

ON OMBUDSPERSON

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Assembly of Republic of Kosovo,

Approves

LAW ON OMBUDSPERSON

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
The purpose of the Law**

This Law aims establishing legal mechanism for protection, supervision and promotion of fundamental rights and freedoms of natural and legal persons from illegal actions or failures to act and improper actions of public authorities, other bodies and organizations exercising public authorizations for their account.

**Article 2
Scope of Law**

This Law regulates the organization and functioning of the Ombudsperson Institution, establishing procedures for appointment and dismissal, powers and manner of work of the Institution of Ombudsperson and regulates the procedures for submitting the complaints and their investigation.

**Article 3
Basic Principles of the activity of the Ombudsperson**

1. Ombudsperson is an independent institution that is governed by the principles of impartiality, confidentiality and professionalism.
2. The provisions of this Law apply to protect the rights, freedoms and interests of all persons in the Republic of Kosovo and abroad from illegal actions or failure to act of the bodies of public authorities of the Republic of Kosovo.

**Article 4
Working language**

Working Languages of the Institution of the Ombudsperson are official languages envisaged by the Constitution and Law.

**Article 5
Composition of the Ombudsperson Institution**

1. Ombudsperson Institution is composed of:
 - 1.1. Ombudsperson;
 - 1.2. five (5) Deputy Ombudspersons;
 - 1.3. professional staff and

1.4. administration.

Article 6
Conditions for election of the Ombudsperson and his deputies

1. On the post of Ombudsperson and his deputies are elected persons who meet the following conditions:
 - 1.1. must be a citizen of the Republic of Kosovo;
 - 1.2. must have high education (a University degree);
 - 1.3. must have character, honesty and high moral
 - 1.4. should be experienced and have distinguished knowledge in the field of human rights;
 - 1.5. should not be sentenced to a final decision for a criminal offense punishable by the legislation of Republic of Kosovo ;
 - 1.6. should not exercise function in any political party, a deputy in the legislature of the Republic of Kosovo Assembly that elects him, or a government cabinet member.

Article 7
Incompatibility

1. Ombudsperson and his deputies should not be members of any political party or exercise political, state or private professional activity.
2. Ombudsperson and his deputies do not participate in the management bodies of civil, economic and trade organizations;
 - 2.1. In addition to restrictions set forth in sub-paragraph 1.6 Article 6 of this Law and paragraph 1 and 2 of this Article, the Ombudsperson and his deputies have no right to exercise any other public or professional duty for which they are paid, except teaching at the institutions of higher education.
3. The Ombudsperson and his deputies may be involved in science, cultural, academic activities and other activities which are not in contrary to their functions and the legislation in force.

CHAPTER II
PROPOSAL, ELECTION AND DISMISSAL OF THE OMBUDSPERSON AND HIS DEPUTIES

Article 8
Proposal Procedures

1. The procedure for electing the Ombudsperson and his deputies starts six (6) months before the expiration of their mandate.
2. During the election procedure of candidates for Ombudsperson and his deputies, ethnic and gender representation must be ensured.
3. Proposal for Ombudsperson is made by respective Committee of the Assembly of the Republic of Kosovo, which reflects the political, ethnic and gender composition, of the Assembly in accordance with Rules of Procedure of the Assembly of the Republic of Kosovo.
4. The Assembly of Kosovo publishes the competition for election of Ombudsperson, in written and electronic media.

5. In the competition the conditions for election of Ombudsperson are determined, envisaged by the Constitution and the Law. The time period for submission of proposals for candidates can not be shorter than fifteen (15) nor more than twenty (20) days.
6. After expiration of time period foreseen in paragraph 5 of this Article, the Commission, within the term of fifteen (15) days, assesses whether the candidates meet the requirements envisaged by the Constitution and the Law to be elected Ombudsperson, and rejects nominees who do not meet these conditions.
7. The Commission conducts interview with each candidate who meets the conditions to be elected for Ombudsperson and based on the data presented and the results of the interview, prepares the short list of candidates qualified for Ombudsperson.
8. The short list comprises of three (3) candidates.
9. The Commission, delivers the short list to the Assembly of the Republic of Kosovo with the attached list of all candidates who meet the requirements to be elected for Ombudsperson.
10. The Commission proposal contains justification why the Commission has given priority to some of the candidates in comparison with other candidates.
11. Proposal of the deputies is made by the Ombudsperson on the basis of open and transparent competition, according to the competition announced by the Assembly of Kosovo.
12. The proposal of Ombudsperson contains justification for the proposed candidates.
13. At least one Deputy Ombudsperson must be a member of the Kosovo Serb community and at least one (1) must be from other non-majority communities that are represented in the Assembly of the Republic of Kosovo.
14. The procedure for election and dismissal of Ombudsperson and Deputy Ombudsperson shall be regulated with a special Regulation of the Assembly of Republic of Kosovo.

