

Ombudsman Act 1982 – VolksanwG

CHAPTER I

Organization of the Ombudsman Board

§ 1. (1) A quorum of all members of the Ombudsman Board is required for adopting Board resolutions. The Standing Rules may determine rules on the representation of a member of the Ombudsman Board in matters which require Board resolutions. Unless provided differently by constitutional law, resolutions shall be adopted with the majority of votes, abstention is not admissible.

(2) Apart from resolutions on the Standing Rules and the Allocation of Responsibilities and Duties pursuant to Art. 148h para 4 of the Federal Constitutional Law, the following shall be subject to resolutions of the Ombudsman Board:

1. recommendations, requests for a deadline and suggestions on measures of supervisory control pursuant to Art. 148c of the Federal Constitutional Law,
2. reports to the National Council and the Federal Council pursuant to Art. 148d para 1 of the Federal Constitutional Law,
3. applications to the Constitutional Court pursuant to Art. 148e, Art. 148f and Art. 148i para 1 second sentence of the Federal Constitutional Law,
4. statements of opinions in procedures for the review of draft laws and regulations (§ 7 para 1),
5. suggestions on the amendment or adoption of laws (§ 7 para 2),
6. the appointment and dismissal of the members of the commissions (§ 12 paras 2 and 4) as well as of the Chairperson, the Chairperson's deputy and the other members and substitute members of the Human Rights Advisory Council (§ 15 paras 3 and 6),
7. the specification of general monitoring priorities, and
8. the passing of resolutions on suggestions by the Human Rights Advisory Council to guarantee uniform courses of action and monitoring standards (§ 14).

The Standing Rules or the Allocation of Responsibilities and Duties can reserve further matters for Board resolutions.

(3) The mutual representation of members of the Ombudsman Board in handling duties conferred upon them for taking care of on an independent basis in case of being temporarily prevented and permanent carrying out of the office is subject to the provisions of the Ombudsman Board's Standing Rules.

(4) Except for their salaries, the members of the Ombudsman Board rank equal with a State Secretary with an agenda of specific duties to be handled.

§ 2. In case a member of the Ombudsman Board is resigning from office before expiry of his or her term of office, the Chairperson shall inform the President of the National Council accordingly without delay.

§ 3. (1) The Ombudsman Board shall report annually to the National Council and the Federal Council on its activities. In addition, the Ombudsman Board can report at any time to the National Council and the Federal Council on its observations on individual matters.

(2) Each member of the Ombudsman Board whose opinion on the contents of a report addressed to the National Council has not obtained a majority of the votes has the right to attach a dissenting opinion to such report.

(3) After having been submitted to the National Council and the Federal Council, the reports of the Ombudsman Board shall be published by it. In addition, the annual report of the Ombudsman Board shall be submitted to the Subcommittee on Prevention of Torture (Art. 2 of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 18th December 2002 – OPCAT).

§ 4. (1) The Standing Rules may provide that matters recurring on a regular basis and serving to prepare measures to be taken shall be handled by the office.

(2) Standing Rules and Allocation of Responsibilities and Duties of the Ombudsman Board shall be published in the Federal Law Gazette.

CHAPTER II

Proceedings before the Ombudsman Board

§ 5. § 6, § 7, § 10, § 12, § 13, § 14, § 16, § 18 paras 1, 3 and 4, § 21, § 22, § 32, § 33, § 39a, § 45 paras 1 and 2, § 46 through § 51, § 52, § 53, § 54 and § 55 of the General Administrative Procedure Act 1991, Federal Law Gazette No. 51, and the Service of Documents Act, Federal Law Gazette No. 200/1982, shall be applied accordingly to proceedings before the Ombudsman Board.

§ 6. The federal executive bodies and officers responsible for handling the supreme administrative matters are obligated to comply with recommendations addressed to them by the Ombudsman Board within a term of eight weeks and to inform the Ombudsman Board accordingly or to give the reasons in writing why the recommendation has not been complied with. The Ombudsman Board may extend this term upon a justified request. The complainant shall be informed of the information.

§ 7. (1) Drafts of laws and regulations shall be submitted to the Ombudsman Board in due time, granting a reasonable period for review.

(2) The Ombudsman Board can suggest the amendment or adoption of laws.

(3) The Ombudsman Board shall cooperate with scientific and academic institutions and schools and other educational institutions and shall inform the public of its activities.

§ 8. To the extent submissions with authorities and offices are admissible in a different language from German, such submissions may also be filed with the Ombudsman Board in such language.

§ 9. If the Ombudsman Board deems investigations necessary for ascertaining the facts on which a complaint is based, the Federation shall assume the costs arising for this purpose.

