shall be applicable to the Deputy Ombudsmen in the performance of their duties.

**Article 7.** 1. The post of Ombudsman is incompatible with any elected office; with any political position or activities involving political propaganda; with remaining in active service in any Public Administration; with membership of a political party or the performance of management duties in a political party or in a trade union, association or foundation, or employment in the service thereof; with practising the professions of judge or prosecutor; and with any liberal profession, or business or employment activity.

2. Within ten days of his appointment and before assuming the office, the Ombudsman must terminate any situation of incompatibility that may affect him or her, it being understood that in failing to do so the appointment is thereby declined.

3. If the incompatibility should arise after taking office, it is understood that he shall resign therefrom on the date that the incompatibility occurs.

## CHAPTER IV

### *The Deputy Ombudsmen*

**Article 8** 1. The Ombudsman shall be assisted by a First Deputy Ombudsman and a Second Deputy Ombudsman to whom he may delegate his duties and who shall deputize for the Ombudsman in their fulfilment, in hierarchical



order, in the event of any temporary incapacity or dismissal.

2. The Ombudsman shall appoint and dismiss his Deputy Ombudsmen, following approval by both Houses, in accordance with their Regulations.

3. The appointments of the Deputies shall be published in the «Official State Gazette».

4. The provisions contained in Articles 3, 6 and 7 of the present Act regarding the Ombudsman shall be applicable to the Deputy Ombudsmen.

## PART II: Procedure

### CHAPTER ONE

#### *Initiation and Scope of Investigations*

**Article 9.** 1. The Ombudsman may instigate and pursue, ex officio or in response to a request from the party concerned, any investigation conducive to clarifying the actions or decisions of the Public Administration and its agents regarding citizens, as established in the provisions of Article 103.1 of the Constitution and the respectful observance required for the rights proclaimed in Part I thereof.

2. The Ombudsman has authority to investigate the activities of Ministers, administrative authorities, civil servants and any person acting in the service of the Public Administration.

**Article 10.** 1. Any individual or legal entity who invokes a legitimate interest may address the Ombudsman, without any restrictions whatsoever. There shall be no legal impediment on the grounds of nationality, residence, gender, legal minority, legal incapacity, confinement in a penitentiary institution or, in general, any special relationship of subordination to or dependence on a Public Administration or authority.

2. Individual Deputies and Senators, investigative Committees or those connected

with the general or partial defence of public rights and liberties and, especially, the Joint Congress-Senate Committee established to liaise with the Ombudsman, may request, in writing and stating their grounds, the intervention of the Ombudsman to investigate or clarify the actions, decisions or specific conduct of the Public Administration which may affect an individual citizen or group of citizens and which fall within his competence<sup>5</sup>.

3. No administrative authority may submit complaints to the Ombudsman regarding affairs within its own competence.

**Article 11.** 1. The activities of the Ombudsman shall not be interrupted in the event that Parliament is not in session, has been dissolved, or its mandate has expired.

2. In the circumstances described in the previous paragraph, the Ombudsman shall address the Standing Committees of the Houses of Parliament.

3. The declaration of a state of emergency or siege shall not interrupt the activities of the Ombudsman, nor the right of citizens to have access to him, without prejudice to the provisions of Article 55 of the Constitution.

### CHAPTER II

#### *Scope of Competence*

**Article 12.** 1. The Ombudsman may in all cases, either ex officio or at the request of a party concerned, supervise the activities of the Autonomous Communities, within the scope of competence defined by this Act.

2. For the purposes of the preceding paragraph, Autonomous Community bodies similar to the Ombudsman shall coordinate their functions with the latter, who may request their co-operation.

**Article 13.** Whenever the Ombudsman receives complaints regarding the functioning of

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<sup>5</sup> Drafted according to Organic Act 2/1992, dated March 5th.



the Administration of Justice, he must refer them to the Public Prosecutor to allow the latter to investigate their foundation and take appropriate legal action, or else refer them to the General Council of the Judiciary, according to the type of complaint involved, independently of any reference that he may make to the matter in his annual report to Parliament.

**Article 14.** The Ombudsman shall protect the rights proclaimed in Part I of the Constitution in the field of Military Administration, without however causing any interference in the chain of command for the National Defence.

