

**26 May 2009 - Decree establishing the office of an Ombudsman for the German-speaking Community**

[BS 07.10.09; amended D. 14.02.11 (BS 31.03.11); D. 25.01.16 (BS 07.03.16)]

**CHAPTER I - GENERAL PROVISIONS**

**Article 1 - Principle**

This decree creates the office of an Ombudsman for the German-speaking Community.

If this office is held by a woman, she is called an ombudswoman.

**Art. 2 - Definitions**

For the purposes of this Decree, the following shall be understood as:

1. Administrative authorities: [Administrative bodies of the German-speaking Community]<sup>1</sup> within the meaning of Article 14 §1 paragraph 1 number 1 of the coordinated laws on the Council of State, insofar as they do not have their own ombudsman or service;

[2. local administrative authorities: Administrative bodies of the municipalities of the German-speaking Community within the meaning of Article 14 §1, paragraph 1, point 1 of the Coordinated Laws on the Council of State, insofar as they do not have their own ombudsman or service;]<sup>2</sup>

[3. bodies with a mission in the public interest of the German-speaking Community: natural or legal persons, under private or public law, which by decree or by express mandate of the government perform tasks in the public interest and are co-financed for this purpose by the German-speaking Community and which are not administrative authorities within the meaning of number 1;]<sup>3</sup>

[4. language legislation: legal regulations governing the official use of languages, in particular in the areas of legislative jurisdiction, administrative matters, judicial matters, public offices and the Belgian Armed Forces;]<sup>4</sup>

[5.]<sup>5</sup> Parliament: the Parliament of the German-speaking

Community; [6.] Presidium: the Presidium of the Parliament.

[7.-9.] [...] <sup>6</sup>

[For the application of this decree, the Parliament of the German-speaking Community as well as its organs and services shall not be considered as administrative authorities].<sup>7</sup>

**[Art. 2.1 - Duty to inform**

The administrative authorities and local administrative authorities inform in their decisions and notifications about the possibility of an appeal to the Ombudsman of the German-speaking Community.

In the course of dealing with a complaint, it shall be for the Ombudsman to decide whether to take into account the time limit referred to in Article 15(2)(4) in the event of failure to comply with the obligation referred to in paragraph 1].<sup>8</sup>

**CHAPTER II - TASKS, OBJECTIVE AND WORKING METHODS**

**Art. 3 - Tasks of the Ombudsman**

§1 - The Ombudsman has the following tasks:

1. To investigate complaints about the functioning and official acts of the administrative authorities [, the local administrative authorities and the institutions with a mandate in the public interest of the German-speaking Community]<sup>9</sup> in their relations with the citizens and to mediate in the existing conflicts;

2. to forward complaints that do not fall within the Ombudsman's remit to the competent authorities without delay;

3. to carry out, at the request of the Presidency, investigations into the functioning and official acts of the administrative authorities designated by it [, the local administrative authorities and the institutions with a mandate in the public interest of the German-speaking Community]<sup>10</sup> ;

4. make recommendations based on the findings made in the execution of the tasks referred to in points 1 and 3, which may relate to the handling of the matter submitted, future conduct and applicable law;

5. Report to Parliament, on the basis of the findings made in the performance of the tasks referred to in paragraphs 1 and 3, on the functioning and official acts of the Administration.

<sup>1</sup> amended D. 25.01.16, Art. 1 No. 1

<sup>2</sup> inserted D. 25.01.16, Art. 1 No. 2

<sup>3</sup> inserted D. 25.01.16, Art. 1 No. 3

<sup>4</sup> inserted D. 25.01.16, Art. 1 No. 4

<sup>5</sup> renumbered D. 25.01.16, art. 1 no. 5

<sup>6</sup> Nos 4-6 repealed D. 14.02.11, Art. 19 - Entry into force : 01.01.11

<sup>7</sup> Paragraph 2 replaces D. 25.01.16, Art. 1 No. 6

<sup>8</sup> Art. 2.1 inserted D. 25.01.16, Art. 2

<sup>9</sup> amended D. 25.01.16, Art. 3 No. 1

<sup>10</sup> amended D. 25.01.16, Art. 3 No. 1

tungsbehörden[, the local administrative authorities and the bodies with a mandate in the public interest of the German-speaking Community]<sup>11</sup> and

6. to establish and promote cooperation with other services working in this field.

