

The Ombudsman Act

Journal of Laws 01.14.147

15.03.2007 amended Journal of Laws 2006.218.1592
09.11.2010 amended Journal of Laws 2010.197.1307
01.01.2011 amended Journal of Laws 2010.254.1700
02.01.2011 amended Journal of Laws 2010.182.1228
15.07.2011 amended Journal of Laws 2011.168.1004
18.08.2011 amended Journal of Laws 2011.222.1320

The Ombudsman Act Act of 15 July 1987 on the Human Rights Defender¹⁾ (consolidated text)

Article 1. 1. The Human Rights Defender is hereby established.
2. The Human Rights Defender, hereinafter referred to as "the Defender" shall safeguard the liberties and rights of citizens as set forth in the Constitution and in other normative legal acts including implementation of the principle of equal treatment.
2a. On matters concerning children the Defender shall co-operate with the Children's Rights Defender.
3. In cases involving protection of the rights and liberties of the human being and of the citizen, the Defender shall investigate whether, due to any action or abstaining on the part of organs, organizations or institutions responsible for the observance and implementation of those rights and liberties, the law and principles of community life and social justice have been infringed.
4. The Defender shall act as a visiting party for prevention of torture and other cruel, inhuman or degrading treatment or punishment (national prevention mechanism) as defined in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 18 December 2002 in New York. (Journal of Laws of 2007 no. 30, item 192).

Article 2. The Defender must be a Polish citizen of outstanding legal knowledge, professional experience and high prestige due to the individual's moral values and social sensitivity.

Article 3. 1. The Defender shall be appointed by the Sejm upon approval of the Senate on a motion expressed by the Speaker of the Sejm or by a group of 35 deputies.
2. Detailed procedure of nomination for the office of the Human Rights Defender shall be determined by the resolution of the Sejm.
3. The resolution of the Sejm appointing the Human Rights Defender shall be immediately conveyed by the Speaker of the Sejm to the Speaker of the Senate.
4. The Senate shall adopt resolution on the approval of the appointment of the Defender within one month of receipt of the Sejm's resolution referred to in section 3. The Senate's failure to adopt such a resolution within one month shall be tantamount to approval.
5. Should the Senate refuse to approve the Defender, the Sejm shall appoint another person the Defender. Provisions of sections 1-4 shall apply respectively.
6. The outgoing Defender shall perform his duties until the office is taken over by the new Defender.

Article 4. Prior to assumption of duties, the Defender shall make the following oath before the Sejm:

"I solemnly do swear that in performing the duties entrusted to me as the Human Rights Defender I shall keep faith with the Constitution of the Republic of Poland, safeguard the liberties and rights of the human being and the citizen, being guided by the Law and the principles of community life and social justice.

I pledge to perform the duties entrusted to me impartially, with the greatest of diligence and care, to safeguard the dignity of the office and to keep the State and office matters in strict confidence."

The oath may be taken with the sentence added "So help me God".

Article 5. 1. The Defender's term of office shall be five years starting from the date the oath is made before the Sejm.
2. The same person may not act as the Defender for more than two terms of office.

Article 6. After completion of his duties, the Defender has the right to resume the position occupied before or to be offered a position equal to the previous one, should there be no legal obstacles.

Article 7. 1. The Sejm may discharge the Defender prior to the end of his term of office in the case if:

- 1) the Defender has refused to perform his function,
 - 2) has become permanently incapable to perform the office due to medically certified ailment, disability or decline of strength.
 - 3) has presented untrue vetting declaration stated by a final and valid sentence of the court.
2. The Sejm may also discharge the Defender before the end of the term of his appointment, should he act against his oath.
3. In the case mentioned under section 1 point 1 the Sejm, upon the motion of the Speaker, takes the resolution on discharging the Defender.
4. The Sejm takes the resolution on discharging the Defender in cases mentioned in section 1 point 2 and section 2 on the motion of the Speaker or a group of at least 35 deputies, and by the majority of at least 3/5 of votes with at least the half of the regular number of deputies present.

Article 8. 1. The Defender shall take measures under the present Act having acquired information indicating that liberties and rights of a human and a citizen have been violated, including the principle of equal treatment.