Article 9

The election of the Ombudsperson and his deputies

1. The Ombudsperson is elected by the Assembly of the Republic of Kosovo, with majority of votes of all its deputies for a term of five (5) years, without the right of re-election.
2. The Ombudsperson should be elected within thirty (30) days from the day of proposal of candidates. If this deadline is not reached, the Assembly of the Republic of Kosovo votes for the election of the Ombudsperson in each plenary session for thirty (30) other days. If the Ombudsperson is not nominated within sixty (60) days, the respective Committee of the Assembly will again publish competition for the Ombudsperson.
3. The deputies of Ombudsperson are elected at the same time by the Assembly of the Republic of Kosovo with a majority of votes of members present and who vote.
4. If the Assembly does not elect the deputies within sixty (60) days, the Assembly shall announce a new competition.
5. One of the elected deputies is appointed as Principal deputy with rotation for one (1) year mandate by the Ombudsperson.

Article 10

Taking the job (office) and oath

1. Ombudsperson shall take the office after having given the oath before members of the Assembly of the Republic of Kosovo.

2. The text of the oath is as follows: "I solemnly swear and promise that will perform faithfully, independently and impartially the duties and functions which are entrusted to me by the Constitution and by Law and will protect and promote human rights and freedoms in Republic of Kosovo".

Article 11 Immunity

1. Ombudsperson and his deputies enjoy immunity from prosecution, civil Lawsuit and dismissal for activities or decisions that are within the scope of responsibilities of the Ombudsperson Institution.

2. The Offices of the Ombudsperson Institution are inviolable. Archives, subjects, communications, property, funds and assets of the Ombudsperson Institution, wherever they are or by whosoever held, shall be inviolable and immune from control, acquisition, official search, confiscation, from expropriation or from any other intervention or through bailiff action, administrative, judicial or legislative action.

Article 12 Dismissal from the function of the Ombudsperson and his deputies

1. Ombudsperson and his deputies may be dismissed for the following reasons:

1.1. physical or mental inability that causes inability to perform his/her functions.

1.2. in case to committing a criminal offense punishable by the legislation of Republic of Kosovo to six (6) months imprisonment or more based on court decision of final form.

1.3. due to his personal conduct which is inconsistent with the exercise of his function.

1.4. if he/she performs actions in contradiction to sub-paragraph 1.6 of Article 6 and paragraph 2 of Article 7 of this Law.

2. Ombudsperson requires from the Assembly of the Republic of Kosovo to dismiss from function one (1) or more of his deputies, due to one or more reasons set out in this Law.

Article 13 End of the function of the Ombudsperson and his deputies

1. The function of the Ombudsperson and his deputies ends:

1.1. in case of death;

1.2. in case of resignation;

1.3. when five (5) year mandate for Ombudsperson expires, while three (3) year mandate for the deputies of Ombudsperson; and

1.4. when dismissed.

2. In case of absence, death, permanent or temporary disability, the Ombudsperson is replaced by the principal deputy. If the Principal deputy can not perform the function, then the Ombudsperson is replaced by the oldest deputy, according to age.

3. In case of expiry of the mandate, the Ombudsperson and his deputies shall exercise their functions until the election of the new Ombudsperson and his deputies.

Article 14
Providing of job after the end of mandate

1. After completion of the mandate, the Ombudsperson may return to his post or public work that he/she had prior to election as Ombudsperson. When this is not possible, then the previous employer must provide a suitable job, depending on skills and his profession.
2. The Ombudsperson, whose mandate expires, or due to reasonable causes can not continue previous job or can not find another adequate job, nor has fulfilled general conditions for retirement, has the right to remuneration in the same amount that would be paid if he/she had worked until being hired to another job or until fulfillment of general retirement conditions, but not longer than one year from the end of the mandate.