[§2 - The Ombudsman also accompanies complaints against authorities and institutions subject to language legislation by:

1. informs about rights and complaint possibilities in case of violations of the language legislation;
2. collects complaints, forwards them to the competent authorities and follows their progress;
3. cooperates with the competent control and complaints bodies.

The Ombudsman shall report to Parliament on the basis of the findings made in paragraph 1].<sup>12</sup>

[§3 - The Ombudsman's duties also include examining reports from staff members of the authorities referred to in Article 2(1)(1) and (2) who, in the course of their duties, have become aware of abuses, irregularities, irregularities or criminal offences within the administrative authority or local administrative authority in which they work and consider that:

1. there was no or insufficient follow-up after reporting to their superior within a thirty-day period;
2. they are subject to disciplinary proceedings or other public or non-public punishment as a result of the report].<sup>13</sup>

[§4] - [The Ombudsman is not competent to deal with complaints relating to statutory provisions].<sup>14</sup>

#### **Art. 4 - Targets**

In carrying out its tasks, the Ombudsman aims to mediate between citizens and the administrative authorities and to provide an alternative way of resolving conflicts, settling disputes and, in certain cases, avoiding court proceedings.

#### **Art. 5 - Mode of operation**

No later than six months after the appointment of the first Ombudsman, Parliament shall adopt, on his or her proposal, Rules of Procedure laying down the internal procedure.

The Rules of Procedure referred to in paragraph 1 and the amendments thereto adopted by Parliament shall be published in the *Moniteur belge*.

### **CHAPTER III - [DESIGNATION]<sup>15</sup> , STATUS AND ORGANISATION**

#### **Art. 6 - [Designation]<sup>16</sup> of the Ombudsman**

The Ombudsman shall be [designated] by Parliament for a term of six years, renewable once, following a public call for candidates and a comparative selection procedure determined by the Bureau<sup>17</sup> .

The decision of Parliament [to designate]<sup>18</sup> the candidate proposed by the Presidium shall be taken by a two-thirds majority of the votes cast. [...] <sup>19</sup> .

#### **Art. 7 - [Conditions for the exercise of the mandate].<sup>20</sup>**

Only [designated]<sup>21</sup> may be appointed ombudsman who:

1. Belgian;
2. is of good repute and in possession of civil and political rights;
3. satisfies the militia laws;
4. has a very good knowledge of German, a good knowledge of French and a satisfactory knowledge of Dutch;
5. has a sound knowledge of the German-speaking Community and the Belgian state structure;
6. Holds a certificate of study giving access to Level I or II+ posts in the parliamentary administration;

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<sup>11</sup> amended D. 25.01.16, Art. 3 No. 1

<sup>12</sup> §2 inserted D. 25.01.16, Art. 3 No. 2

<sup>13</sup> §3 inserted D. 25.01.16, Art. 3 No. 3

<sup>14</sup> §2 repealed and §3, which becomes §2 replaced D. 14.02.11, Art. 20 - Entry into force: 01.01.11, numbering amended D. 25.01.16, Art. 3 No. 4

<sup>15</sup> amended D. 25.01.16, Art. 4

<sup>16</sup> amended D. 25.01.16, Art. 5 No. 1

<sup>17</sup> amended D. 25.01.16, Art. 5 No. 2

<sup>18</sup> amended D. 25.01.16, Art. 5 No. 3

<sup>19</sup> amended D. 25.01.16, Art. 5 No. 3

<sup>20</sup> amended D. 25.01.16, Art. 6 No. 1

<sup>10</sup> amended D. 25.01.16, Art. 3 No. 2

7. has useful professional experience of at least five years either in the legal, administrative or social field or in any other field useful to the office.

#### **Art. 8 - Oath**

Before taking office, the Ombudsman takes the following oath before the President of Parliament: "I swear allegiance to the King, obedience to the Constitution and the laws of the Belgian people."

#### **Art. 9 - Incompatibilities**

§1 - During his term of office, the Ombudsman may not hold any of the following offices or mandates:

1. the office of judge, notary or bailiff;
2. the profession of a lawyer;
3. the function of a servant of a recognised cult or the office of a representative of an organisation recognised by law which provides moral succour on the basis of a non-confessional worldview;
4. a public mandate conferred by election;
5. a salaried office in the public service of the German-speaking Community or a public mandate conferred by the German-speaking Community.