### CHAPTER III

#### *Complaints procedure*

**Article 15.** 1. All complaints submitted must be signed by the party concerned, giving his name and address in a document stating the grounds for the complaint, on ordinary paper and within a maximum of one year from the time of becoming acquainted with the matters giving rise to it.

2. All action by the Ombudsman shall be free of charge for the party concerned, and the assistance of a solicitor or barrister shall not be compulsory. Receipt of all complaints shall be acknowledged.

**Article 16.** 1. Correspondence addressed to the Ombudsman from any institution of detention, confinement or custody may not be subjected to any form of censorship whatsoever.

2. Nor may the conversations which take place between the Ombudsman or his delegates and any other person enumerated in the previous section be listened to or interfered with.

**Article 17.** 1. The Ombudsman shall record and acknowledge receipt of the complaints made, which he shall either proceed with or reject. In the latter case, he shall do so in writing, stating his reasons. He may inform the party concerned about the most appropriate

channels for taking action if, in his opinion, such channels exist, independently of the fact that the party concerned may adopt those it considers to be most pertinent.

2. The Ombudsman shall not investigate individually any complaints that are pending judicial resolution, and he shall suspend any investigation already commenced if a claim or appeal is lodged by the person concerned before the ordinary courts or the Constitutional Court. However, this shall not prevent the investigation of general problems raised in the complaints submitted. In all cases, he shall ensure that the Administration, in due time and manner, resolves the requests and appeals that have been submitted to it.

3. The Ombudsman shall reject anonymous complaints and may reject those in which he perceives bad faith, lack of grounds or an unfounded claim, and in addition those whose investigation might infringe the legitimate rights of a third party. His decisions may not be appealed.

**Article 18.** 1. Once a complaint has been accepted, the Ombudsman shall begin appropriate informal summary investigations to clarify the allegations contained therein. In all cases he shall report the substance of the complaint to the pertinent administrative agency or office for the purpose of ensuring that a written report is submitted by its director within fifteen days. This period may be extended if, in the opinion of the Ombudsman, circumstances so warrant.

2. Refusal or failure on the part of the civil servant or his superiors responsible for sending the initial report requested may be considered by the Ombudsman as a hostile act obstructing his functions. He shall immediately make such an act public and draw attention to it in his annual or special report, as the case may be, to Parliament.



## CHAPTER IV

### *Obligatory Co-operation of Bodies Requested to do so*

**Article 19.1.** All public authorities are obliged to give preferential and urgent assistance to the Ombudsman in his investigations and inspections.

2. During the stage of verifying and investigating a complaint or in the case or proceedings initiated *ex officio*, the Ombudsman, his Deputy, or any person delegated by him may present himself at any establishment of the Public Administration or attached thereto or responsible for a public service in order to verify any necessary information, hold relevant personal interviews or examine pertinent records and documents.

3. In the pursuit of this objective he may not be denied access to any administrative record or document related to the activity or service under investigation, without prejudice to the provisions of Article 22 of this Act.

**Article 20. 1.** Should the complaint to be investigated concern the conduct of persons in the service of the Administration in connection with the duties they perform, the Ombudsman shall so inform them and the immediate superior or body to which the former are attached.

2. The persons concerned shall reply in writing, supplying whatever documents and supporting evidence they may consider appropriate, within the period established, which in no case may be less than ten days and which may be extended at their request by half the period originally granted.

3. The Ombudsman may verify the veracity of such documents and propose to the civil servant concerned that he be interviewed in order to furnish further details. Civil servants who refuse to comply may be required by the Ombudsman to submit to him in writing the reasons justifying their decision.

4. The information a civil servant may furnish through personal testimony in the course of an

investigation shall be treated as confidential, subject to the provisions of the Criminal Procedure Act regarding the reporting of acts which may constitute criminal offences.

**Article 21.** Should a hierarchical superior or entity forbid a civil servant under his orders or in its service from replying to a demand from the Ombudsman or from holding an interview with him, he or it must state such prohibition in writing, justifying such action, both to the civil servant and to the Ombudsman himself. The Ombudsman shall thereafter direct whatever investigative procedures may be necessary to the aforesaid hierarchical superior.

