

RULES OF PROCEDURE OF THE OMBUDSMAN INSTITUTION

In force as of 18 September 2012.

Adopted by a decision of the National Assembly on 4 September 2012.

Promulgated SG no. 71 of 18 September 2012, Supplemented SG no.53 of 26 June 2018

Section I General Provisions

Article 1. These Rules of Procedure regulate the organisation and operation of the Ombudsman and its administration, the work of the National Preventive Mechanism, the terms for reviewing complaints and alerts, conducting inspections upon the initiative of the Ombudsman and mediation, and making proposals and recommendations.

Article 2. Matters concerning the work of the Ombudsman and the organisation of its administration that are not covered by the Ombudsman Act or the Rule of Procedure shall be regulated by internal acts of the Ombudsman such as orders, decisions, rules, methodological instructions, etc.

Article 3. The Ombudsman shall be assisted by a Deputy Ombudsman to whom he may delegate some of his powers or the performance of particular activities.

Article 4. The Ombudsman shall cooperate with partner institutions in other states as well as with international organisations that work in the field of human rights protection.

Article 5. (1) The Ombudsman shall work together with the local public mediators and other similar institutions in Bulgaria and shall render methodological assistance.

(2) The Ombudsman shall cooperate with non-governmental organisations that work in the field of human rights protection.

Article 6. (1) The work of the Ombudsman shall be public.

(2) The Ombudsman shall inform the general public about its work by publications on the official website of the institution, press releases, statements in the media, press conferences, interviews, participations in public events, etc.

(3) The Ombudsman shall not disclose circumstances that are governmental, professional or commercial secret or personal ones of which he becomes aware in the course of carrying out his tasks.

Article 7. (1) The documents of the Ombudsman shall be inviolable and shall not be subject to control or seizure.

(2) The correspondence between the Ombudsman and the persons who address him with complaints or alerts shall be inviolable and shall not be subject to control nor used as evidence in any proceedings.

(3) Persons who have addressed the Ombudsman with complaints or alerts shall be entitled to access to the correspondence between the Ombudsman and other authorities or persons in relation to their complaints or alerts under the terms and conditions of the Access to Public Information Act.

Section II.

Main Principles in the Work of the Ombudsman. Powers

Article 8. In his work the Ombudsman shall be guided by the following principles:

1. impartiality and independence;
2. strengthening justice and rule of law;
3. protection of the best interest of the child;
4. judgment in accordance with his belief as regards compliance with good governance requirements.

Article 9. (1) The Ombudsman shall:

1. (suppl. SG 53/2018) examines complaints and alerts against state and municipal authorities and their administrations and against persons entrusted with the performance of a public function or the provision of public services, when the administrative actions they perform violate rights and freedoms or do not create the necessary conditions for their respect, as well as against private entities for violated or threatened rights and freedoms;
2. perform checks upon complaints or alerts;
3. take up action on his own initiative when he establishes that his interference is required with a view to ensuring respect for rights and freedoms;
4. make proposals and recommendations to ensure respect for rights and freedoms and to eliminate the effects of the violation of certain rights and freedoms or the reasons that have led thereto, including by proposals for legislative amendments;
- 4.a.(new, SG 53/2018) makes proposals and recommendations for the promotion and protection of citizens' rights and freedoms threatened by private entities;
5. act as National Preventive Mechanism;
6. provide opinions to the National Assembly and the Council of Ministers on bills concerning human rights protection;
7. protect the rights of the child by the powers granted to him under the Ombudsman Act and these Rules of Procedure;
8. (suppl. SG 53/2018) makes proposals and recommendations to the National Assembly and the Council of Ministers for the signing and/or ratification of international instruments in the field of human rights; monitors and promotes the effective implementation of signed and ratified international instruments in the field of human rights;
9. refer to the Constitutional Court laws that violate individual rights and freedoms seeking review of their compliance with the Constitution, and propose to the bodies specified in Article 150, para 1 of the Constitution to seize the Constitutional Court in case he deems it necessary that an interpretation of the Constitution is required or a ruling on the compliance of international treaties concluded by Bulgaria with the Constitution prior to their ratification as well as on the compliance of laws with international law and international treaties to which Bulgaria is a party;
10. seize the Supreme Court of Cassation and/or the Supreme Administrative Court seeking interpretative rulings;
11. mediate between the bodies specified in item 1 and the affected persons with a view to overcome the violation and reconcile their positions;
12. require information from the bodies specified in item 1 in relation to specific cases;

