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DRAFT LAW

ON OMBUDSMAN FOR HUMAN RIGHTS

OF

BOSNIA AND HERZEGOVINA

Revised version

of 15 September 2015

Unofficial translation for the OSCE Mission to BiH

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LAW
ON OMBUDSMAN FOR HUMAN RIGHTS
OF BOSNIA AND HERZEGOVINA

CHAPTER I
GENERAL PROVISIONS

Article 1
(Subject of the Law)

This Law shall govern the seat, principles of operation and jurisdiction of the Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina, composition, appointment, term of office, management, organisation of work, salaries, procedure for investigating complaints, cooperation with other authorities, acting upon recommendations, cooperation with civil society, promotion, reporting, funding, and other issues regarding operations of the Ombudsman for Human Rights of Bosnia and Herzegovina.

Article 2
(Definitions)

For the purpose of this Law:

(1)

- a) "Institution" means the Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina.
- b) "Ombudsman" means persons appointed to the function of Lead Ombudsman and Ombudsman for Human Rights of Bosnia and Herzegovina.
- c) "Authorities of Bosnia and Herzegovina" indicates all institutions, bodies, agencies, and all other public institutions in Bosnia and Herzegovina (state, entity, Brcko District BiH, cantonal, city and municipal authorities as well as private institutions performing public functions).
- d) "Preventive Mechanism" indicates a body consisting of experts with a mandate to visit places/institutions in which persons are deprived of liberty against their own will, in order to prevent torture and other cruel, inhuman, or degrading punishment or procedures.

Article 3
(Gender Neutral Language)

Words and terms that are gender specific, regardless of whether they are used in the masculine or feminine form, shall equally apply to male and female gender.

**CHAPTER II
SEAT, OPERATING PRINCIPLES, AND JURISDICTION**

**Article 4
(Seat)**

- (2) The Seat of the Institution is in Banja Luka.
- (3)
- (4) The Institution shall have its offices in Mostar, Sarajevo and Brcko District BiH, and based on need may establish offices in other places in Bosnia and Herzegovina.
- (5)
- (6) The Institution shall stipulate the issues of its organisational units, the seat of the Institution and its offices by by-laws.

**Article 5
(Independence and Principles of Operation)**

- (1) The Institution and the Ombudsmen shall be independent and autonomous in their work. Every form of influence on the work of the Institution and Ombudsmen shall be prohibited. The Institution and Ombudsmen shall not be given instructions or orders by any authorities of BiH.
- (7)
- (2) The Institution and Ombudsmen shall report only to the Parliamentary Assembly of Bosnia and Herzegovina for their work.
- (3) Within performance of their functions and tasks, the Institution and the Ombudsmen shall act within the framework of constitutional and legal provisions and international legal acts on human rights and freedoms.
- (4) The Institution shall have its organisational, administrative, and financial independence and autonomy.
- (5) The Institution and Ombudsmen shall adhere to the principles of justice, equality, and morality in their work and act impartially and in accordance with the standards of good governance.
- (6) The Institution and Ombudsmen shall not discontinue their work at the time when the legislative bodies are not in session, due to dissolution of legislative bodies or because their mandate has expired.

Note: Articles 6 to 12 are new

**Article 6
(Jurisdictions of the Institution)**

- (1) The Institution shall have the jurisdiction for:
 - a) protection of human rights,
 - b) promotion of human rights,
 - c) preventive mechanism.

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(2) The Institution may also exercise other functions and competences defined by other laws.

Article 7
(8) (Protection of Human Rights)

- (1) The Institution protects human rights and freedoms and the rule of law by reviewing complaints about the existence of unlawfulness and irregularities in the work of the authorities and, if separate laws stipulate such possibility, it also reviews complaints pertaining to other legal and natural persons.
- (2) The Institution is the central institution for protection for discrimination in accordance to the Law on the Prohibition of Discrimination („Official Gazette BiH“ no. 59/09).
- (3) The Institution operates on the basis of received complaints or on its own initiative (*ex officio*).
- (4) The Institution shall not consider complaints pertaining to decisions, facts or events which occurred prior to 15 December 1995.
- (5) The Institution, following the investigation of human rights violations, issues recommendations in individual cases, and presents its conclusion in annual reports, special reports, opinions, notices, announcements, initiatives or guidelines.

Article 8
(Promotion of Human Rights)

The Institution promotes human rights and freedoms by monitoring the human rights situation and indicates the need for its protection, it performs research and analytical work, documents human rights violations, develops and maintains a database, actively and regularly collaborates with civil society organizations, international organizations and bodies, professional bodies and academic community, timely and regularly informs the public and interested parties, implements educational, informational and awareness raising activities, and initiates harmonization of legislation, public policies and other regulations with international standards in the field of human rights and freedoms.