## CHAPTER V

### *Confidential Documents*

**Article 22. 1.** The Ombudsman may request the public authorities to furnish all the documents he considers necessary to the performance of his duties, including those legally classified as confidential. In the latter case, the refusal to furnish said documents must be resolved by the Council of Ministers and accompanied by a document attesting to such refusal.

2. The investigations and relevant procedures conducted by the Ombudsman and his staff shall be performed in strict confidence, with respect to both private individuals and offices and other public bodies, without prejudice to the considerations that the Ombudsman may feel are appropriate for inclusion in his reports to Parliament. Special protection measures shall be taken concerning documents classified as confidential.

3. Should he be of the opinion that a document declared to be confidential and not made available by the Administration could decisively affect the progress of his investigation, he shall notify the Joint Congress



Senate Committee referred to in Article 2 of this Act<sup>6</sup>.

## CHAPTER VI

### *Responsibilities of Authorities and Civil Servants*

**Article 23.** Should the investigations conducted reveal that the complaint was presumably the result of abuse, arbitrariness, discrimination, error, negligence or omission on the part of a civil servant, the Ombudsman may contact the person concerned to state his views on the matter. On the same date he shall send a copy of this letter to the civil servant's hierarchical superior, accompanied by any suggestions he may consider appropriate.

**Article 24.** 1. Persistence in a hostile attitude or the hindering of the work of the Ombudsman by any body, civil servants, officials or persons in the service of the Public Administration may be the subject of a special report, in addition to being stressed in the appropriate section of the annual report.

2. (Repealed)<sup>7</sup>.

**Article 25.** 1. Should the Ombudsman, in the performance of the duties of his office, become aware of presumably criminal acts or behaviour,

he must immediately notify the Attorney-General of the same.

2. The above notwithstanding, the Attorney-General shall inform the Ombudsman periodically, or whenever so requested by the latter, of the proceedings instituted at his request.

3. The Attorney-General shall notify the Ombudsman of all possible administrative irregularities with which the Public Prosecutor becomes aware in the performance of his duties.

**Article 26.** The Ombudsman may, *ex officio*, bring actions for liability against all authorities, civil servants and governmental or administrative agents, including servants of the local administrations, without needing under any circumstances to submit a prior claim in writing.

## CHAPTER VII

### *Reimbursement of Expenses to Individuals*

**Article 27.** Expenses incurred or material losses sustained by individuals who have not themselves lodged a complaint but are called upon by the Ombudsman to provide information shall be reimbursed; such expenses will be met from the latter's budget once duly justified.

## PART III: Decisions

### CHAPTER ONE

#### *Content of Decisions*

**Article 28.1.** Although not empowered to modify or overrule the acts and decisions of the Public Administration, the Ombudsman may nevertheless suggest modifications in the criteria employed in their production.

2. If as a result of his investigations he should reach the conclusion that the strict fulfilment of a regulation may lead to situations that are unfair or harmful to those persons thereby affected, he may suggest to the competent legislative body or the Administration that the same be modified.

<sup>6</sup> Drafted according to Organic Act 2/1992, dated March 5th.

<sup>7</sup> Repealed in accordance with sub-section 1.F. of the Sole Repeal Provision of Organic Act 10/1995, dated November 23rd, which establishes the following in its article 502 (Hindering the enquiries by House Committees and investigative bodies), points 1 and 2:

\*1. Anyone who, having been properly requested in law with due warning, fails to put in an appearance before an Investigative Committee of Parliament or a Legislative Assembly of a Regional Community shall be punished for being guilty of the offence of disobedience. If the party so found guilty were a public authority or a public servant, an additional sentence of suspension from the position or public office held for a term of from six months to two years will be imposed.

2. The same penalties will be imposed on any civil servant or public authority obstructing an investigation by the Ombudsman, Auditing Tribunal or equivalent organs of a Regional Community by refusing to send or unduly delaying the dispatch of reports requested or by hindering access to the administrative records or documents necessary for such investigation.

3. ..."



3. If action has been taken in connection with services rendered by private individuals with due administrative authorization, the Ombudsman may urge the competent administrative authorities to exercise their powers to inspection and impose penalties.