13. inspect, on the spot if required, the work of the bodies specified in item 1 and observes the decision-taking;

14. publicly voice his opinion on respect for rights and freedoms and may ask to be heard by the National Assembly;

15. notify the Prosecutor's Office about the outcome of his inspections where there is data that a crime has been committed;

16. draw annual reports and submit them in the National Assembly;

17. notify the National Assembly of specific cases of violations of rights and freedoms and draw reports on them;

18. perform other activities related to the respect for rights and freedoms.

(2) The Ombudsman's powers shall not concern:

1. the work of the National Assembly, President, Constitutional Court, Supreme Judicial Council and Court of Auditors;

2. justice administration by the court, prosecutor's office and investigation service;

3. issues regarding national security and foreign policy.

(3) The Ombudsman may not engage in legal proceedings on behalf of the persons who have turned to him and may not represent them in court or before the authorities specified in paragraph 1, item 1.

Section III.

Administration of the Ombudsman

Article. 10. (1) The administration of the Ombudsman shall be managed by a Secretary-General and shall be organized in directorates and/or departments.

(2) The Ombudsman shall appoint the employees in his administration, terminate their employment relations and determine their powers and remuneration.

(3) The Ombudsman shall set the working hours of the administration and the reception hours for members of the general public.

Article 10. a. (new – SG 53/2018) The Ombudsman's administration is appointed in accordance with the principles of transparency, efficiency, pluralism and non-discrimination.

Article 10. b. (new – SG 53/2018) (1) The selection of candidates for appointment to positions in the Ombudsman's administration shall be carried out through a competition, which may be internal (for employees of the Ombudsman) or external (for an unlimited number of persons).

(2) The announcement of vacant positions in the case of an external competition shall be published on the Ombudsman's website.

(3) Candidates for participation in the competition may submit documents in person, through an authorized person, by e-mail, by courier, as well as by mail with a registered letter with return receipt requested.

(4) The documents for participation in the competition in accordance with the requirements for occupying a specific position include:

1. an application (free text), indicating the position for which the application is being made, a telephone number and/or e-mail address for contact, a list of the documents attached to the application;

2. a curriculum vitae with a detailed indication of the work and/or service experience, accompanied by copies of documents certifying it;

3. a copy of a diploma for completed education; in the case of a diploma issued by a foreign educational institution - a certificate of recognized education and degree of education;

4. a copy of the certificate of legal capacity issued by the Ministry of Justice, when the competitive position requires higher legal education and acquired legal capacity;

5. copies of documents for acquired qualifications, proficiency in foreign languages and other legal capacity, if required;

6. written recommendations related to work activity and professional qualifications, containing the name, address and contact telephone number of the person who signed the recommendation (at the request of the candidate);

7. other documents related to the requirements for holding the position and specified in the order or announcement.

(5) The competition includes a written part and an interview, except when conducting a competition based on documents, which includes only an interview.

(6) No competition is held for the position of "head of cabinet".

(7) The written part consists of a test with open and closed questions and aims to verify the candidate's knowledge in a specific area related to the functions of the position for which he/she is applying.

(8) When conducting an interview, the following criteria are used:

1. knowledge of the Ombudsman's activities;
2. knowledge of the regulations;
3. approaches to achieving goals and results;
4. ability to work in a team;
5. analytical competence;
6. communication skills.

(9) The evaluation of the results of the competition is carried out by a commission composed of the head of the cabinet, the chief secretary, the chief legal advisor and the head/director of the relevant department/directorate of the institution, on a five-point scale, in which the lowest score is one. The overall score is formed as the arithmetic mean of the scores of all members of the commission. When conducting a competition based on documents, the final score is formed only on the basis of the results of the interview.