[6. a salaried office in the public service of local administrative authorities or a public office conferred by a local administrative authority;

7. an office in an institution with a mission in the public interest of the German-speaking Community].<sup>22</sup>

The ombudsman may not stand for public office for three years after the end of his mandate.

§2 - The Ombudsman may not hold a public office or any other function that could jeopardise the dignity of his office or the performance of his duties, or that could harm his independence and impartiality.

§3 - For the application of this Article, a public mandate awarded by election shall be deemed equivalent:

1. the office of a mayor appointed outside the municipal council;
2. the mandate of an administrator in a public interest entity;
3. the office of a government commissioner;
4. including the office of governor, associate governor or deputy governor.

The holder of a public mandate conferred by election who accepts his [designation]<sup>23</sup> as ombudsman shall lose by operation of law his public mandate obtained by election.

#### **Art. 10 - Independence**

The ombudsman acts completely independently and neutrally in the performance of his duties. He cannot be relieved of his mandate for actions he takes or opinions he expresses in the course of his activities.

#### **Art. 11 - Headquarters and Secretariat**

The Ombudsman is based at the Parliament.

On the proposal of the Ombudsman, the Presidency shall determine the material and personnel framework for the exercise of his office.

#### **Art. 12 - Official, professional and business secrecy**

The Ombudsman and his secretariat are bound by official secrecy to the same extent as the staff of the administrative authorities who provide information. They are bound to secrecy about professional and business matters which, by their nature or by virtue of legal provisions or instructions, must be kept secret.

#### **Art. 13 - End of activities**

§1 - According to Article 6, the mandate of an Ombudsman ends after six years, unless it has been renewed.

§2 - Parliament puts an early end to the mandate of the Ombudsman:

1. at his request,
2. if his state of health seriously jeopardises the performance of his duties;
3. if he no longer fulfils the [conditions for exercising the mandate]<sup>24</sup> set out in Article 7;
4. if he exercises any of the functions or holds any of the offices or mandates mentioned in Article 9.

Parliament may dismiss the Ombudsman prematurely:

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<sup>22</sup> Nos 6-7 inserted D. 25.01.16, Art. 7 No. 1

<sup>23,23</sup> amended D. 25.01.16, Art. 7 No. 2

<sup>24</sup> amended D. 25.01.16, Art. 8 No. 1

1. in agreement with the Ombudsman;
2. for serious reasons.

§3 - If the incumbent Ombudsman terminates his or her activities before the end of his or her mandate, Parliament shall publish a new call for candidates as soon as possible in order to [designate] an Ombudsman to continue the mandate as soon as possible<sup>25</sup> .

The mandate of the Ombudsman appointed under this paragraph may be continued by a new mandate.

## **CHAPTER IV - COMPLAINT MANAGEMENT**

### **Art. 14 - Initiation of the procedure**

The Ombudsman acts upon request or on his own initiative.

### **Art. 15 - Acceptable complaints**

The Ombudsman deals with a complaint when:

1. it falls within its area of responsibility;
2. it was submitted in writing or in person;
3. it was submitted in German or French;
4. the identity of the complainant is known.

The Ombudsman may refuse to deal with a complaint if:

1. it is obviously unfounded;
2. the complainant has neither initiated existing appeal procedures nor taken steps with [the administrative authority, local administrative authority or institution with a mandate in the public interest of the German-speaking Community]<sup>26</sup> to obtain satisfaction;
3. it is essentially identical to a complaint that the Ombudsman has already rejected, insofar as there are no new facts;
4. [it relates to facts that occurred more than one year before the filing of the complaint, with the exception of a complaint that is the subject of administrative or judicial proceedings]<sup>27</sup> ;
5. [it refers to personnel matters of the administrative service in which the complainant is employed with the exception of a complaint formulated within the framework of Article 3 §3].<sup>28</sup>

### **Art. 16 - Admitted appellants**

Any natural person, legal person or [unincorporated association]<sup>29</sup> who can show a direct interest may lodge a complaint with the Ombudsman, irrespective of their nationality, place of residence or registered office.

The complaint of a legal person or an unincorporated association]<sup>30</sup> shall be filed by a duly authorised natural person.

