

European Ombudsman Institute

Европейский Институт Омбудсмана

• Europäisches Ombudsmann Institut

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VARIA 22 (E)

LAW ON THE OMBUDSMAN OF THE HELLENIC REPUBLIC

(OFFICIAL TRANSLATION OF THE TRANSLATIONS
OFFICE OF THE MINISTRY OF FOREIGN AFFAIRS)

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LAW No. 2477

The Ombudsman and the
Public Administration Inspectors-Controllers Body

THE PRESIDENT OF THE HELLENIC REPUBLIC

We issue the following law passed by the Parliament

CHAPTER A'

THE OMBUDSMAN

Article 1

Establishment - Mission

1. An independent administrative authority is established, called «The Ombudsman», who has as mission the intervention between the citizens and the public services, the local self-government organizations, the Legal Entities of Public Law and the utilities, as these are defined in article 3, par. 1 hereof, for the protection of the citizen's rights, the opposition to maladministration and the observance of legality.
2. The Ombudsman is not subject to control by a governmental organ or administrative authority.
3. The Ombudsman is assisted by four (4) Assistant Ombudsmen. At the exercise of their duties they enjoy personal and functional independence.

The Ombudsman and the Assistant Ombudsmen are not responsible and they are not prosecuted and examined for an opinion that they have expressed or for an act that they have performed during the exercise of their duties. A prosecution is permitted only for calumnious defamation, insult or violation of confidence.

The Ombudsman, the Assistant Ombudsmen, the special scientists and the detached employees with qualifications of

special scientists, in case that they are prosecuted or sued for an act or omission during the exercise of their duties, may appear before of the courts with members of the State Law Council.

4. The Ombudsman is supported by thirty (30) special scientists, forty (40) detached employees with qualifications of special scientists and a Secretariat.

5. The required credits for the operation of the authority are entered in a special agent and incorporated in the annual budget of the Ministry of the Interior, Public Administration and Decentralization. The expeditor is the Ombudsman or his substitute.

Article 2

Election - Term of Office

1. As Ombudsman and Assistant Ombudsmen are elected persons of recognized authority, who have high scientific training and enjoy a broader social acceptance.

2. The Ombudsman is selected by the Ministerial Council upon previous opinion of the Institutions and Transparency Committee, according to the prescribed by the Regulation of the Parliament, and he is appointed by a presidential decree.

The Assistant Ombudsmen, among whose is the substitute of the Ombudsman, are appointed by decision of the Ministry of the Interior, Public Administration and Decentralization, upon recommendation by the Ombudsman.

The substitution of the Ombudsman in case that he is not able to exercise his duties for any reason, is possible.

3. The term of office of the Ombudsman and the Assistant Ombudsmen is for five years. The re-election of the same person as the Ombudsman is not permitted. The early termination of the Ombudsman's term of office for any reason, ipso jure results to the termination of the Assistant Ombudsmen's term of service.

4. The Ombudsman may be relieved of his duties by a presidential decree, issued upon recommendation of the Ministerial Council and after previous opinion of the

Institutions and Transparency Committee, on the grounds of inability in the performance of duties because of disease or disability, physical or mental one.

The Assistant Ombudsmen may be terminated by decision of the Ministry of the Interior, Public Administration and Decentralization, upon recommendation by the Ombudsman, on the grounds of inability in the performance of their duties because of disease or disability, physical or mental one, as well as for inefficiency in the performance of their duties.

5. During the period of the Ombudsman's and the Assistant Ombudsmen's term of service the exercise of any other public function is suspended. The Ombudsman and the Assistant Ombudsmen shall not exercise any professional activity or undertake other duties, salaried or not, in the public or private sector.

6. A member of the Parliament elected as Ombudsman or Assistant Ombudsman has to resign from the parliamentary capacity before undertaking his duties.

7. The Ombudsman's and the Assistant Ombudsmen's salary is determined by common decision of the Ministers of the Interior, Public Administration & Decentralization and Finance, in deviation from the provisions in force.

Article 3

Competencies

1. The Ombudsman is competent for topics concerning the following Services: a) of the State, b) of the local self-government organizations of a' and b' degree, c) of the other legal entities of public law and d) of the utilities, engaged in: i) the water filtering and distribution, drainage and waste waters and sewage treatment, ii) the distribution of electric power and fuel gas, iii) the transportation of persons and goods by land, sea and air, and iv) the telecommunications and posts. Wherever in this law the term «public service» is mentioned, it refers to the ones set forth in the previous chapter of this paragraph.