§ 10. Submissions to the Ombudsman Board and all other briefs prepared for being used in a proceeding before the Ombudsman Board shall be exempt from stamp duties.

CHAPTER III

Protection and promotion of human rights

§ 11. (1) To protect and promote human rights, the Ombudsman Board, within the federal sphere of administration including the Federation's activities as a holder of private rights and, in the case of Art. 148i para 1 first sentence of the Federal Constitutional Law, also in the sphere of administration of the relevant Land, shall

1. regularly visit and inspect places of detention as defined in Art. 4 of the OPCAT,
2. monitor and concomitantly inspect the behaviour of executive bodies and officers of administrative authorities authorized to issue direct orders and carry out coercive measures, and
3. regularly visit and inspect facilities and programmes designed to serve persons with disabilities, in order to implement Art. 16 para 3 of the Convention on the Rights of Persons with Disabilities, Federal Law Gazette III No. 155/2008, and to prevent all forms of exploitation, violence and abuse.

(2) The Ombudsman Board shall entrust the commissions set up by it (§ 12, § 13) with performing the duties specified in para 1.

(3) The Ombudsman Board and the commissions set up by it shall

1. be provided information, in particular concerning the number and treatment of persons who are being or were deprived of their liberty or concerning places where persons are or may be deprived of their liberty and concerning the conditions of detention as well as concerning the number and treatment of persons with disabilities in facilities and programmes designed to serve persons with disabilities,
2. be allowed to inspect documents, where necessary by being provided with such documents, and to make duplicates and copies free of charge,
3. be granted access to all installations of places of detention and of facilities for persons with disabilities, and
4. upon their request, be provided contact with detainees or persons with disabilities in facilities and programmes or with informants without the presence of third parties, where necessary with the assistance of an interpreter.

(4) When performing their duties, the Ombudsman Board and the commissions set up by it shall take into account the requirements of the facilities' operation.

(5) To the extent this is required to perform the duties delegated to them by law to protect and promote human rights, the Ombudsman Board and the commissions set up by it shall be entitled, with regard to any case of illness, to inspect documents (nursing documentation, case history, medical reports and other relevant records relating to the relevant person) of the entity operating the facility that is a place as defined in para 1 item 1, and the notifications to the resident's representative pursuant to § 7 para 2 of the Nursing and Residential Homes Residence Act, Federal Law Gazette I No. 11/2004, and the notifications to the patient's representative on increased restrictions pursuant to § 33 et seq. of the Hospitalization of Mentally Ill Persons Act, Federal Law Gazette No. 155/1990, and to make duplicates and copies of such documents free of charge or request the provision of such documents. Residents' representatives and patient advocates shall provide to the Ombudsman Board and the commissions set up by it the information required for performing their duties specified in para 1 and provide documents to them.

(6) Unless other statutory rules provide for the continued use of the data, the Ombudsman Board and the commissions set up by it shall delete any references to persons in the data processed by them as of the time at which the data are no longer required for performing the duties delegated to them by law to protect and promote human rights.

§ 12. (1) The Ombudsman Board shall set up a minimum of six commissions organized by region or subject matter. Each commission shall consist of the required number of members, the minimum total number of members of all commissions being 42. Each commission shall be headed by an eminent person in the field of human rights.

(2) The members shall be appointed, with their consent, by the Ombudsman Board after having consulted the Human Rights Advisory Council. Only persons who have the required capabilities and expert knowledge may be appointed members. Persons who perform an activity that could cause doubt about the independent exercise of their function as a member of the commission shall be excluded from appointment. The Ombudsman Board shall strive to achieve a balanced gender representation and a reasonable representation of ethnic groups and minorities in the commission as well as an independent, interdisciplinary and pluralistic composition having regard to the duties of the commissions.

(3) The members shall be appointed for six years; every three years, half of the members of all commissions shall be newly appointed. Reappointment shall be permissible.

(4) The Ombudsman Board can dismiss a member in writing, stating reasons, before expiry of his or her term of office

1. at the member's request,

2. if the member can no longer perform the duties connected with his or her function due to the member's state of health, or
3. if the member grossly violated or continuously neglected the obligations connected with his or her function or carries out an activity that could cause doubt about the independent exercise of the member's function.

(5) If a member resigns before expiry of his or her term of office, a new member shall be appointed for the remaining term of office of the resigned member.

(6) The members shall be entitled to remuneration for performing their duties (§ 13 para 3).

(7) Resolutions by a commission shall require a majority of votes. In the case of a tie, the head of the commission shall have a casting vote. Passing resolutions by circular resolution shall be permissible.