Article 9
(Preventive Mechanism)

- (1) The Institution, in accordance with the Option Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, shall perform tasks of the preventive mechanism for prevention of torture and other cruel, inhuman, or degrading punishments or treatments.
- (2) Representatives of civil society organizations registered for activities in the field of human rights protection and representatives of academia shall participate in the work of the preventive mechanism.
- (3) The Institution may at any moment and without previous announcement visit premises where persons deprived of liberty and persons with restricted freedom of movement are residing, and premises where certain groups are held or residing. The Institution has the right to access all locations – premises where persons who have been deprived of liberty against their will are residing.

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- (4) The Annual Report of the Institution, in accordance to Article 43 of this Law, shall dedicate a separate chapter to the issue of torture and other cruel, inhuman or degrading treatment or punishment and fulfilment of the preventive mechanism's competences in general.
- (5) The Institution, in a separate Rulebook, shall regulate activities and powers of the preventive mechanism, method and criteria for selection and method of work of included representatives of civil society organizations and the academia. The Lead Ombudsman shall adopt the Rulebook no later than 180 days following his/her appointment.

Article 10 (Legislative Initiative)

- (1) Ombudsman, in their areas of responsibility, shall monitor compliance of laws, public policies and other regulations with the Constitution of Bosnia and Herzegovina and international human rights legislation in the field of human rights and freedoms.
- (2) The Institution is authorized to submit an initiative to the legislative bodies, when in the course of the exercise of their jurisdiction it deems necessary, for adoption or amendments of laws, public policies and other regulations, or can draw attention to the need for harmonization of legislation or other regulations with the Constitution of Bosnia and Herzegovina and international legal acts.
- (3) Relevant legislative body is obliged to consider the initiatives submitted by the Institution and provide them with report on the results.
- (4) The Institution is authorized to, during the process of development of legislation, provide opinion to the draft laws, public policies and other regulations, if they govern issues that are important for the protection of human rights and freedoms.
- (5) The Institution is authorized to take part in the work of the commissions and committees of the legislative bodies and sessions of the legislative bodies when issues significant to the protection of human rights and freedoms are on the agenda.

Article 11 (Initiative for Abstract Control of Constitutionality)

- (1) The Institution, in accordance with its jurisdiction, can refer to the authorized proponents as prescribed by Article VI/3 paragraph a) of the Constitution of Bosnia and Herzegovina initiatives for evaluation of compatibility of the constitutions or laws with the Constitution of Bosnia and Herzegovina.
- (2) The body that received the initiative referred to in paragraph 1 of this Article shall issue a response.

**CHAPTER III
COMPOSITION, APPOINTMENT, AND TERM OF OFFICE OF THE OMBUDSMAN**

**Article 12
(Composition)**

- (1) The Parliamentary Assembly of Bosnia and Herzegovina shall appoint a Lead Ombudsman and three Ombudsman.
- (2) The Lead Ombudsman and three Ombudsman are appointed from the constituent peoples and others.
- (3) The Lead Ombudsman cannot be appointed from the same constituent peoples or others for two consecutive mandates.

**Article 13
(Requirements for Appointment)**

- (1) Persons meeting the following requirements can be appointment as the Ombudsman:
 - a) Citizen of Bosnia and Herzegovina,
 - b) Graduated from the Faculty of Law with a passed bar exam and at least 10 years of prominent working experience in the field of law,
 - c) They have proven experience in the field of protection of human rights and citizen freedoms, moral standing,
 - d) ,
 - e) They have not been convicted of criminal offences in accordance with the Roma Statute and Criminal Code of BiH.
- (2) During the appointment procedure of the Ombudsman, discrimination shall be prohibited on any grounds in accordance with the European Convention on Human Rights and Freedoms and the Law on Prohibition of Discrimination of Bosnia and Herzegovina.
- (3) During the appointment procedure of the Ombudsman, equal representation of the constitutive peoples and others shall be ensured, along with representation of both genders, in accordance with the Law on Gender Equality of Bosnia and Herzegovina.

**Article 14
(Appointment Procedure)**

- (1) The Parliamentary Assembly of Bosnia and Herzegovina shall appoint the Ombudsman for a term of five years.
- (2) The appointment procedure is initiated by the Joint Committee for Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina. The procedure is regulated by a separate Rulebook adopted by the Joint Committee for Human Rights. .
- (3) The Committee shall initiate the appointment procedure at the latest 180 days prior to expiration of term of the Ombudsman, or within 30 days following the termination of Ombudsman's office for other reasons.

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(4) The Committee shall adopt the Rulebook on the Work of the Committee which shall regulate a transparent and open process for appointment of the Ombudsman.