2. The Defender shall examine on a regular basis the treatment granted to detained persons.

Article 9. Measures shall be taken by the Defender:

- 1) at the request of citizens or their organizations,
- 2) at the request of self-government organs,
- 2a) at the request of the Children's Rights Defender,
- 3) on the Defender's own initiative.

Article 10. An application addressed to the Defender shall be exempt from charges, and no special form shall be required; however, the identity must be indicated of the applicant and the person whose liberty and right is involved in the case, and the subject of the case must be defined.

Article 11.

1. Having become acquainted with each application received, The Defender may:

- 1) take up the case,
- 2) instruct the applicant as to whatever action the person is entitled to take,
- 3) convey the case according to competence,
- 4) abandon the case, against notification thereof the applicant and the person involved.

2. In the scope of fulfilling the equal treatment principle in relations between private entities, the Defender may undertake actions mentioned in section 1 (2).

Article 12. Having taken up a case, the Defender may:

- 1) carry out his own explanatory proceedings,
- 2) request that the case or a part thereof be explained by relevant agencies, especially agencies involved in the supervision, prosecution and State, professional or public control,
- 3) request the Sejm to commission the Supreme Chamber of Control with investigating the specific case or a part thereof.

Article 13. 1. In the course of the proceedings referred to in art. 12 section 1, the Defender has the right to:

- 1) examine each case on the spot even without any prior warning,
- 2) demand explanation or presentation of files of any case handled by superior and central authorities of State administration, government administration agencies, agencies of co-operative, civic, professional or socio-professional organizations, as well as agencies of corporate organizational units, communes and organizational units of local government,
- 3) demand information on the status of a case dealt with by courts or prosecutor's office or other law enforcement agencies, and to demand that court and prosecutor files be made available to the Office of the Human Rights Defender, as well as files from other law enforcement bodies after

proceedings have been completed and judgment issued,

4) order expertise and opinion.

1a. While performing the tasks referred to in Article 8 (2), the Defender shall also be entitled to:

1) make audio or video recordings in places for detained persons with the consent of the persons to be recorded,

2) meet with detained persons, without the presence of any other persons, and also meet with any other persons considered to be able to provide relevant information.

1b. Audio and video recordings shall be:

1) kept in the Human Rights Defender Office, in rooms secured against unauthorised access, for as long as necessary in a given case, however, not longer than for 10 years,

2) made available to the recorded person and also to its statutory representative or attorney.

2. In cases involving classified information, (by a clause 'secret' or 'top secret') providing the Defender with information or access to files shall be subject to the principles and procedures set forth in relevant regulations on the protection of classified information.

3. The Defender shall refuse to disclose the name and any other personal data of the plaintiff, including any disclosures to public authorities, if non-disclosure is considered necessary to protect the freedom, rights and interests of the individual.

Article 14. Having examined a case, the Defender may:

1) explain to applicant that no infringement of liberties and rights of a human and a citizen has been found,

2) refer to the agency, organization or institution whose activity has been found to have caused an infringement of the liberties and right of a human and a citizen; such motion may not, however, infringe upon independence of the judiciary,

3) request an agency superior to the one referred to in point 2 to apply measures provided by law,

4) demand that proceedings be instituted in civil cases, and participate in any ongoing proceedings with the rights enjoyed by the prosecutor,

5) demand that preparatory proceedings be instituted by a competent prosecutor in cases involving offences prosecuted ex officio,

6) ask for instituting administrative proceedings, lodge complaints against decisions to administrative court and participate in such proceedings with the rights enjoyed by the prosecutor,

7) move for punishment as well as for reversal of a valid decision in proceedings involving misdemeanor, under rules and procedures set forth elsewhere,

8) lodge cassation or extraordinary appeal against each final and valid sentence, under rules and procedures set forth elsewhere.

Article 15. 1. In the motion mentioned in art. 14 point 2, the Defender shall present opinions and conclusions as to how the case could be settled, and may also demand that disciplinary proceedings be instituted or official sanctions imposed.

2. The agency, organization or institution to which such motion has been addressed must, without unreasonable delay and no later than within 30 days, inform the Defender of whatever action or view has been taken. Should the Defender disagree with such a view, he can approach the relevant superior entity for necessary actions.

Article 16. 1. In connection with the cases examined, the Defender can present to the relevant agencies, organizations and institutions opinions and conclusions aimed at ensuring efficient protection of the liberties and rights of a human and a citizen and facilitating the procedures such cases may involve.