§ 13. (1) The commissions or individual members determined by it shall carry out visits and inspections for the Ombudsman Board.

(2) The commissions shall report to the Ombudsman Board on their visits and inspections and make suggestions on determinations of cases of maladministration and recommendations and suggestions as to measures of supervisory control. If the Ombudsman Board does not follow the suggestions or recommendations of the commissions on recommendations and determinations of cases of maladministration, the commissions shall be entitled to attach to the reports made to the Ombudsman Board (Art. 148d para 1 of the Federal Constitutional Law) comments concerning the activities of the relevant commission. The heads of the commissions shall be entitled to attend deliberations of the Ombudsman Board concerning their field of activities; upon request, they shall be permitted to speak.

(3) In its Standing Rules, the Ombudsman Board shall also regulate the Standing Rules of the commissions, and, in its Allocation of Responsibilities and Duties, it shall also regulate their Allocation of Responsibilities and Duties. In particular, it is to be regulated how the commissions, taking into account the general monitoring priorities of the Ombudsman Board, have to proceed routinely and comprehensively as well as in individual cases on the basis of circumstances that have become known and, if necessary, may call in further experts. In its Standing Rules, the Ombudsman Board, after having consulted the commissions, shall also specify the amount of the remuneration of the members of the commissions (§ 12 para 6). The commissions shall be consulted before resolutions are passed on the Standing Rules and Allocation of Responsibilities and Duties of the commissions.

(4) The heads of the commissions shall coordinate their activities between themselves.

§ 14. The Human Rights Advisory Council shall advise the Ombudsman Board on matters referred to in § 11 para 1, in particular when defining general monitoring priorities as well as before the submission of determinations of cases of maladministration and recommendations. The Human Rights Advisory Council can make suggestions to the Ombudsman Board on how to guarantee uniform courses of action and monitoring standards.

§ 15. (1) The Human Rights Advisory Council shall consist of one Chairperson, his or her deputy, 14 other members and 14 substitute members.

(2) Only persons who have the required capabilities and expert knowledge in the field of human rights may be appointed members. The Chairperson and his or her deputy shall be eminent persons in the field of human rights having excellent knowledge of the organization and functioning of administration and academic qualifications in constitutional law. The Ombudsman Board shall strive to achieve a balanced gender representation and a reasonable representation of ethnic groups and minorities in the Human Rights Advisory Council as well as an independent and pluralistic composition of the Human Rights Advisory Council.

(3) The members and substitute members of the Human Rights Advisory Council shall be appointed, with their consent, by the Ombudsman Board. When appointing members and substitute members, the Ombudsman Board shall be bound to one proposal each of a member and substitute member by the Federal Chancellor, the Federal Minister of the Interior, the Federal Minister of Justice, the Federal Minister of Health, the Federal Minister of Defence and Sports, the Federal Minister of Labour, Social Affairs and Consumer Protection and the Federal Minister for European and International Affairs. The officials making the proposals shall strive to achieve a balanced gender representation and a reasonable representation of ethnic groups and minorities in the Human Rights Advisory Council as well as an independent, interdisciplinary and pluralistic composition having regard to the duties of the Human Rights Advisory Council. Seven non-governmental organizations, to be determined by the Ombudsman Board, that are dedicated to the preservation of human rights shall propose one member and one substitute member each; the Ombudsman Board shall be bound to these proposals. The Ombudsman Board shall appoint the Chairperson and his or her deputy without being bound to proposals.

(4) If at least one Land declares the Ombudsman Board competent also in the sphere of the particular Land's administration pursuant to Art. 148i para 1 first sentence of the Federal Constitutional Law, two further members and two substitute members shall be appointed, one member and substitute member of them at the proposal of a non-governmental organization for the preservation of human rights and one each on the basis of a joint proposal of the *Laender* concerned.

(5) The members and substitute members shall be appointed for six years. Reappointment shall be permissible.

(6) The Ombudsman Board can dismiss a member or substitute member before expiry of his or her term of office

1. at the member's or substitute member's request,
2. if the member or substitute member can no longer perform the duties connected with his or her function due to the member's or substitute member's state of health, or

3. if the member or substitute member grossly violated or continuously neglected the obligations connected with his or her function.

The dismissal of a member or substitute member proposed by a non-governmental organization as well as of the Chairperson or the deputy of the Chairperson shall be in writing, stating reasons.

- (7) The members proposed by non-governmental organizations and the Chairperson and his or her deputy shall be entitled to remuneration (§ 16 para 2).