(5) The Committee shall issue a public announcement for the posts and following consultations with international and non-governmental organisations dealing with the protection of human rights and freedoms, and in line with the pre-defined, objective, relevant, and public criteria for ranking the candidates, make a list of candidates who meet the requirements prescribed by the Law.

(6) The list of candidates that reflects the ranking of the candidates shall be submitted to the House of Representatives and the House of Peoples of the Parliamentary Assembly of Bosnia Herzegovina for further procedure. The Parliamentary Assembly of Bosnia Herzegovina may request that the candidates present their concepts of the work of the Institution.

(7) The Parliamentary Assembly of BiH shall appoint the Ombudsmen simultaneously for a five year term. The Ombudsmen shall be appointed and dismissed by the House of Representatives and the House of Peoples of Parliamentary Assembly of BiH by a majority vote and in accordance with the Rules of Procedure of each House.

(8) The appointment of the Ombudsman, in accordance with this Law, shall be conducted within 60 days from the day of submission of proposed candidates to the House of Representatives and the House of Peoples of Parliamentary Assembly of BiH, and at most within a 90 days from the day the post has become vacant or following the termination of Ombudsman's office for other reasons as prescribed by this Law.

Article 15
(Re-appointment and Performance of Duties
following the Expiration of Term of Office)

(1) The Ombudsmen shall be appointed for a five-year period with a possibility of one reappointment.

(2) An Ombudsman who is appointed after the resignation of the Ombudsman or the termination of office for reasons prescribed by this Law shall serve for the remainder of the term of office and may be re-appointed.

(3) The remainder of the term of office referred to in paragraph 2 of this Article may not be shorter than 180 days.

(4) When the post of the Ombudsman is vacant because the term of office has expired, the Ombudsman whose term of office has expired shall perform his/her duties on a temporary basis until the appointment prescribed in Article 14 has been carried out.

(5) When the post of the Ombudsman is vacant for other reasons, and not because the term of office has expired, the remaining Ombudsman shall perform the duties of the vacant post on temporary basis until the procedure for appointment of a new Ombudsman has been completed.

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Article 16
(Termination of Office of the Ombudsman)

- (1) Ombudsman's office shall be terminated for the following reasons:
- a) expiration of term of office,
 - b) resignation,
 - c) death,
 - d) as a result of a final judgment rendering a conviction for a criminal offence that does not stem from their term of office,
 - e) non-performance of duties for a period longer than six months,,
 - f) inability to perform duties for medical reasons.
- (2) In the event of the reasons referred to in paragraph e) and f), a decision on the vacant post shall be made by a two-third majority vote of the representatives of the House of Peoples and the House of Representatives of the Parliamentary Assembly of Bosnia Herzegovina, following a discussion and hearing of the Ombudsman concerned.
- (3) The vacant post of the Ombudsman shall be announced by the Speaker of the House of Representatives of the Parliamentary Assembly of Bosnia Herzegovina.
- (4) The appointment procedure resulting from the reasons referred to in paragraph 1 of this Article shall be initiated in compliance with the procedure prescribed by Article 14 of this Law.

Article 17
(Immunity)

- (1) The Ombudsman and staff of the Institution shall not be criminally prosecuted, arrested, or detained in custody, nor tried in civil proceedings for any opinions expressed or for any decisions rendered within their official duties during and after their term of office.
- (2) Immunity shall not prevent or postpone investigation in criminal or civil proceedings in accordance to the law initiated against the Ombudsman in a given matter outside of their duties.
- (3) Official documents from the jurisdiction of the Institution and the space used by the Institution shall not be a subject of criminal investigation or civil proceedings.

Article 18
(Conflict of Interest and Incompatibility)

- (1) The Ombudsman may not perform any other public or professional duty, except performing the tasks of a lecturer or teaching associate in educational institutions.
- (2) Ombudsman may engage in scientific, cultural, academic or humanitarian work provided that they are not in conflict with their duties and that it shall not threaten the timely and effective performance of their regular tasks within the Institution.
- (3) Ombudsman may not be a member of a political party.

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(4) The Ombudsman, within 10 days following their appointment, and prior to taking office, shall leave any post that is potentially incompatible, and if failing to do so, shall be deemed as refusal of appointment.