They do not belong to his competency the ministers and the deputy ministers as regards the actions concerning the management

of the political function, the religious legal entities of public law, the judicial authorities, the military services as regards topics concerning the national defence and security, the National Intelligence Service, the services of the Ministry of Foreign Affairs as regards activities concerning the country's foreign policy or international relations, the State Law Council and the independent administrative authorities as regards their main operation.

The Ombudsman does not undertake cases concerning the national security. Also topics referring to the official status of the public services personnel do not fall under his competency.

2. The Ombudsman investigates personal administrative acts or omissions or material actions of the public services organs that violate or infringe upon legal interests of physical persons or legal entities.

He especially investigates the cases in which a public service organ, individual or collective one:

- i) infringes by an act or omission, upon a right or interest protected by the Constitution and the law,
- ii) refuses to fulfil a specific obligation imposed by a final judicial judgement,
- iii) refuses to fulfil a specific obligation imposed by a law provision or by a personal administrative act,
- iv) performs or omits a legal due action in violation of the right administration and transparency principles or in abuse of authority.

3. The Ombudsman does not undertake cases pending before of a judicial authority.

4. The Ombudsman co-ordinates the work of the Assistant Ombudsmen. He also supervises and instructs the special scientists and the personnel of the Secretariat.

He is the disciplinary head of the scientific and administrative personnel and he may impose a reprimand penalty or fine up to the salary of one (1) month.

He may authorize one or more of the Assistant Ombudsmen and the heads of official units to sign documents and proceed to other actions.

5. The Ombudsman draws up an annual report in which he sets out the work of the Authority, presents the most important cases and makes suggestions regarding the improvement of public services and the required legislative regulations.

The Ombudsman's report is submitted in March of each year to the Prime Minister and to the Chairman of the Parliament and it is also communicated to the Minister of the Interior, Public Administration and Decentralization. The Ombudsman may submit to the Prime Minister, the Chairman of the Parliament and communicate to the competent, each time, Minister, reports during the year. The Ombudsman's annual report is discussed during a special plenary session of the Parliament, according to the prescribed by its Regulation and it is published in a special issue of the National Printing Office.

Article 4

Investigation Procedure

1. The Ombudsman undertakes any subject falling under his competencies, upon signed petition of any directly interested physical person or legal entity or union of persons. He may also ex officio undertake cases that have caused a special interest in the public opinion.

2. The Ombudsman does not undertake cases in which the administrative act has generated rights or has created favourable conditions in favour of third parties, which may be reversed only by a court judgement, unless there is obviously an illegality or they are related, in their main subject, to the environmental protection.

2. The petition is submitted within six (6) months from the date when the interested party was informed of the acts or the omissions for which he takes recourse to the Ombudsman and it is

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registered in a special record. The submission thereof does not depend on the parallel exercise of a petition for remedy or hierarchical appeal and does not interrupt nor suspend the prescribed by the law terms for the exercise of legal means. In case that a judicial-like appeal is exercised the Ombudsman does not undertake the subject before the decision of the competent organ or before the expiry of three (3) months from such exercise with no action taken.

The Ombudsman may, by act of his, put by in the records a petition which is deemed vague, ungrounded or insignificant.

4. The Ombudsman may, during the investigation of cases, ask for the assistance of the Public Administration Inspectors - Controllers Body.

5. The Ombudsman may request from the public services any information, document or other evidence on the case, examine persons, perform autopsies and order expert reports. At the investigation of documents and other evidence, which are at the disposal of public services, their characterization as confident may not be pleaded against, except if they concern the national defence, the state security and the international relations of our country. All the public services shall facilitate the research by any means. The non offering of assistance by a public service during the conduct of such research may be the subject of an Ombudsman's special report to the competent Minister.

6. Upon the completion of the investigation, the Ombudsman draws up a conclusion which is communication to the competent Minister and the competent services. He intervenes by any appropriate way for the solution of the citizen's problem. The Ombudsman, in his recommendations to the services, may fix a term, within which they have to inform him of their acts regarding the implementation of his recommendations or the reasons which does not permit the acceptance thereof. The Ombudsman may make the not acceptance of his recommendations public, if he thinks that such non acceptance is not sufficiently justified.

7. The Ombudsman informs, in any case, the interested party regarding the course of his case.

8. The Ombudsman, the Assistant Ombudsmen, the special, scientists, the detached employees with qualifications of special scientist and the personnel of the Secretariat have to keep confident the documents and the particulars, of which they are informed within the frames of the investigation and which are secret, according to the provisions in force or are exempted from the right to information on administrative documents, according to art. 16, L. 1599/1986 and any other similar provision.