§ 16. (1) A resolution by the Human Rights Advisory Council shall require the presence of the Chairperson or his or her deputy and at least seven further members or substitute members and a majority of votes. In the case of a tie, the Chairperson shall have a casting vote. Passing resolutions by circular resolution shall be permissible.

- (2) In its Standing Rules, the Ombudsman Board shall also regulate the Standing Rules of the Human Rights Advisory Council and, in its Allocation of Responsibilities and Duties, it shall also regulate the Allocation of Responsibilities and Duties of the Human Rights Advisory Council. In its Standing Rules, the Ombudsman Board, after having consulted the Human Rights Advisory Council, shall also specify the amount of the remuneration of the members of the Human Rights Advisory Council proposed by non-governmental organizations and of the Chairperson and his or her deputy (§ 15 para 7). The Human Rights Advisory Council shall be consulted before resolutions are passed on the Standing Rules and Allocation of Responsibilities and Duties of the Human Rights Advisory Council.

- (3) The members of the Ombudsman Board shall be entitled to attend deliberations of the Human Rights Advisory Council. The Human Rights Advisory Council shall be free to call in to its deliberations employees of the Ombudsman Board and members of the commissions.

§ 17. (1) The Ombudsman Board shall be entitled to be in contact with the Subcommittee on Prevention of Torture (§ 3 para 3), to provide information to it and have meetings with it.

- (2) To protect and promote human rights, the Subcommittee on Prevention of Torture shall be entitled to visit and inspect places of detention within the federal sphere of administration, including the Federation's activities as a holder of private rights, and to enter Austria for that purpose. The obligations referred to in § 11 para 3 shall also apply in respect of the Subcommittee on Prevention of Torture.

- (3) Objections to a visit of a certain place of detention may be raised only if this is strictly necessary for reasons of national defence, public safety, due to natural disasters or severe disruptions of the order at the place to be visited, which temporarily prevent such a visit.

§ 18. Nobody shall be penalized or otherwise disadvantaged due to providing information to the Subcommittee on Prevention of Torture, the Ombudsman Board or the commissions set up by it.

§ 19. Personal data processed by the Ombudsman Board and the commissions set up by it may only be published with the express consent of the relevant persons. The Ombudsman Board and the

commissions set up by it shall preserve the confidentiality of information in accordance with the statutory provisions.

§ 20. The Ombudsman Board, the members of the commissions and the members and substitute members of the Human Rights Advisory Council shall not be obligated to disclose the identity of an informant or to report behaviour that is punishable by a court.

CHAPTER IV

Final provisions

Referrals

§ 21. To the extent provisions of other federal acts are referred to by this Federal Act, such provisions shall be applied as amended.

Implementation

§ 22. With regard to § 10, the Federal Minister of Finance, for the remaining provisions the Federal Chancellor, shall be responsible for the implementation of this Federal Act.

Date of legal effectiveness

§ 23. (1) The title and § 5 as amended by Federal Act, Federal Law Gazette I No. 158/1998, shall become legally effective as of 1st January 1999.

(2) § 1 para 2, § 3, § 5, § 7, the section names of the previous § 7 to § 9 (the new § 8 to § 10), Chapter III, the chapter name and the heading of the previous Chapter III (the new Chapter IV), the section name of the previous § 10 (the new § 21), the previous § 11 (the new § 22) and the section name of the previous § 12 (the new § 23) as amended by the Federal Act, Federal Law Gazette I No. 1/2012, shall become legally effective as of 1st July 2012.

(3) When the members of the commissions are appointed for the first time, half of the members shall be appointed for three years and the other half for six years.

(4) As of 1st July 2012, the positions within the Federal Ministry of the Interior planned to perform the duties of the secretariat of the Human Rights Advisory Council shall become positions within the Ombudsman Board. Positions of employees who exclusively or predominantly perform duties which now fall within the sphere of competence of the Ombudsman Board shall be transformed into positions within the Ombudsman Board. After having consulted the competent employment committee, the Federal Minister of the Interior shall determine, by way of an administrative decision, which civil servants of the Federal Ministry of the Interior exclusively or predominantly perform duties that now fall within the sphere of competence of the Ombudsman Board. The same shall apply to contract public employees, with the proviso that instead of an administrative decision, an employer declaration shall be required. The employees whose positions were transformed into positions within the Ombudsman Board shall be allocated functions that are at least equal to their previous functions unless this conflicts with important work-related interests. The existence, composition and term of

office of the employees' representative bodies set up within the Federal Ministry of the Interior and the Ombudsman Board shall not be affected by the transfer of employees pursuant to this paragraph.