CHAPTER IV MANAGEMENT AND DIVISION OF DUTIES

Note: Articles 19 to 24 are new

Article 19 (Management of the Institution)

- (1) Lead Ombudsman manages the work and represents the Institution.
- (2) Lead Ombudsman is authorized to:
 - a) adopt of the Annual Work Plan,
 - b) propose of the budget of the Institution,
 - c) compile of Annual and Special Reports of the Institution,
 - d) upon the proposal of the Ombudsman or independently render decisions on the production of Special Reports,
 - e) upon the proposal of the Ombudsman or independently forward initiatives for adoption of laws, amendments of laws and other regulations in case they regulate issues of significance for protection of human rights and freedoms,
 - f) upon the proposal of the Ombudsman or independently render initiatives for abstract control of constitutionality,
 - g) adopt the Strategy of the Institution,
 - h) Rulebook on Internal Organization and Systematization of Positions within the Institution and other legal acts.
- (3) Ombudsman, within the area of their responsibility, are authorized to:
 - a) implement activities envisaged by the Annual Work Plan and the Strategy of the Institution,
 - b) prepare components of the Annual and Special Reports,
 - c) propose initiatives for adoption of laws and amendment to laws and other regulations to the Lead Ombudsman,
 - d) monitor the compliance of legislation, public policies and other regulations with the Constitution of Bosnia and Herzegovina and international legal acts for protection of human rights, and in this regard report to the Lead Ombudsman and other Ombudsman,
 - e) propose initiatives for abstract control of constitutionality to the Lead Ombudsman,
 - f) independently investigate complaints,
 - g) independently issue recommendations following investigation of complaints of human rights violations,
 - h) propose initiatives, activities and measures for the Annual Work Plan and Strategy of the Institution and other legal acts to the Lead Ombudsman

Article 20 (Division of Duties According to Area of Responsibility)

- (1) Within 45 days following appointment, the three Ombudsman shall among themselves divide duties according to areas of responsibility.

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- (2) Within the Institution duties are organized within the following areas of responsibility:
- a) protection from discrimination, including duties pertaining to: equality and discrimination on any grounds, rights of the child, rights of elderly persons, persons with disabilities, minority rights, the rights of sexual and gender minorities, gender based violence and domestic violence, right to private and family life, and other related activities,
 - b) protection of human rights and basic freedoms, including duties pertaining to: the right to life, the right to personal integrity, the right to liberty and security, freedom from torture and inhuman or degrading treatment or punishment, trafficking in human beings, the right to asylum, the right to an effective remedy and to a fair trial, freedom of movement and residence, as well as all other related activities, and
 - c) protection of rule of law and social solidarity, including duties pertaining to: the right to good administration, right of access to documents, protection of personal data, protection of the environment, freedom of expression, information and media, freedom of assembly and association, freedom of science and art, right to education, freedom of ownership, the right to work, fair and equitable working conditions, the right to social and health care, the right to vote, and all other related activities.
- (3) Duties which stem from jurisdiction prescribed by other laws are assigned to one of the three Ombudsman.
- (4) In case of disagreement the final decision on the division of duties among the three Ombudsman referred to paragraph 2 of this Article shall be rendered by the Lead Ombudsman.
- (5) The division of duties shall be further regulated with the Rulebook on Internal Organization of the Institution.

Article 21
(Administrative and Professional Service)

- (1) For the execution of professional, research, promotional, administrative, financial and other affairs as well as public information and relations, administrative and professional service of the Institution shall be established.
- (2) The work of the administrative and professional service is managed by the General Secretary of the Institution.

Article 22
(Staff)

- (1) The Institution shall adopt a Rulebook on Internal Organization and Systematization to regulate the number of employees required for the performance of duties with an indication of their basic tasks, assignments, professional requirements necessary for the performance of tasks, their authorizations and responsibilities, salary levels and other benefits, as well as other issues of significance for the work and performance of staff.
- (2) The Institution shall adopt a Rules of Procedure.
- (3) The Rulebook on Internal Organization and Systematization and the Rules of Procedure are adopted by the Lead Ombudsman no later than 90 days following appointment.

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(4) The Rulebook on Internal Organization and Systematization and the Rules of Procedure shall enter into force upon publication in the Official Gazette of BiH.

(5) Staff of the Institution shall be recruited and dismissed by the Institution.

(6) Recruitment of staff in the Institution shall be based on a public vacancy call, in accordance with the Labour Law of Bosnia and Herzegovina and internal regulations.

(7) Lead Ombudsman and individual Ombudsman each appoint one advisor for their area of responsibility. The term of office of the advisor is tied to the term of office of the Lead and individual Ombudsman and expires at the same time.

(8) Person who has completed a four-year degree in law, has excellent knowledge of at least one of the official languages of the United Nations, and at least 5 years of working experience in the field of human rights and freedoms can be appointed as an advisor referred to in paragraph 7 of this Article.

(9) The term of office of the advisors referred to in paragraph 7 of this Article is terminated when the Parliamentary Assembly of Bosnia and Herzegovina appoints new Lead Ombudsman or Ombudsman. Advisors can be reappointed.

(10) Advisors referred to in paragraph 7 of this Article coming from the Institution enjoy the guarantee of reintegration into the Institution or to other positions in the civil service in BiH.