9. A refusal by a functionary or employee or member of the administration to cooperate with the Ombudsman, in the conduct of an investigation, constitutes a disciplinary offence for breach of duty and, as regards the members of the administration, a reason for their replacement. If during the investigation an illegal behaviour of a functionary, an employee or a member of the administration is ascertained, the Ombudsman forwards the petition to the competent organ and may cause the responsible person's disciplinary prosecution or suggest the taking of other measures, if such responsible person is not subject to disciplinary control. The Ombudsman may determine a reasonable term, in view of the circumstances, upon the expiry of which with no action taken, he himself orders the research. The Ombudsman may also, in serious cases, cause, by a document of his to the competent organ, the disciplinary prosecution of the responsible functionary or employee for the above omission to conduct the indicated research. If from the Ombudsman's reports ensues that a functionary or an employee of a public services obstructs for the second time within a period of three years the work of the research or refuses, without serious cause, to assist in the solution of the problem, it may be imposed on him the penalty of final discharge.

10. If sufficient indications ensue regarding the committal of a punishable act by a functionary, an employee or a member of the administration, the Ombudsman forwards the report to the competent Public Prosecutor.

Article 5

Special Scientists - Secretariat

1. Thirty (30) positions of special scientific personnel are established, in the sense of par. 2 of article 25, L. 1943/1991, with work contract of private law and five (5) years duration, which may be renewed. The positions will be covered upon public invitation by the Ombudsman for submission of candidacies.

The preselection is made between those who submitted candidacies by the Ombudsman and the selection is entrusted upon a five-member committee, the members of which are appointed by the Ombudsman. Such committee comprises of the Ombudsman, two Assistant Ombudsmen, a university professor and a higher judicial functionary. The committee evaluates the formal and the essential qualifications of the candidates as well as their personality, by a public interview. All the necessary details regarding the engagement procedure are determined by the Authority's operation regulation.

For the above positions they may also be employed, in the same procedure, lawyers, by way of exception from the provisions in force. The employment of a lawyer entails suspension of the lawyer's function.

The employment of special scientific personnel is made by decision of the Minister of the Interior, Public Administration and Decentralization.

2. To the Ombudsman they are detached up to forty (40) permanent or with work contract of private law of indeterminate duration, employees of the State, Legal Entities of Public Law, banks controlled by the State or of other services of the public sector, who fulfil the qualifications of par. 2, article 25 of L. 1943/1991 or University Education employees of the public sector with at least eight years service. The detachment of the employees is performed by corresponding implementation of the provisions of the first and second chapter of the previous paragraph. The detachment is made by common decision of the Minister of the Interior, Public Administration and

Decentralization and the relevant Minister, without opinion of the official council, by way of exception from the provisions in force. The duration of the detachment shall be for three years and it may be renewed once.

3. A Secretariat operates at the Authority, which is supervised by a Director. As director the Ombudsman selects a permanent employee who fulfils the requirements of article 36, L. 2190/1994.

The director is selected by the Ombudsman for three years, among those who have submitted a candidacy after public notification. The director is detached for three years by decision of the Minister of the Interior, Public Administration and Decentralization, without opinion of the official council, by way of exception from the provisions in force.

4. For the first enforcement of this law, the positions of the Secretariat may be filled by transference or detachment of employees from the public services, upon public notification. The detached employees must have the qualifications for the positions to which they are detached. The transference or detachment are decided by joint act of the Ministers of the Interior, Public Administration and Decentralisation & the relevant Minister, without the opinion of the official or other council, by way of exception from the general and special provisions in force. The detachment may be revoked at any time and in any case with the fulfilment of the corresponding position.

5. For the posts of the heads of the official units of the Secretariat, also detached employees may be selected. The detachment is ipso jure terminated with its revocation.

6. A common decision of the Ministers of the Interior, Public Administration & Decentralization and Finance, determines the salaries of the thirty (30) special scientists, appointed according to par. 1, article 5 of this law. These salaries may be lower than the ones prescribed by art. 92A of the Code regarding Lawyers.

The employees detached according to par. 2 of this article, receive their salary and all the additional regular incomes as well as the regular allowances of any kind, of their organic position, paid fixedly, and which are still paid by the service from which they are detached. They also receive a special extra remuneration, determined by way of exception from the provisions in force, by common decision of the Ministers of the Interior, Public Administration & Decentralization and Finance.