#### **[Art. 16.1 - Special safeguard measure**

A staff member who reports an adversity described in Article 3 §3 may be placed under the protection of the Ombudsman upon request. The relevant administrative authorities and local administrative authorities draw up a protocol with the Ombudsman Service. In addition to the period of protection, this protocol provides for minimum protection measures such as the suspension of disciplinary proceedings, rules on the distribution of the burden of proof and the possibility of voluntary transfer].<sup>31</sup>

### **Art. 17 - Information of the parties to the appeal proceedings**

§1 - The Ombudsman informs the complainant without delay of his or her decision to deal with the complaint, to refuse to deal with it or to transfer it to another Ombudsman or competent service.

The refusal to process a complaint must be accompanied by reasons.

The Ombudsman informs the [administrative authority, local administrative authority or institution with a mandate in the public interest of the German-speaking Community]<sup>32</sup> of a complaint against it that he intends to investigate.

§2 - The Ombudsman regularly informs the complainant about the steps taken as a result of his complaint.

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<sup>25</sup> amended D. 25.01.16, Art. 8 No. 2

<sup>26</sup> amended D. 25.01.16, Art. 9 No. 1

<sup>27</sup> No. 4 replaces D. 25.01.16, Art. 9 No. 2

<sup>28</sup> No. 5 replaces D. 25.01.16, Art. 9 No. 3

<sup>29</sup> amended D. 25.01.16, Art. 10

<sup>30</sup> amended D. 25.01.16, Art. 10

<sup>31</sup> Art. 16.1 inserted D. 25.01.16, Art. 11

<sup>32</sup> amended D. 25.01.16, Art. 12

### **Art. 18 - Examination**

The Ombudsman examines the conduct complained of in terms of legality, appropriateness, correctness and fairness.

He tries to reconcile the views of the complainant with those of the services concerned.

### **Art. 19 - Duties of cooperation [...] <sup>33</sup>**

[§1]<sup>34</sup> - The Ombudsman may impose on the staff of the [authorities and bodies referred to in Article 2(1)(1) to (3)]<sup>35</sup> to whom he addresses questions in the course of his mandate a reasonable period of time within which to reply in writing or orally.

[If there is no reply or only an incomplete reply within the time limit imposed under paragraph 1, the Ombudsman shall immediately inform the Presidency and include it in the report referred to in Article 25].<sup>36</sup>

[§2]<sup>37</sup> - Without prejudice to Article 15 of the Constitution and the laws, decrees and ordinances relating thereto, the Ombudsman may, within the scope of his duties, also make all findings on the spot, obtain all documents and information he deems necessary and hear all persons concerned.

[§3]<sup>38</sup> - Persons bound by an official, professional or business secret are released from their duty of secrecy in the context of the investigation conducted by the ombudsmen. The duty of confidentiality continues to apply to information protected by medical secrecy or of which the persons have become aware in their capacity as necessary confidants.

[§4]<sup>39</sup> - The Ombudsman may call on the assistance of experts [from the authorities and bodies mentioned in Article 2(1)(1) to (3)] .<sup>40</sup>

### **Art. 20 - Dealing with administrative or judicial elements**

§1 - If, in the course of his duties, the Ombudsman discovers facts which constitute, or seriously suggest, breaches of disciplinary law, he shall inform the [authorities and bodies mentioned in Article 2(1)(1) to (3)]<sup>41</sup> thereof.

If, in the course of his duties, he discovers facts constituting a criminal offence, he shall inform the King's Procurator in accordance with Article 29 of the Code of Criminal Procedure.

§2 - [Notwithstanding the obligation provided for in Article 19 §1(1), the examination procedure shall be suspended if the ground of appeal is the subject of administrative or judicial appeal proceedings.

The authorities and bodies referred to in Article 2(1)(1) to (3) and the Complaints Officer shall notify the Ombudsman without delay of the appeal proceedings lodged.

The Ombudsman informs the complainant and the authority or institution concerned immediately when an examination procedure is suspended.