Article 23 (Strategy)

(1) Lead Ombudsman, following consultation with Ombudsman, adopts a multi-year Strategy of the Institution. The Strategy defines the goals of the Institution, manner of implementation, monitoring and evaluation.

(2) The Strategy shall particularly be focused on activities related to the competence of the promotion of human rights.

(3) Standing Advisory Body shall participate in the development and implementation of the Strategy.

(4) The Strategy is adopted for the period of the duration of the mandate of the Lead Ombudsman.

(5) The Strategy is adopted no later than 180 days following the appointment of the Lead Ombudsman.

Article 24 (Other acts)

(1) Lead Ombudsman can in accordance with this Law and the Rulebook adopt other acts necessary for the execution of duties.

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(2) Other acts shall enter into force upon publication in the Official Gazette of BiH.

CHAPTER V INVESTIGATION PROCEDURE OF COMPLAINTS

Article 25 (Submission and Statute of Limitations for Submission of Complaints)

(1) Any person who deems that their human rights and freedoms have been threatened or violated may submit a complaint to the Institution in order to initiate an investigation procedure.

(2) A complaint can be filed by a civil society organization working in the field of human rights protection with the consent from the person who considers that their human rights have been threatened or violated.

(3) The Institution shall not consider complaints pertaining to circumstances that took place three years ago, unless it assesses that the case is of special interest for the protection of human rights and freedoms, or that its consequences still persist.

(4) Institution shall not consider complaints pertaining to decisions, facts or events which occurred prior to 15 December 1995.

Article 26 (Procedure Following Receipt of Complaints and *Ex Officio*)

(1) The Institution promotes and protects human rights and freedoms and the rule of law by reviewing complaints about the existence of unlawfulness and irregularities in the work of all authorities and, if separate laws stipulate such possibility, it also reviews complaints pertaining to other legal and natural persons.

(2) Ombudsmen shall act upon the receipt of complaints or *ex officio*.

(3) The work of the Institution is free of charge to the person concerned and does not require the assistance of counsel or a solicitor.

(4) The Institution shall not act upon anonymous complaints.

(5) In exceptional cases, the Institution may launch the procedure *ex officio* if it deems that an anonymous complaint contains grounds for investigation.

(6) No one can be prevented from submitting complaints to the Ombudsman or placed in an unfavourable position or suffer any other consequences or sanctions as a result of addressing the Institution.

(7) Submission of complaints, time limits, procedure, complaint form, database of complaints, issuing of recommendations and all other issues pertaining to complaints and investigation of violations of human rights and freedoms shall be further regulated in the Rules of Procedure of the Institution and in other acts of the Institution, if necessary.

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(8) Persons deprived of liberty shall submit complaints and receive response in a sealed envelope without restriction or inspection of the content.

Article 27
(Complaint Form and Electronic Database)

(1) Complaints are generally submitted using a complaint form, but may also be submitted verbally with written minutes or by electronic mail.

(2) All submitted complaints and *ex officio* procedures shall be recorded in the electronic database of complaints of the Institution.

(3) In case the complaint is incomplete, the complainant shall be obliged to supplement it.

Article 28
(Application of Regular Legal Remedies)

The Institution shall instruct the complainant about the possibility to launch adequate legal proceedings, if such are foreseen.

Article 29
(Action in Cases Subject to Court Proceedings)

(1) The Institution shall not act in cases subject to court proceedings, except in cases of unnecessary delays..

(2) A person who submitted a complaint to the Institution and then filed a law suit with the court shall be obliged to inform the Institution thereof in writing.

(3) Should the Institution establish a violation of human rights and freedoms by the court, the recommendation shall also be submitted to the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

(4) The Institution may also appear as a friend of the court (*amicus curiae*) in court proceedings related to human rights.

Article 30
(Preliminary Investigation)

(1) The Institution can adopt a decision to review a complaint without conducting an investigation when the facts stated in the complaint and generally known facts, i.e. official data available to the Institution, can be used to establish whether rights and freedoms of the complainant have been threatened or violated.

(2) In case the complaint is not accepted, the Institution shall inform the complainant on the reasons for its rejection. The decision to accept or reject the complaint shall be made within thirty (30) days of the day of submission.