CHAPTER III
POWERS AND RESPONSIBILITIES OF THE OMBUDSPERSON

Article 15
Competencies

1. The Ombudsperson has the competences to investigate complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws and other acts, as well as international standards of human rights and international conventions, particularly the European Convention on Human Rights, including actions or failure to act which present abuse of authority.
2. The competences of Ombudsperson extend to the entire territory of the Republic of Kosovo. In exercising his/her functions related to cases that arise within the territory of the Republic of Kosovo, the Ombudsperson can provide good services to the citizens of the Republic of Kosovo who temporarily live outside territory of the Republic of Kosovo.
3. The Ombudsperson has the power to investigate whether to respond to complaint filed or on its own initiative (ex officio), if from findings, testimony and evidence presented by submission or by knowledge gained in any other way, there is a base and it results that the Republic of Kosovo institutions have violated human rights and freedoms.
4. If the Ombudsperson starts procedure on his/her own initiative or if any other person on behalf of the damaged person with the submission addresses to the Ombudsperson for initiating of the procedure, the consent from the person whose rights and freedoms have been violated is necessary.
5. When the Ombudsperson initiates procedure on his own initiative regarding the violation of rights and freedoms to a greater number of citizens, children or persons with lost abilities for action, consent required by paragraph 4 of this Article is not necessary.
6. The Ombudsperson will not intervene in the cases and other legal procedures that are taking place before the courts, except in cases of unreasonable delays or apparent abuse of power.
7. The Ombudsperson may initiate matters to the Constitutional Court in accordance with the Constitution and Law on the Constitutional Court.
8. The Ombudsperson shall also exercise his/her competences through mediation and conciliation.
9. Services offered by the Institution of the Ombudsperson are free.

Article 16
Responsibilities

1. Ombudsperson has the following responsibilities:
 - 1.1. to investigate alleged violations of human rights and be committed to resolve them;

- 1.2. to draw attention to cases when the institutions of the Republic of Kosovo violate human rights and to make recommendation to stop such cases and when it is necessary to express his opinion on attitudes and reactions of the relevant institutions relating to such cases;
 - 1.3. to inform about human rights and to make efforts to combat all forms of discrimination through increasing of awareness, especially through information and education and through the media;
 - 1.4. to inform the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms;
 - 1.5. to publish notifications, opinions, recommendations, proposals and his own reports.
 - 1.6. to recommend promulgation of new Laws in the Assembly, modification of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo;
 - 1.7. to prepare annual reports, periodical reports and others on the situation of human rights and freedoms in the Republic of Kosovo;
 - 1.8. to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation;
 - 1.9. to cooperate, in accordance with the Constitution and legislation in force, with all organizations, local and international institutions dealing with protection of human rights and freedoms;
 - 1.10. The Ombudsperson, his deputies and staff must keep-safe the confidentiality of all information and data that they receive, paying special attention to safety of complainants of damaged parties and witnesses, in accordance with the Law on data protection;
 - 1.11. Obligation for official confidentiality is also valid after ending of mandate or termination of their employment.
2. The Ombudsperson can provide advice and give recommendations to any natural or legal person concerning compliance of Laws and sub-legal acts with internationally accepted standards for human rights and freedoms.
 3. The Ombudsperson can advise and recommend to the institutions of the Republic of Kosovo for their programs and policies to ensure the protection and advance of human rights and freedoms in the Republic of Kosovo.
 4. The Ombudsperson undertakes all necessary measures and actions to review complaints submitted under paragraph 1 of Article 15 of this Law, including direct intervention to the competent authorities, who will be required to respond within the time period reasonable as determined by the Ombudsperson. If severe damage continues as a consequence of the complaint under Article 15 paragraph 1 of this Law, the competent authorities are required to respond promptly.
 5. If during the investigation, the Ombudsperson determines that the execution of an administrative decision may have irreversible consequences for the natural or legal person, he/she can recommend to competent authority to suspend execution of the decision until completion of investigations relating to this issue.
 6. The Ombudsperson has access to files and documents of every institution of the Republic of Kosovo and can review them on cases that are under review and under this Law, may require any institution of the Republic of Kosovo and their staff to cooperate with the Ombudsperson, providing relevant information, including a copy of full or partial file and other documents upon request of the Ombudsperson.

7. Officials of the Ombudsperson Institution may, at any time and without notice, enter and inspect any place where persons are deprived of their freedom and other institutions of limited freedom of movement and can be present at meetings or hearing sessions where such persons are included. Officials of the Ombudsperson Institution may hold meetings with such persons without the presence of officials of respective institution. Any kind of correspondence of these persons with the Ombudsperson Institution is not prevented or controlled.

8. Ombudsperson or his representatives may enter the official premises of all bodies of public authorities, other bodies and organizations exercising public authority for their account.