(10) The results of the competition shall be recorded in a report signed by the members of the competition committee.

(11) In the event of re-appointment and promotion, no competition shall be held if the employee meets the requirements for holding the new position. In such cases, the re-appointment or promotion shall be carried out on the basis of a written application submitted by the person or a report.

(12) Within 7 days of the compilation of the report under para. 10, the candidate ranked first shall be notified and shall be appointed/may be appointed within 7 days of the notification. The appointed person shall be obliged to start work within two weeks of the notification under sentence one. In the case of valid reasons, this period shall be up to one month.

(13) If the person does not start work within the period under para. 12, the legal relationship shall be deemed not to have arisen.

(14) The filling of positions requiring education no higher than secondary special education (hygienist, driver, housekeeper-driver) shall be carried out without holding a

competition, by preparing a proposal to the Ombudsman by the Secretary General, to which an application from the candidate shall be attached.

Article 11. (1) A reception-room shall be set up with the administration of the Ombudsman.

(2) The Ombudsman shall meet personally members of the general public during the reception-room hours set by him.

(3) The Ombudsman may set up temporary reception-rooms in other cities.

Article 12. (1) Staff members in the administration of the Ombudsman shall be employed under labour or service contracts. The Ombudsman shall determine which positions shall be occupied by persons employed under service contracts.

(2) The working experience of the Ombudsman's staff members shall be deemed professional experience or period of service respectively.

(3) The Ombudsman, Deputy Ombudsman and staff members shall be entitled to up to 12 working days extra paid annual leave as compensation for performing their duties outside office hours. The specific number of extra paid annual leave shall be determined by the Ombudsman.

Article 13. (1) Staff members in the administration of the Ombudsman shall be guided by the principles of chain of command, impartiality, transparency and efficiency.

(2) Staff members shall not disclose facts or circumstances that are professional or commercial secret or personal data of which they become aware in the course of their work in the administration of the Ombudsman.

Article 14. The Ombudsman may be assisted by external experts and professionals hired under civil contracts or working pro bono.

Article 15. The Ombudsman may set up advisory councils comprising himself, the Deputy Ombudsman or other members of his administration, members of the academia, media, non-governmental organisations, external consultants, etc.

Section IV.

Review of Complaints and Alerts

Article 16. (1) Complaints and alerts filed with the Ombudsman may be in writing or verbal.

(2) Complaints and alerts shall be filed in the Bulgarian language. In case the complainant is not proficient in Bulgarian, s/he may file a complaint or alert in another language.

(3) Complaints and alerts shall follow a free text but must by all means contain the following:

1. information about the applicant, including contact information;
2. description of the violation;
3. information about the person/entity against whom the complaint is filed;

4. the time when the violation has been committed;

5. information whether the same case is currently being reviewed by court or another institution.

(4) Missing information under paragraph 3 does not preclude review of the application. Any necessary information may be requested upon submitting the application or afterwards.

(5) Written complaints and alerts shall be filed in person or by letter, fax or e-mail. The Ombudsman may issue a template application form that shall not be mandatory.

(6) Verbal complaints and alerts shall be submitted in person or by phone.

(7) Submitting complaints and alerts and the whole procedure of their review is free of charge for the complainants.

Article 17. Written complaints and alerts shall be registered and distributed for review by the respective department.

Article 18. (1) The staff member on duty in the reception-room of the Ombudsman shall draw up a protocol about the verbal complaints or alerts indicating the name and permanent address of the complainant; the violation; and the offender against who the complaint is filed – authority, administration or person.

(2) The protocol shall be entered in the register of complaints and alerts.

Article 19. In case the complainant requests that his or her identity is kept secret, no data about his or her identity shall be entered in the register.

Article 20. (1) Anonymous complaints and alerts as well as such concerning violations committed more than two years ago shall not be reviewed.

(2) In case the complaints or alerts referred to in the preceding paragraph are of particular public significance, the Ombudsman may conduct an inspection acting upon his own initiative.

Article 21. (1) Complaints and alerts entered in the register shall be assigned for review to a staff member from the respective department.

(2) Departments shall cooperate with each other in case an application concerns several departments.