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**Article 31
(Investigation Procedure)**

- (1) Within their area of responsibility, in accordance to Article 20 of the Law, the Ombudsmen shall independently conduct the investigation procedure of the submitted claims.
- (2) During the investigation procedure, the Institution shall request a statement from the authority named in the complaint as the entity that violated human rights..
- (3) The Institution shall have the right to request necessary information, data, explanations, acts and other documentation from the authorities. The authorities shall ensure availability of acts and other documentation pertaining to the submitted complaint, and shall provide necessary assistance to the Institution in accordance with its request.
- (4) The Institution shall have access to any authority for the purpose of verifying requested information, conducting in-person discussions and interviews, and reviewing necessary acts and documents.
- (5) The Institution shall also be granted access to those acts and documents designated as confidential or classified in accordance with the law.
- (6) The Institution shall set the time limit in line with the circumstances of the case within which authorities shall be obliged to submit statements and responses. The time limit may not be shorter than (8) eight days or longer than (30) days.
- (7) If the authorities fail to ensure availability of information or fail to submit the requested data, acts and other documentation within the set time limit, the Institution shall inform the body competent for the supervision over the relevant authority.
- (8) The Institution is required to keep confidential any information and data received and processed and shall not make it available to the public. A duty of confidentiality shall remain after the termination of office or employment.
- (9) If the Institution during the course of the investigation determines that there are elements of a criminal offence, they shall inform the competent prosecutor's office.

**Article 32
(Cessation of Investigation Procedure)**

- (1) The Institution may cease the investigative procedure in the following cases:
 - a) it finds that human rights and freedoms have not been violated,
 - b) the authority eliminated the violation of human rights in the course of the procedure,
 - c) the complainant failed to comply with the request of the Ombudsman to supplement the complaint within the given time period,
 - d) the complainant requested the procedure to be terminated, or
 - e) the case is resolved in some other way, in accordance with the request of the complainant.

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(2) The Institution shall adopt a decision on the cessation of investigation and inform the complainant and the authorities of their decision.

**Article 33
(Issuance of Recommendations)**

(1) Upon completion of the investigation procedure, the Institution shall issue a recommendation to the competent authority and shall also deliver it to the complainant.

2) The investigation procedure and the issuance of the recommendation shall be finalized not later than 120 days from the date of submission of the complete complaint.

(3) Through its recommendation, the Institution shall propose the manner in which the threat or violation of human rights can be eliminated.

(4) Within their areas of responsibility, the Ombudsman shall independently adopt recommendations pertaining to the submitted complaints.

(5) The authorities shall inform the Institution on the measures taken pertaining to the recommendation and within the time limit stipulated in the recommendation.

(6) Should the authority fail to inform the Institution within the stipulated time limit of the measures taken or fail to act in accordance with the recommendation, the Institution shall inform thereof the body competent for the supervision over the relevant authority.

(7) In its Annual Report, The Institution shall inform the legislative bodies of all individual recommendations that have not been implemented.

(8) Appeals may not be filed against the recommendations of the Institution.

(9) If a recommendation is not considered confidential or classified by its nature, it shall be published on the website of the Institution.

(10) The Institution may decide to publish the recommendation in the Official Gazette of BiH.

**CHAPTER VI
OBLIGATION TO CO-OPERATE WITH THE OMBUDSMAN**

**Article 34
(Ensuring Access)**

(1) Authorities in BiH have the obligation to provide adequate assistance in accordance during the investigation procedure.

(2) In the course of the investigative procedure Ombudsman shall have access to all authorities in BiH for the purpose of verifying requested information, conducting in-person discussions and interviews, and reviewing the necessary files and documents.

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(3) The Ombudsman may not be denied access to any file or administrative document or to any document relating to the activity or service under investigation.

Article 35
(Obligation to Notify and Inform)

(1) When the case under investigation concerns the conduct of persons employed in civil service and is connected with the duties they perform, the Institution shall inform the person concerned and either his/her superior or the body to which he or she is attached and may demand written statements.

(2) The civil servant or employee concerned shall reply in writing and submit all the documents and evidence which he or she considers relevant, within the indicated time limits. Upon request, the deadline may be extended.

(3) An Ombudsman may check the veracity of the elements submitted and propose a hearing of the official involved in order to obtain further information. Officials who refuse this hearing may be required by the Ombudsman to give a written explanation of the reasons for their refusal.

(4) The information or personal records provided by an civil servant or employee during an investigation is confidential, without prejudice to their liability according to criminal legislation in BiH.

Article 36
(Obligation to Respond)

Senior officials or authorities of BiH which prohibit civil servant and employees subordinate to them or in their service from responding to a request from an Ombudsman or from being heard by him or her shall declare that they have done so in a written document, stating their grounds. This document shall be communicated to the civil servant/employee and to the Ombudsman. The Ombudsman shall then approach the said senior official in respect of all operations necessary to the investigation.

Article 37
(Access to Confidential and Secret Documents)

(1) The Ombudsman may require authorities of BiH to hand over any documents they considers necessary to perform their duties, including those classified as confidential or secret in accordance with law. In such cases, the Ombudsman shall apply the requisite discretion to these documents and shall not make them available to the public.