CHAPTER IV COMPLAINTS REVIEW PROCEDURES

Article 17 Initiation of procedure

Any person who believes that his rights and freedoms are violated by any Law, action or inaction, mismanagement of public authority bodies, other bodies and organizations exercising public authorities for their account, may request from the Ombudsperson Institution the initiation of procedure.

Article 18 The way of submitting the complaint

1. Any complaint submitted to the Ombudsperson should be signed and must contain personal records of the submitter of the complaint and should contain all the circumstances, facts and evidences on which the appeal is based. Submitter of the complaint may declare whether legal remedies are exercised or not, and if so which of these remedies are applied.

2. Any appeal for initiation of the procedure, as a rule, is submitted in writing. The request for initiation of the procedure may be submitted even verbally, in case it can not be made in writing.

Article 19 Procedure after receiving the complaint

1. After receiving the complaint, the Ombudsperson within thirty (30) days decides for the admissibility of the case as follows:

1.1. to review the case under prompt procedure;

1.2. to start full investigation;

1.3. to reject the complaint because:

1.3.1. is not in the jurisdiction of the Ombudsperson according to this Law;

1.3.2. the complaint is submitted after the term foreseen with this Law;

1.3.3. the complaint is anonymous;

1.3.4. the complaint represents an abuse of the Law for filing the complaint or

1.3.5. the complainant has failed to provide information requested by the Ombudsperson.

1.4. to reject the complaint as groundless.

1.5. to stop investigation when he/she ascertains that the case was resolved in another way in accordance with the request of the complainant.

2. In all cases above, the Ombudsperson shall notify the party in writing within 30 days from receiving the complaint.

3. Ombudsman's decision to reject or to refuse the appeal is of final form.

Article 20 **Cases of refusal to review the complaint**

1. Ombudsperson refuses the request for reasons as follows:

1.1. when from the entries submitted and the circumstances of the case appears that the rights and freedoms are not violated or any mismanagement is not performed;

1.2. when the request is incomplete and has not been completed even after the requirements of the Ombudsperson;

1.3. when procedures for a case are being held in judicial or other competent bodies, except in cases specified by this Law.

1.4. when all the regular and extraordinary remedies are not exhausted, unless he/she considers it would be useless for submitter of the complaint to initiate or continue proceedings, or if estimates that individuals have suffered severe damage or may suffer severe and uncompensated harm in the meantime;

Article 21 **Cases of prescription and exclusion**

1. Ombudsperson does not initiate proceedings to investigate violations of human rights if from the date that party has received the final form decision or is informed about it and until submitting the complaint to the Ombudsperson Institution have passed more than six (6) months.

2. Regardless of paragraph 1 of this Article, the Ombudsperson may initiate procedure after the expiration of a period of six (6) months, if he considers that the submitter of the complainant has been prevented or if estimates that the issue is of particular importance.

Article 22 **Procedure after start of investigation**

1. When the Ombudsperson decides to initiate investigations in accordance with Article 19 of this Law, he/she shall communicate his decision to the submitter of the complaint and the body against which the complaint is filed. The Ombudsperson may require additional information regarding the case.

2. Ombudsperson sets the time period within which the body must submit all information required in accordance with paragraph 1 of this Article. The time period can not be shorter than 8 days or longer than thirty (30) days. When the body fails to submit information required by the Ombudsperson within the foreseen time period, it must submit in writing the reasons for the delay in providing the requested information without delay.

3. If the Ombudsperson evaluates responses or measures taken by the body inadequate, he/she has the right to deliver the case to the highest competent authority, or to submit separate report to the Assembly, by proposing concrete measures for resolving the violated right.

4. Refusal or failure to respond to the requirements of Ombudsperson is considered obstruction of Ombudsperson's work. This does not prevent the Ombudsperson to issue his conclusions and recommendations.

5. The Ombudsperson may report the actions foreseen in paragraph 4 of this Article in his reports.

Article 23
Obligation of cooperation and the consequences of refusal

1. All organs of state authorities are obliged to assist the Ombudsperson in the development of investigations, as well as to provide adequate support according to his request.
2. Refusal to cooperate with the Ombudsperson of a civil officer, a functionary or public authority is a reason that the Ombudsperson requires from the competent body the initiation of administrative proceedings, including disciplinary measures, till the removal from job or civil service.

Article 24
Invitation of witnesses and experts

Ombudsperson may send invitation to any witness or expert to interview him/her about the case. The person invited who works in public institutions is obliged to respond the invitation.