**Article 29.** The Ombudsman is entitled to lodge appeals on the grounds of unconstitutionality and individual appeals for relief, as provided by the Constitution and the Organic Act Regarding the Constitutional Court<sup>8</sup>.

**Article 30.** 1. The Ombudsman may, in the course of his investigations, give advice and make recommendations to authorities and officials in the Public Administration, remind them of their legal duties and make suggestions regarding the adoption of new measures. In all cases such authorities and officials shall be obliged to reply in writing within a maximum period of one month.

2. If, within a reasonable period of time after such recommendations are made, appropriate steps are not taken to implement them by the administrative authority concerned, or if the latter fails to inform the Ombudsman of its reasons for non-compliance, the Ombudsman may inform the Minister of the Department concerned, or the highest authority of the Administration concerned, of the particulars of the case and the recommendations made. If adequate justification is not forthcoming, he shall mention the matter in his annual or special report, together with the names of the authorities or civil servants responsible for this situation, as a case in which although the Ombudsman thought that positive solution was possible, it was not however achieved.

## CHAPTER II

### *Notifications and Communications*

**Article 31.** 1. The Ombudsman shall inform the party concerned of the results of his investigations and actions taken, and similarly of the reply from the Administration or civil servants involved, except in the event that on account of their subject matter they should be considered confidential or have been declared secret.

2. Should his intervention have been initiated under the provisions of Article 10.2, the Ombudsman shall inform the Member of Parliament or competent committee that requested investigation of the matter, upon its completion, of the results obtained. Equally, should he decide not to intervene he shall communicate his decision, giving his reasons.

3. The Ombudsman shall communicate the results of his investigations, whether positive or negative, to the authority, civil servant or administrative office in respect of which they were initiated.

## CHAPTER III

### *Reports to Parliament*

**Article 32.** 1. The Ombudsman shall inform Parliament annually of the action that he has taken in an annual report submitted to it when meeting in ordinary session.

2. When the seriousness or urgency of the situation makes it advisable to do so, he may submit a special report to the Standing Committees of the Houses of Parliament, if Parliament is not in session.

3. The annual reports and, when applicable, the special reports, shall be published.

**Article 33.** 1. The Ombudsman shall give an account in his annual report of the number and type of complaints filed, of those rejected and the reasons for their rejection, and of those investigated, together with the results of the investigations, specifying the suggestions or recommendations accepted by the Public Administrations.

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<sup>8</sup> See the Organic Act Regarding the Constitutional Court, § 2.1, Articles 31.1b, 46.1 and 46.2.



2. No personal data enabling the public identification of the parties involved in investigation proceedings shall appear in the report, without prejudice to the provisions of Article 24.1.

3. The report shall include an appendix directed to Parliament, detailing the settlement of the budget of the institution during the corresponding period.

4. An oral summary of the report shall be presented by the Ombudsman to the Plenary Sessions of both Houses. The parliamentary groups may take the floor to state their positions.

#### PART IV: Human and Financial Resources

### CHAPTER ONE

#### *Staff*

**Article 34.** The Ombudsman may freely appoint the advisers necessary for the execution of his duties, in accordance with the Regulations and having regard for budget constraints<sup>9</sup>.

**Article 35.** 1. Persons in the service of the Ombudsman shall, while so remaining, be deemed as being in the service of Parliament.

2. In the case of civil servants from the Public Administration, the position held by them prior to joining the office of the Ombudsman shall be reserved for them, and the time served with the latter shall be taken into consideration for all purposes.

**Article 36.** Deputy Ombudsmen and advisers shall be automatically relieved of their duties when a new Ombudsman appointed by Parliament takes office.

### CHAPTER II

#### *Financial Resources*

**Article 37.** The financial resources necessary for the operation of the institution shall constitute an item of the Parliamentary Budget.

#### TRANSITIONAL PROVISION

Five years after the coming into force of the present Act, the Ombudsman may submit to Parliament a reasoned report detailing the amendments that he considers should be made thereto.

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<sup>9</sup> See the Regulations on the Organisation and Functioning of the Ombudsman, adopted by the Congress and Senate Procedural Committees at their joint meeting on April 6, 1983, as amended at the joint meeting of the Congress and Senate Procedural Committees on April 21, 1992.



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