(2) Investigations conducted by an Ombudsman and their staff, including procedural measures, shall be conducted in accordance with the manner of handling classified or confidential data.

CHAPTER VII
ACTING UPON OMBUDSMAN RECOMMENDATIONS AND REPORTING

Article 38
(Submission of Recommendation)

(1) When an investigation reveals that an abuse, an arbitrary procedure, discrimination, an error, negligence or an omission complained of was perpetrated by the civil servant/employee of the authority of BiH, the Ombudsman may communicate this finding to the civil servant/employee concerned.

(2) At the same date, the Ombudsman shall forward the same document to the official's superior and issue a recommendation.

(3) When an Ombudsman in the exercise of his/her duties becomes aware of any conduct or acts which appears to be a criminal offence, they shall advise the competent prosecuting authority.

Article 39
(Obstruction of Investigation Procedure)

(1) In the situation where the investigation procedure has been obstructed by an authority of BIH or its officials, this may be the subject of a Special Report.

(2) Where an official of the authority of BiH impedes an investigation by refusing, neglecting or denying to access to administrative files or documents necessary to the investigation, the Ombudsman shall send the relevant file to the official's superior or to the competent prosecuting authorities for the appropriate disciplinary or penal action to be taken, in accordance with the law.

(3) Where the competent authority fails to take action, the Ombudsman may, in substitution for this authority, institute disciplinary proceedings against the official responsible or, where appropriate, initiate criminal proceedings.

Article 40
(Acting upon Recommendations)

(1) Ombudsman may issue recommendations to authorities with a view to the adoption of new measures.

(2) Authorities of BiH that receive such recommendations are obliged to reply in writing and to inform the Ombudsman of the effect given to the recommendations within a period indicated by the Ombudsman.

(3) If, once recommendations have been made, the authority concerned does not take appropriate measures within the time indicated by the Ombudsman, or if it does not inform the Ombudsman of the reasons for not doing so, the Ombudsman may draw the attention of the

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Minister responsible for the authority concerned, or of the highest authority of the authority, to the course of the case and the recommendations issued.

(4) Should the Ombudsman, after informing the responsible persons of the institution, obtain no satisfaction in a case, the matter should be included in the Annual Report or in a Special Report, mentioning the names of the authorities in BiH or officials taking this attitude.

(5) When, following the examination of a case, the Ombudsman finds that the manner in which a rule is implemented leads to inequitable results, they may address to the competent authority of BiH recommendations could lead to a fair solution of the situation of the concerned case.

(6) The Ombudsman may propose to the competent authority measures likely to remedy the complainant's situation, including payment of damages.

(7) If the activities complained of have been carried out on the occasion of services provided by private persons under a contract of concession of public service, the Ombudsman may ask the competent administrative authorities to exercise their powers of inspection and sanctions.

Article 41 (Notification and Publicity of Recommendations)

(1) The Ombudsman shall inform the person concerned of the result of their investigations and activities and of the reply given by the authorities in BiH, unless the reply, by its nature, is to be considered as confidential or classified.

(2) The Ombudsman shall communicate the positive or negative findings of the investigations to the authority, official, or administrative department concerned.

(3) The Institution may decide to publish its recommendations in the Official Gazette of BiH.

(4) All other recommendations of the Ombudsman or of the Institution shall be accessible to the public, except in cases in which they relate to matters which are confidential or classified, or where the complainant has expressly requested that his/her name and the circumstances of the complaint should not be revealed.

Article 42 (Reporting Obligation)

(1) The Institution of the Ombudsman shall prepare a Annual Report on its work and findings with the respect for human rights and fundamental freedoms in Bosnia and Herzegovina not later than 31 March of the current year covering the previous year.

(2) The Institution shall submit the annual report to the Presidency of Bosnia and Herzegovina, the House of Representatives of Bosnia and Herzegovina and the House of Peoples of Bosnia and Herzegovina, to the Parliament of the Federation of Bosnia Herzegovina, to the National Assembly of the Republic of Srpska and the Assembly of Brcko District of BiH.

(4) Where the public prominence or urgency of the facts so require, the Institution shall develop a Special Report.

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(5) Reports shall not contain personal information which would lead to public identification of persons concerned in the investigation procedure.

(6) Annual or Special Reports shall be published on the website of the Institution.

Note: Articles 43 to 44 are new

**Article 43
(Annual Report)**

(1) The Institution, based on their observations and knowledge, shall produce an Annual Report on the State of Human Rights and Freedoms in Bosnia and Herzegovina.

(2) In the Annual Report, the Institution shall present its activities from the previous year, provide an overview of the protection and violations of human rights in Bosnia and Herzegovina, propose specific amendments to laws, public policies and other legal acts, and provide a review of all previously issued recommendations that have not been implemented.