The submission and handling of a complaint by the Ombudsman does not have any suspensive or interrupting effect on any related administrative or judicial appeal proceedings].<sup>42</sup>

§3 - [By way of derogation from §2 and without prejudice to the provisions of Article 19(3) of the Coordinated Acts of 12 January 1973 on the Council of State, the Ombudsman may continue the examination procedure insofar as the administrative acts or the facts are the subject of an action for annulment before the Council of State].<sup>43</sup>

### **Art. 21 - Examination result**

§1 - Unless an agreement is reached between the complainant and the relevant [administrative authority, local administrative authority or institution with a mandate in the public interest of the German-speaking Ge-

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<sup>33</sup> amended D. 25.01.16, Art. 13 No. 1

<sup>34</sup> §inserted D. 25.01.16, Art. 13 No. 4

<sup>35</sup> amended D. 25.01.16, Art. 13 No. 2

<sup>36</sup> Para. 2 inserted D. 25.01.16, Art. 13 No. 5

<sup>37</sup> §inserted D. 25.01.16, Art. 13 No. 4

<sup>38</sup> §inserted D. 25.01.16, Art. 13 No. 4

<sup>39</sup> §inserted D. 25.01.16, Art. 13 No. 4

<sup>40</sup> amended D. 25.01.16, Art. 13 No. 2

<sup>41</sup> amended D. 25.01.16, Art. 14 No. 1

<sup>42</sup> §2 replaces D. 25.01.16, Art. 14 No. 2

<sup>43</sup> §3 replaces D. 25.01.16, Art. 14 No. 3

<sup>44</sup> is found, the Ombudsman may make any recommendation to the service concerned that appears to him to be appropriate.

In this case, he shall inform the competent minister or the competent supervisory body.

§2 - The [administrative authority, local administrative authority or institution with a mandate in the public interest of the German-speaking Community]<sup>45</sup> concerned informs the Ombudsman to what extent his recommendation has been followed.

If the [administrative authority, local administrative authority or institution with a mandate in the public interest of the German-speaking Community]<sup>46</sup> concerned does not take the Ombudsman's recommendation into account, it shall inform the Ombudsman of this in a reasoned letter.

#### **Art. 22 - Gratuitousness**

The services of the ombudsman are free of charge for the complainant.

### **CHAPTER V - PARLIAMENTARY REPORTING**

#### **Art. 23 - [...] <sup>47</sup> Report**

The Ombudsman shall submit an annual [written]<sup>48</sup> report to Parliament by 31 March at the latest concerning his activities in the previous year. [With the agreement of the Bureau, this report may be drawn up in a two-year cycle].<sup>49</sup> In addition, he may, if he deems it appropriate, submit interim reports to Parliament.

[Within the framework of the modalities mentioned in paragraph 1, the Ombudsman shall send a copy of the report to the municipal councils].<sup>50</sup>

The reports include the recommendations made by the Ombudsman and indicate any difficulties encountered in the performance of his duties.

The identity of the complainants and the staff members of the [administrative authority, local administrative authority or institution with a mission in the public interest of the German-speaking Community]<sup>51</sup> concerned may not be stated in these reports.

The reports are published by the Parliament.

The Ombudsman may be heard by Parliament at any time either at his or her request or at the request of Parliament.

### **CHAPTER VI - FINANCING**

#### **Art. 24 - Remuneration of the Ombudsman**

The Presidency determines the type and amount of the Ombudsman's compensation as well as the corresponding payment modalities.

The Ombudsman may waive the indemnities provided for in paragraph 1 during the period for which he has deposited a waiver with the Secretary-General of Parliament.

#### **Art. 25 - Financial resources made available**

The [Presidium]<sup>52</sup> shall adopt the budget and accounts of its service annually on the proposal of the Ombudsman. Appropriate funds shall be provided for [in Parliament's budget] .<sup>53</sup>

The Ombudsman submits his accounts to the Court of Audit for review.

### **CHAPTER VII - FINAL PROVISIONS**

#### **Art. 26 - Entry into force**

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<sup>44</sup> amended D. 25.01.16, Art. 15

<sup>45</sup> amended D. 25.01.16, Art. 15

<sup>46</sup> amended D. 25.01.16, Art. 15

<sup>47</sup> amended D. 25.01.16, Art. 16 No. 1

<sup>48</sup> amended D. 25.01.16, Art. 16 No. 2

<sup>49</sup> amended D. 25.01.16, Art. 16 No. 3

<sup>50</sup> Para. 2 inserted D. 25.01.16, Art. 16 No. 4

<sup>51</sup> amended D. 25.01.16, Art. 16 No. 6

<sup>52</sup> amended D. 25.01.16, Art. 17 No.1

<sup>53</sup> amended D. 25.01.16, Art. 17 No.2

This Decree shall enter into force on the day of its adoption.