Article 25
Decision Making

After completion of the investigation, the Ombudsperson in accordance with its powers and responsibilities, issues a decision in which his findings and recommendations are submitted. His decision is delivered to the complainant and responsible public authorities.

Article 26
Response to requests of the Ombudsperson

Bodies, to which the Ombudsperson has addressed recommendation, request or proposal for disciplinary measures, must respond within thirty (30) days. The answer must include written reasons for actions taken on the issue in question.

Article 27
Report of the Ombudsperson

1. The Ombudsperson presents the annual report to the Assembly of the Republic of Kosovo
2. The Ombudsperson presents to the Assembly of Kosovo the report for the previous year till 31 March of following year. The Ombudsperson presents the report in plenary session, in which it is discussed.

Article 28
Publication of Special Reports

Ombudsperson may also publish special reports through media relating to violation made by the body, if the latter, after repeated requests did not respond appropriately to his proposals and recommendations.

CHAPTER V
OFFICE, OBJECT, STAFF AND BUDGET OF THE INSTITUTION OF OMBUDSPERSON

Article 29
The residence of the Institution, the inviolability of the residence and offices of the Ombudsperson

1. The residence of the Ombudsperson Institution is located in Pristina.
2. Ombudsperson Institution is provided with appropriate facilities for work and other equipment in order to enable him/her effective conduct of functions and responsibilities.
3. The Ombudsperson may open other offices within the territory of the Republic of Kosovo if required.

4. Within the Institution of the Ombudsperson special units for protection of special categories of human rights will operate.

Article 30
Professional Personnel

Personnel of the Ombudsperson Institution is selected from among the citizens of the Republic of Kosovo in accordance with the Law provisions on Civil Servant in the Republic of Kosovo.

Article 31
Regulation of the Institution

1. Ombudsperson Institution issues its Rules of Procedure.
2. The Rules of Procedure is published in "Official Gazette of the Republic of Kosovo" and the website of the Ombudsperson Institution.

Article 32
Salaries

1. The level of salary of the Ombudsperson and his deputies is determined in accordance with the Law on salary of public senior officials.
2. The level of salary of other staff of the Ombudsperson Institution determined in compliance with Law on salary of civil servants.

Article 33
Engagement of external advisors and experts

Ombudsperson, in agreement with the employer may engage, according to needs, external advisers and experts, to serve for a certain period of time.

Article 34
Financing

1. The Ombudsperson Institution is financed from the budget of the Republic of Kosovo.
2. Regardless of the provisions of other Laws, the Ombudsperson Institution prepares its annual budget proposal and sends it for approval to the Assembly of the Republic of Kosovo.
3. The Ombudsperson Institution manages independently with its own budget and is subject to internal and external audit by the General Auditor of the Republic Kosovo.

Article 35
Acceptance of donations

Ombudsperson Institution may accept additional donations from local and international donors, for which the Assembly of the Republic of Kosovo is notified and which do not affect the financial independence of the Ombudsperson Institution and which are not in contrary to the Law, and that do not affect the independence of the Ombudsperson Institution or its rights on the Budget of the Republic of Kosovo.

**CHAPTER VI
TRANSITIONAL AND FINAL PROVISIONS**

Article 36

1. Within six (6) months after entry into force of this Law, deputies of the Ombudsperson are elected in accordance with this Law.
2. The current mandate of the Ombudsperson continues until the end of his/her mandate.
3. The current mandate of the Deputy Ombudsperson continues until election of other deputies.
4. The Ombudsperson is also competent for the cases submitted before the entry into force of this Law, when from the facts, continual violation of one or more international standards on human rights is evident, or constitute the continued abuse of power.

**Article 37
Transitional provisions**

Within three (3) months after entry into force of this Law, the Ombudsperson Institution issues Work Regulation.

**Article 38
Abrogative provisions**

Upon entry into force of this Law UNMIK Regulation No.2000/38 on establishment of the Ombudsperson Institution in Kosovo of the date 30 June 2000, UNMIK Regulation No. 2006 / 6 on the Ombudsperson Institution in Kosovo of the date 16 February 2006 and UNMIK Regulation No. 2007/15 Amending UNMIK Regulation 2006 / 6 on the Ombudsperson Institution in Kosovo, of the date 19 March 2007 as well as all other provisions which are in contrary to this Law are abrogated.

**Article 39
Entry into force**

This Law enters into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo.

**Law No. 03/L –195
22 July 2010**

Promulgated by the Decree No. DL-046-2010, dated 09.08.2010, of the President of Republic of Kosovo, Dr. Fatmir Sejdiu