Article 22. (1) A staff member to whom complaints or alerts have been assigned shall review their admissibility.

(2) Where required, additional information may be requested from the complainant.

(3) The availability of other remedies is no ground for inadmissibility of the complaint or alert. If a complaint or alert concerns an issue that may be reviewed by a superior administrative body or another specialized body, the Ombudsman may advise the complainant to refer the issue to the respective authority unless he deems it necessary to review the issue personally.

(4) Where a complaint or alert falls outside the powers of the Ombudsman, he may notify the complainant about this and advise him to address another authority.

(5) The Ombudsman may forward a complaint or an alert to another competent authority with the consent of the complainant.

Article 23. (1) The staff member to whom the review of a complaint or an alert has been assigned conducts an inspection by collecting information, requesting and inspecting documents, monitoring directly the work of the authorities and persons referred to in Article 9, para 1, item 1, etc.

(2) The inspection may further include collecting data from the applicant, making inquiries with other authorities or persons outside the ones referred to in Article 9, para 1, item 1, etc.

(3) The Ombudsman may commission research and expert reports if he deems it necessary for the purpose of the inspection.

Article 24. (1) The inspection concludes by sending a written response to the complainant.

(2) The response under paragraph 1 shall report the outcome of the inspection and shall comprise:

1. the occasion to conduct the inspection;
2. description of the violation;
3. the action taken;
4. the findings and conclusions from the inspection;
5. recommendations and proposals, if any;
6. other information about the case.

(3) The response shall be signed by the Ombudsman or by a person authorized by him.

Article 25. (1) The register of complaints and alerts shall contain the following information:

1. incoming number and date of receipt of the complaint or alert;
2. the name and address of the complainant save for the cases referred to in Article 19;
3. name of the entity under Article 9, para 1, item 1;
4. the essentials of the complaint;
5. the department or staff member to whom the case has been assigned;
6. the outgoing correspondence number and date of the response;
7. other action taken in relation to the case;
8. mediation and the outcome thereof.

(2) Entries in the register shall be made by staff members in the records department or by the staff members in charge of the inspection.

(3) The information in the register shall be publicly accessible under the terms and conditions of the Personal Data Protection Act.

Section V. National Preventive Mechanism

Article 26. (1) In acting as National Preventive Mechanism, the Ombudsman shall visit the places of detention referred to in Article 28a, para 1 of the Ombudsman Act and shall review complaints and alerts from persons detained therein.

(2) Visits under paragraph 1 may be planned or ad hoc.

(3) The Ombudsman shall approve a schedule of visits in places of detention by 31 January every year. The schedule shall be published on the website of the Ombudsman.

Article 27. (1) Visits in places of detention shall be made by at least two staff members of the Ombudsman authorized by an order.

(2) The visits shall be conducted following a methodology approved by the Ombudsman.

(3) Staff members under paragraph 1 shall make themselves known by a service card and order issued by the Ombudsman authorizing the visit.

(4) Staff members under paragraph 1 shall not disclose information of which they become aware in the course of the visits or personal data of the detained persons.

Article 28. (1) In case of planned visits, the Ombudsman shall notify the head of the detention place not later than 7 days prior to the visit.

(2) The notification contains the names of the authorized staff members; the date of the planned visit; a list of documents that the staff members would like to inspect; and other information where appropriate.

(3) The head of the detention place shall inform the persons detained or accommodated therein as well as his or her officers about the pending visit in an appropriate manner.

Article 29. Ad hoc visits shall be made without prior notification upon the Ombudsman's discretion, for example following an alert or in order to check progress on his recommendations.

Article 30. (1) During visits authorized staff members monitor how detained persons are treated; protection measures; material conditions; access to medical services; contacts with the outside world; the administration and funding of the detention places as well as other conditions and circumstances related to the prevention of torture and other forms of cruel, inhuman or degrading treatment of the persons detained or accommodated therein.