7. The official council of the employees of the Authority is formed by decision of the Ombudsman, of one Assistant Ombudsman, as Chairman, with an Assistant Ombudsman also as his substitute, two regular members, and the corresponding deputies and two elected representatives of the Authority's personnel. For the rest, they are applied the provision of the Clerical Code as they are each time in force.

8. The Authority's personnel belongs, as regards the auxiliary insurance thereof, to the Auxiliary Fund of the Personnel of the Ministry of Foreign Affairs, Government's Presidency and Culture, with the exception of the lawyers appointed as special scientists for whom the special auxiliary insurance of their Fund stands.

9. The organization and operation of the Authority, the distribution of the special scientific personnel, the organization of the Secretariat, the number of personnel positions and their distribution to the central official units and the regional offices, the distribution of the personnel to branches and specialization and every other necessary detail are settled by the operation regulation of the Authority. Such regulation is enacted by presidential decree, published upon recommendation of the Minister of the Interior, Public Administration and Decentralization, with the Ombudsman's consent.

CHAPTER B'

Public Administration Inspectors-Controllers Body

Article 6

Establishment - Formation

1. A Body of Public Administration Inspectors - Controllers (S.E.E.D.D.) is established, having as competence the conduct of inspections, extraordinary controls and researches with purpose to ensure the harmonious and effective operation of the administration, and especially to point out phenomena of maladministration, low productivity and quality in the services rendered. S.E.E.D.D. is an organ for the internal control of the Public Administration, coming under the Minister of the Interior, Public Administration and Decentralization. Its competence includes the inspection of the following services: a) of the State, b) of the Local Self-Government Organizations of a' and b' degree and the enterprises thereof, and c) of the other legal entities of public law. S.E.E.D.D. does not undertake issues falling under the competence of the independent administrative authorities and of the Financial Inspectors Body of the Ministry of Finance.

2. S.E.E.D.D. comprises of the General Inspector and fifty (50) Inspectors - Controllers, who are permanent employees, detached, by way of exception from the provisions in force, from public services, legal entities of public law, local self-government organizations, of University Education class with degree A', or graduates of the National School of Public Administration, having at least two years service, who have been distinguished for their vocational training, their official progress and their character. Especially for the General Inspector it is also required to have the qualifications in order to be elected as chief of a general directorate of a public service.

3. The General Inspector and the Inspectors-Controllers of the Public Administration are detached by decision of the Ministry of the Interior, Public Administration and Decentralization, upon special for each case public invitation

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for submission of candidacies. The invitation is published in two at least daily newspapers of wide circulation and communicated to all the services of par. 1, article 14 of L. 2190/1994.

The General Inspector is selected by the Special Official Council of article 29, L. 2190/1994.

4. The detachment of the Inspectors-Controllers to the S.E.E.D.D. lasts for three (3) years, it may be renewed for another period of three years and it is compulsory for the employee's service. The period of the detachment is consequently calculated as period of continuous and real service to the employee's organic position. The detachment may be revoked upon petition of the interested party or for exceptional reasons upon justified recommendation of the General Inspector.

5. The employees detached to the S.E.E.D.D. receive their salary and all the additional regular incomes, as well as the any kind of allowances and fees of their permanent position. The General Inspector and the Inspectors-Controllers receive also a special additional fee, determined, by way of exception from the provisions in force, by common decision of the Ministers of the Interior, Public Administration & Decentralization and Finance and is paid out of the budget of the Ministry of the Interior, Public Administration and Decentralization. The foreseen compensation for work away from the Body's seat and the travelling expenses are paid by prepayment money orders.

Article 7

General Inspector

1. The General Inspector is in charge of the Body, supervises the Inspectors-Controllers, is the disciplinary head thereof. He may impose a reprimand penalty or fine up to the salary of one (1) month and he gives to the Inspectors-Controllers the inspection, control and research orders. The General Inspector is substituted by the Inspector-Controller, appointed by himself.

2. The Inspectors-Controllers are evaluated by the General Inspector, according to the provisions each time in force, which determine the place, the type, the content and the procedure for drawing up the reports and the evaluation system in general of their service or their agent.

The General Inspector also evaluated every year, by a special report, the entire work of each Inspector-Auditor. A decision of the Minister of the Interior, Public Administration and Decentralization, upon recommendation of the General Inspector, defines the criteria, the type, the place and the necessary details for such evaluation. If the work of an Inspector-Controller is deemed by two special reports as not satisfactory, his detachment is revoked.

