

Chapter VIII Ombudsman Board

Article 148a. (1) Everyone can lodge complaint with the Ombudsman Board (Commission for Complaints from the Public) against alleged maladministration by the Federation, including its activity as a holder of private rights, mainly for alleged violation of human rights, provided that they are affected by such maladministration and in so far as they do not or no longer have recourse to legal remedy. All such complaints must be investigated by the Ombudsman Board. The complainant shall be informed of the investigation's outcome and what action, if necessary, has been taken.

(2) The Ombudsman Board is ex officio entitled to investigate its suspicions of maladministration by the Federation including its activity as a holder of private rights, mainly of violations of human rights it assumes.

(3) For the protection and the advancement of human rights it is incumbent on the Ombudsman Board and the commissions appointed by it (Art. 148h para 3) in the area of the administration of the Federation including its activity as holder of private rights

1. to visit and inspect the location of deprivation of liberty,
2. to watch and check in advisory manner the conduct of the organs authorized to exert direct administrative power and compulsion as well as
3. to check respectively visit certain institutions and programs for handicapped persons.

(4) Notwithstanding para 1 anyone can complain with the Ombudsman board for alleged delay of a Court to hear a case, if being personally affected. Para 2 applies accordingly.

(5) It is moreover incumbent on the Ombudsman Board to assist in the disposal of petitions and citizens' initiatives presented to the National Council. The Federal Law on the Rules of Procedure of the National Council stipulates the details.

(6) The Ombudsman Board is independent in the exercise of its authority.

Article 148b. (1) All federal, provincial, municipal authorities and municipal associations as well as other self-administrating bodies shall support the Ombudsman Board in the performance of its tasks, allow it inspection of its records, and upon request furnish the information required. Official confidentiality is inoperative towards the Ombudsman Board.

(2) The Ombudsman Board must observe official confidentiality to the same degree as the authority who it has approached in the fulfilment of its tasks. The Ombudsman Board is however bound by the observation of official confidentiality in its reports to the National Council only in so far as this is requisite on behalf of the interest of the parties concerned or of national security.

(3) Paras 1 and 2 apply accordingly to the members of the commissions and the members and substitute members of the Human Rights Council.

Article 148c. The Ombudsman Board can issue to the authorities entrusted with the Federation's highest administrative business recommendations on measures to be taken in or by reason of a particular case. In matters of autonomous administration or of administration by agents not bound by instructions the Ombudsman Board can issue recommendations to the autonomous administrative authority or to the agency not bound by instructions the Federation's highest administrative authority shall likewise have its attention drawn to such recommendations, the authority concerned must within a deadline to be settled by federal law either conform to the recommendations and inform the Ombudsman Board accordingly or state in writing why the recommendations have not been complied with. The Ombudsman board may in a specific case at the occasion of a certain case request a deadline to cure the delay by a court (Art. 148a para 4) and suggest measures of supervisory control.

Artikel 148d. (1) The Ombudsman Board shall annually render the National Council and the Federal Council a report on its activity. In addition, the Ombudsman Board can report on singular observations any time to the National Council and the Federal Council. The reports by the Ombudsman Board, after having been presented to the National Council and the Federal Council, are to be published.

(2) The members of the Ombudsman Board are entitled to participate in the debates by the National Council and the Federal Council and by their committees (sub-committees) on the Ombudsman Board's reports and on each occasion to be given at their request a hearing. The members of the Ombudsman Board shall have this right also in respect of the debates by the National Council and its committees (sub-committees) on the draft Federal Finance Law's chapter subdivisions concerning the Ombudsman Board. Details are stipulated in the Federal Law on the Rules of Procedure of the National Council and the Rules of Procedure of the Federal Council.

Article 148f. If differences of opinion arise between the Ombudsman Board and the Federal Government or a Federal Minister on the interpretation of legal provisions, the Constitutional Court on application by the Federal Government or the Ombudsman Board decides the matter.

Article 148g. (1) The Ombudsman Board has its seat in Vienna and consists of three members one of whom acts in turn as chairman. The term of office lasts six years. Re-election of the Ombudsman Board's members more than once is inadmissible.

(2) The Ombudsman Board members are elected by the National Council on the basis of a joint recommendation drawn up by the Main Committee in the presence of at least half its members. Each of the three parties with the largest number of mandates in the National Council is entitled to nominate one member for this recommendation. In case of equal number of mandates the number of votes cast in the last National Council election is decisive. The members of the Ombudsman Board render an affirmation to the Federal President before their assumption of office.

(3) The Ombudsman Board chairmanship rotates annually between the members in the sequence of the number of mandates, in case of equal number of mandates in the sequence of number of votes possessed by the parties who have nominated them. This sequence remains unchanged during the Ombudsman Board's term of office.

(4) Should an Ombudsman Board member retire prematurely, the party represented in the National Council which nominated this member shall nominate a new member. The new election for the remaining term of office shall be effected pursuant to para 2 above. The allocation of business in force is to be applied to the new member till an eventual new allocation of business is rendered.

(5) Ombudsman board members must be eligible for the National Council and have knowledge of the organization and functioning of administration and knowledge in the field of human rights; during their service in office they may belong neither to a general representative body nor to the European Parliament, not be member of the Federal Government or a Land Government and not practise any other profession.

(6) Each member of the ombudsman is concerning his responsibility pursuant Art. 142 equal to members of the Federal Government

Article 148h. (1) Ombudsman board officials are appointed by the Federal President on the recommendation and with the countersignature of the Ombudsman Board chairman. The Federal President can however authorize him to appoint officials in certain categories. Auxiliary-personnel is appointed by the chairman who is to this extent the highest administrative authority and exercises these powers in his own right.

(2) The service prerogative of the federation with regard to the employees of the Ombudsman Board is exercised by its chairman.

(3) In order to fulfil the tasks according to Art. 148a para 3 the Ombudsman Board has to appoint commissions and create a Human Rights Council as its advisor. The Human Rights

Council consists of a Chairman, a Deputy Chairman and other members and substitute members being appointed by the Ombudsman Board. Federal law provides to which extent the Ombudsman Board in appointing members and substitute members of the Human Rights Council is bound by proposals of other institutions. The Chairman, the Deputy Chairman and the other members of the Human Rights Council are not bound by any instructions in exerting their activity.

(4) The Ombudsman Board resolves rules of procedure and on allocation of business, which mainly has to provide, which tasks are to be handled individually by the members of the Ombudsman Board. The resolution on the rules of procedure and the allocation of business requires unanimity of the members of the Ombudsman Board.

Article 148i. (1) The provinces can by provincial constitutional law declare the Ombudsman Board competent also in the sphere of the particular provincial administration. In such case Art. 148f shall apply analogously.

(2) If provinces create agencies in the sphere of provincial administration with tasks similar to the Ombudsman Board, provincial constitutional law can prescribe a provision corresponding to Art. 148f above.

(3) A province not making use of the authorization of para 1 regarding the tasks according to Art 148a para 3, has to create by constitutional law of the province an agency for tasks similar to Art. 148a para 3 for the sphere of the administration of the province and to provide the corresponding provisions in order to handle the tasks according to Art. 148c and Art. 148d.

Article 148j. Detailed provisions relating to the implementation of this chapter shall be made by federal law.