(2) During visits staff members under paragraph 1 shall be entitled to the following:

1. free access at any time to all facilities in the places of detention and possibility to test the equipment provided to the persons detained or accommodated therein;

2. carry out personal talks with the persons detained or accommodated therein;

3. organize medical examinations of the persons detained or accommodated therein with their consent;

4. access to all information and documentation related to the treatment of the persons and the conditions under paragraph 1;

5. require information and conduct meetings with the officers in the places of detention and with other persons at the territory of the inspected detention place;

6. receive complaints and alerts that are entered in the register under the terms of Section IV.

(3) During visits the staff members under paragraph 1 shall be entitled to use camera, voice and video recording devices, noise/temperature/humidity measurement equipment as well as other measurement devices necessary for the purpose of the visits.

(4) For the purpose of conducting the examinations referred to in Article 28a, para 2, item 7 of the Ombudsman Act, the Ombudsman may use the service of independent medical

experts who have the rights and duties of the staff members under paragraph 1.

(5) Officials and employees in the places of detention must assist the authorized staff members of the Ombudsman, ensure access and provide required information.

Article 31. (1) Within 14 days after the visit the authorized staff members shall draw up a report stating their findings and making recommendations. The report shall be signed by the Ombudsman.

(2) The report under paragraph 1 shall be sent to the head of the detention place and the respective competent body.

(3) The persons and bodies under paragraph 2 shall inform the Ombudsman in writing within one month about the action taken in response to the recommendations made.

Article 32. Every year by 15 February the Ombudsman shall publish on its website a report of his work as National Preventive Mechanism. The report shall be drawn up in accordance with the requirements set forth in Article 28b, para 2 of the Ombudsman Act.

Article 33. (1) Where in the course of his work acting as National Preventive Mechanism the Ombudsman establishes that legislative amendments are required, he may make proposals and recommendations to the National Assembly and the Council of Ministers.

(2) Proposals and recommendations about legislative amendments and the respective action taken shall be included in the annual report of the Ombudsman.

Article 34. The Ombudsman shall cooperate with the national preventive mechanisms of other states, with the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and other bodies or institutions of international organisations that work in the area of protection against torture and other forms of cruel, inhuman or degrading treatment or punishment.

Section VI. Mediation

Article 35. At any time during the review of a complaint or alert the Ombudsman may propose mediation for the amicable dispute settlement between the person affected and the authority or person referred to in Article 9, para 1, item 1.

Article 36. At his discretion, the Ombudsman may perform the mediation in person or delegate it to the Deputy Ombudsman or a staff member from his administration.

Article 37. (1) In the cases under Article 35 the Ombudsman shall make a proposal to the complainant and the authority or person concerned in the complaint or alerts.

(2) In case both parties agree to the mediation, the Ombudsman shall render every assistance to resolve the dispute. To that end he may convene a series of joint and/or individual meetings with the parties.

(3) During these meetings, at every stage the Ombudsman shall hear the opinions of the parties and assist them in overcoming their differences in any possible way, including by

proposing them a resolution of the dispute.

(4) The Ombudsman may disclose to the other party to the dispute information that he has obtained during an individual meeting only with the express consent of the party from which he has obtained the information.

(5) In case of an amicable resolution of the dispute, a protocol shall be drawn up, which shall be signed by the two parties and the Ombudsman or a staff member authorized by him.

(6) In case the mediation has not proved successful, the Ombudsman may make recourse to other powers of his granted under the law or these Rules of Procedure.

Section VII. Action upon the Ombudsman's Initiative

Article 38. (1) The Ombudsman may take action on his own initiative if he establishes that the required conditions for the protection of rights and freedoms are not in place.

(2) When acting upon his own initiative, the Ombudsman may conduct inspections regarding violations that were committed more than two years ago.

(3) Action taken upon the initiative of the Ombudsman shall be entered in the register of complaints and alerts.

(4) When acting upon his own initiative, the Ombudsman may assign the inspection to his Deputy or to one or more staff members.

(5) When assigning the inspection to his Deputy or to one or more staff members, the Ombudsman shall set a deadline for the completion of the inspection.

Article 39. Rules pertaining to inspections upon complaints or alerts shall apply to inspections upon the initiative of the Ombudsman unless provided otherwise in this section.