2. The Defender may also:

1) approach the relevant agencies with proposals for legislative initiative, or for issuing or amending other legal acts concerning the liberties and rights of a human and a citizen,

2) approach the Constitutional Tribunal with motions mentioned in Art. 188 of the Constitution,

3) report participation in the proceedings before the Constitutional Tribunal in the cases of constitutional complaints and take part in those proceedings,

4) request the Supreme Court to issue a resolution aimed at explaining legal provisions that raise doubts in practice, or application of which has resulted in conflicting judicial decisions.

3. In the event that the Defender approaches the Constitutional Tribunal with the motion referred to in section 2 (2), it shall notify the Children's Rights Defender therefore, if the motion pertains to the children's rights.

Article 17. 1. When approached by the Defender, an agency, organization or institution is obliged to co-operate and provide to the Defender due assistance, and in particular:

1) provide with an access to files and documents under provisions set forth in art. 13,

2) providing the Defender with required information and explanations,

- 3) give explanation concerning the factual and legal grounds for its decisions,
 - 4) take its attitude to the Defender's general appraisal, comments and opinions.
2. The Defender may specify the period within which measures mentioned under section 1 have to be accomplished.

Article 17a. The Defender collaborates with associations, civic movements or other good-will societies and with foreign and international organs and organizations for the protection of the liberties and rights of a human and a citizen, including the principle of equal treatment.

Article 17b. In reference to the implementation of the principle of equal treatment, the Defender shall also:

- 1) analyse, monitor and promote equal treatment of all persons,
- 2) carry out independent surveys and studies concerning discriminations,
- 3) prepare and issue independent reports as well as give instructions regarding discrimination-related problems.

Article 17c. The Defender shall be entitled to process all and any information, including personal data, referred to in Article 27 (1) of the Personal Data Protection Act of 29 October 1997 (Journal of Laws of 2002 no. 101, item 926, as amended 2), necessary to perform its statutory tasks.

Article 18. Provisions of this Act regarding protection of the liberties and rights of a human and a citizen shall also apply, respectively, to:

- 1) persons of non-Polish citizenship being under the authority of the Republic of Poland in the scope of the liberties and rights they enjoy;
- 2) legal persons and organizational units not being legal persons, but enjoying a legal person status on the basis and in the range defined in the legal act from 3 December 2010 on implementing certain European Union provisions on equal treatment (Journal of Laws 2010.245.1700).

Article 19. 1. The Defender shall annually inform the Sejm and the Senate on his activities and on the observance of the liberties and rights of a human and a citizen, including the following:

- 1) information about equal treatment actions and their results,
 - 2) information about the compliance with the principle of equal treatment in the Republic of Poland, based primarily on the surveys and studies referred to in Article 17b (2),
 - 3) conclusions and recommendations relating to the measures to be taken in order to ensure compliance with the principle of equal treatment.
2. The Defender's information shall be made public.
3. The Defender may submit to the Sejm and the Senate specific matters resulting from the Defender's activities.
4. If so requested by the Sejm Speaker, the Defender shall provide information or take action in specific cases.

Article 20. 1. The Defender shall perform the Defender's duties with the assistance of the Office of the Human Rights Defender.

2. By way of a regulation, the Defender shall establish a charter which shall regulate the tasks and organisation of the Office of the Human Rights Defender.
3. The Defender shall be able to appoint no more than three Deputy Defenders. The Ombudsman shall be entitled to dismiss any Deputy Defender.
4. The Defender shall determine the scope of responsibilities of the Defender's deputy (deputies).
5. Respective regulations on the employees of government offices shall apply to the Deputy Defender and employees of the Office of the Human Rights Defender.

Article 21. Disbursements involved in the operations of the Defender shall be covered by the central budget.

Article 22. The Defender may, upon the Sejm's approval, establish his local representatives.

1) This act shall implement within the scope regulated thereby the following EC Directives:
- 1) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (EC OJL 180 of 19.07.2000, p. 22, EU OJ Polish special edition, Chapter 20, vol. 1, p. 23);

- 2) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (EU OJL 373 of 21.12.2004, p. 37);

- 3) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (EU OJL 204 of 26.07.2006, p. 23).