Article 8

Inspection Procedure

1. The General Inspector gives an order for inspection, control or research to the Inspectors-Controllers, ex officio or upon order by the Minister of the Interior, Public Administration and Decentralization, the relevant Minister for the services or the supervised by him Legal Entities of Public Law. Also the Ombudsman may ask for a control or research to be conducted.

2. By common decision of the Minister of the Interior, Public Administration and Decentralization, the Minister of Finance and the competent each time Minister, common groups of Public Administration Inspectors-Controller, Financial Controllers and Inspectors of the relevant Ministry may be formed with purpose the conduct of inspection, control or research.

3. The General Inspector allocates the orders to Inspectors-Controllers or to a group of Inspectors-Controllers and observes their timely execution. By this order he also determines the period within which the control should be completed with the submission of the report.

4. The Inspectors-Controllers may, for the execution of their work, visit the service where the control is conducted.

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They also have the right of access to the files, including the secret ones, unless such files concern issues having to do with the foreign policy, the national defence and the state security. The Inspectors are obliged to keep the secret, according to the provisions in force. The services have to offer all the required particulars for the Inspectors-Controllers' work, that are obligatorily placed at their disposal, and facilitate them in any way.

During the period of the inspection and the control they may also ask for information and particulars by the competent employees of the service, request explanations and cooperate with the services occupied with the case under investigation.

The failure in granting the above information or particulars as well as the concealing of particulars or information and the granting, knowingly, of inaccurate particulars and the obstruction in general and misleading of the Public Administration Inspectors-Controllers work, in addition to the potential criminal liabilities, constitutes an integral disciplinary offence for which one of the penalties foreseen by par. 4, article 207 of the Clerical Code may be imposed.

If during the control an illegal behaviour is established by a functionary, an employee or a member of the administration, the Inspector-Controller's report is forwarded to the competent agent with a recommendation for the exercise of a disciplinary control or the taking of other measures.

If sufficient evidence ensue as regards the committal of a punishable act by a functionary or employee of the inspected service or a member of the administration, the report is forwarded also to the competent Public Prosecutor.

5. After the completion of the inspection, the control or the research, the Inspector-Controller submits to the General Inspector a substantiated report. The Inspector-Controller may also set out proposals. The General Inspector-Controller informs of the conclusion the competent Ministers and the services which

were inspected and if he ascertains an illegal behaviour by a functionary, an employee or a member of the administration, he suggests the exercise of a disciplinary prosecution.

6. The services are obliged to report, as soon as possible, to the General Inspector and the Minister of the Interior, Public Administration and Decentralization, the acts to which they have proceeded.

7. The Ministry of the Interior, Public Administration and Decentralization offers secretarial support to the S.E.E.D.D.

8. A presidential decree, issued upon recommendation of the Minister of the Interior, Public Administration and Decentralization, enacts the Operation Regulation of S.E.E.D.D. and defines any other necessary detail regarding its operation.

Article 9

The pecuniary amount of par. 7, article 5, of L. 1943/1991 is fixed by the competent committee, upon recommendation of the Directorate of Relations between State-Citizen, of the Ministry of the Interior, Public Administration and Decentralization, to which it is also submitted the relevant application of the interested party.

Article 10

Upon expiry of two (2) month from the effective date hereof, the Public Administration Controllers Body, formed by the laws 1892/1990 and 1943/1991, as they were amended by L. 2266/1994, is abolished and all the relevant thereto provisions cease being in force. Within the aforesaid term the Public Administration Controllers Body shall carry through all the pending cases.

Article 11

This law will be in force from the date of publication hereof in the Government Gazette.

We order the publication hereof in the Government Gazette and its enforcement as a law of the State.

Athens, 17 April 1997

THE PRESIDENT OF DEMOCRACY
KONSTANTINOS STEFANOPOULOS

THE MINISTERS

OF THE INTERIOR, PUBLIC ADMINISTRATION
AND DECENTRALIZATION

AL. PAPADOPOULOS

OF FINANCE
G. PAPANTONIIOU

Seen and the Great Seal of the State has been affixed

Athens 18 April 1997

THE MINISTER OF JUSTICE

EVANG. GIANNPOULOS

True translation from attached Greek original

Maria Manoussaridou 2/2/98

Γραφείο Μεταφράσεων Υπουργείου Εξωτερικών, Αθήνα

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