Section VIII. Opinions, Recommendations and Proposals

Article 40. Where appropriate, the Ombudsman shall voice opinions and make recommendations and proposals with a view to:

1. performing or terminating specific administrative actions;
2. restoring violated rights and freedoms;
3. eliminating causes or conditions that serve as prerequisites for violations of rights and freedoms;
4. eliminating manifestations of maladministration and improving the work of the administration.

Article 41. (1) The authority or person to whom opinions, recommendations or proposals have been sent shall review them and inform the Ombudsman within 14 days of the action taken in response thereto.

(2) In case no action is taken, the Ombudsman may report the case in his annual report or in a separate report to the National Assembly.

Article 42. (1) Where in the course of an inspection made the Ombudsman establishes that certain legal provisions are the cause or serve as a prerequisite for violations of rights and freedoms, he may make proposals or recommendations for legislative amendments.

(2) Proposals and recommendations for legislative amendments shall be sent to the president of the National Assembly and to the Council of Ministers.

(3) Proposals and recommendations for legislative amendments and action taken upon such shall be entered in the register of complaints and alerts and reported in the annual report of the Ombudsman.

Article 43. The Ombudsman shall give opinions on bills concerning human rights protection upon a request of the National Assembly or the Council of Ministers.

Article 44. (1) The Ombudsman may make proposals and recommendations to the National Assembly or the Council of Ministers for the signing and/or ratification of international human rights treaties.

(2) The proposals and recommendations under paragraph 1 shall be reported in the annual report of the Ombudsman.

Section IX.

Annual Report. Reports in Specific Cases

Article 45. (1) The Ombudsman shall present an annual report about his work to the National Assembly.

(2) The report shall be submitted by 31 March on the following year and shall provide information about the following:

1. complaints and alerts in relation to which the inspections have been completed;
2. cases where the Ombudsman's intervention has been successful;
3. cases where the Ombudsman's intervention has not been successful and the reasons for that;
4. work of the Ombudsman acting as National Preventive Mechanism;
5. proposals and recommendations made and whether they have been taken into account;
6. respect for human rights and fundamental freedoms and the efficiency of the legislation in force in this regard;
7. proposals and recommendations for legislative amendments;
8. statement of expenditure;
9. summary;
10. other information presenting the work of the Ombudsman.

(3) The report under paragraph 1 shall be public and shall be published on the website of the Ombudsman.

Article 46. (1) Upon a request of the National Assembly or upon his own initiative, the Ombudsman may draw up and present reports in individual cases, including from his work as National Preventive Mechanism.

(2) The reports under paragraph 1 shall be public and shall be published on the

website of the Ombudsman.

(3) Copies of specific reports may be sent to the respective authorities or persons concerned.

Section X. Budget

Article 47. (1) The work of the Ombudsman and his administration shall be financed by the national budget and other sources.

(2) The Ombudsman shall be first-level budget spending unit.

Article 48. The main monthly remunerations of the administration shall be set by the Ombudsman in accordance with the internal rules on the salaries and the available budget funds for the respective year.

Article 49. (1) In performing his duties, the Ombudsman shall travel in the country without issuing a duty trip order. The expenditures for the duty trips shall be reimbursed on the basis of the furnished documents in accordance with the Regulation on Duty Trips in the Country.

(2) In performing his duties, the Ombudsman shall travel abroad without issuing a duty trip order. In such cases the Secretary-General of the Ombudsman institution shall draw up a memorandum containing all mandatory information of an order and a report about the duty trip in accordance with the Regulation on Duty Trips and Specialisations Abroad.

Article 50. The performance, report and supervision of the work financed by the national budget shall be carried out in accordance with the general rules of the Bulgarian law.

Transitional and Final Provisions

§ 1. These Rules of Procedure shall repeal the Rules of Procedure of the Ombudsman (SG no. 45/2005).

§ 2. These Rules of Procedure have been adopted by a decision of the National Assembly pursuant to § 6 of the Law Amending and Supplementing the Ombudsman Act (SG 29/2012) read in combination with Article 3, para 2 of the Ombudsman Act (SG 48/2003) and shall enter into force on the day of their promulgation in the State Gazette.