(3) The Annual Report shall devote special chapters to issues arising from the jurisdiction of the preventive mechanism and protection from discrimination.

(4) The Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina shall organize a thematic session dedicated to the Annual Report and shall adopt conclusions that may be submitted, if necessary, to competent and responsible bodies.

(5) The Joint Committee on Human Rights shall particularly focus on the recommendations of the Institution aimed at elimination of systemic violations of human rights and on previously issued recommendations that have not been implemented.

(6) The Council of Ministers of BiH, not later than September 30, shall define the specific measures to be taken in order to eliminate the violation of human rights identified for the previous calendar year in the Annual Report and to improve the protection of human rights.

**Article 44
(Special Reports)**

(1) Special Report shall pertain to certain trends and marginalized groups of citizens, whose human rights and freedoms have been violated, including proposed recommendations which propose amendment to the laws, public policies and other legal documents.

(2) At the request of the Institution, Joint Committee on Human Rights of the Parliament of Bosnia and Herzegovina shall organize thematic sessions dedicated to the Special Reports, and shall adopt conclusions that may be submitted, if necessary, to competent and responsible bodies.

**CHAPTER VIII
CO-OPERATION WITH CIVIL SOCIETY AND PROMOTION**

**Article 45
(Consultation)**

(1) The Institution shall actively and regularly maintain cooperation with civil society organisations, international organisations and bodies, professional bodies, and the academia.

(2) With the purpose of promoting its work and further development of certain areas in the field of protection and promotion of human rights and freedoms, the Institution shall maintain regular and thematic consultations with civil society organisations, international organisations and bodies, professional bodies, and the academia.

**Article 46
(Standing Advisory Body for Cooperation with Civil Society)**

(1) The Institution shall establish the Standing Advisory Body for Cooperation with Civil Society that shall consider and propose strategic guidelines in the field of protection and promotion of human rights and freedoms, ensure continuous cooperation in the field of human rights and freedoms between the Institution, civil society organisations, academia, media, and the profession, and consider other issues of importance for the Institution in terms of human rights and freedoms.

(2) The Standing Advisory Body shall participate in the development of the Strategy of the Institution and its implementation.

(3) The Standing Advisory Body shall be established not later than 180 days following the appointment of the Lead Ombudsman.

(4) Members of the Standing Advisory Body shall be appointed by the Lead Ombudsman following a public call from the ranks of civil society organizations, the academia, the media, and the profession. The appointment process shall be public and transparent.

(5) Members shall not receive any form of compensation for their work in the Standing Advisory Body.

**Article 47
(Cooperation with Media)**

(1) In order to achieve its obligation for promotion of human rights, The Institution and Ombudsman shall cooperate with public broadcasters at the level of Bosnia and Herzegovina and its entities.

(2) Public broadcasters and the Institution shall jointly decide on television and radio content produced and broadcasted for this purpose.

(3) The Institution shall also cooperate with other electronic, printed, and online media.

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**Article 48
(Other Forms of Cooperation)**

- (1) The Institution and other bodies for protection and promotion of human rights at all levels of government in BiH shall cooperate and regularly exchange information.
- (2) The Institution shall intensively cooperate with international and regional organisations and bodies for the protection and promotion of human rights and freedoms.
- (3) The Institution shall network with other similar institutions internationally and strive for active membership in international and European networks of institutions and bodies for protection and promotion of human rights.

**Article 49
(Activities for Promotion of Human Rights)**

The Institution, autonomously or in cooperation, shall promote human rights and freedoms by:

- a) conducting research activities,
- b) documenting violations of human rights,
- c) publishing activities,
- d) organizing public events,
- e) implementation of educational, informative, and awareness raising activities or campaigns,
- f) cooperating with the media.

**CHAPTER IX-
FUNDING AND SALARY OF OMBUDSMAN**

**Article 50
(Funding)**

- (1) In accordance with the provisions of the Law on the Financing of Institutions of BiH, the Lead Ombudsman, shall prepare a draft proposal of the annual budget and submit it for adoption to the Budget Committee of the BiH Parliament.
- (2) Upon the approval of the competent parliamentary committee, in accordance with the provisions of the Law on the Financing of Institutions of BiH, the Ombudsman shall submit a request to the Ministry of Finance and Treasury of BiH to incorporate the budget of the Institution into the budget of the institutions of BiH.
- (3) The Ministry of Finance and Treasury of BiH, the Council of Ministers of BiH and the Presidency of BiH may provide opinions to the draft budget of the Institution, but may not amend the proposal of the budget previously approved by the parliamentary committee, unless the draft budget in conflict with the obligations or limitations of spending in accordance with international agreements or if the draft budget causes a budget imbalance whose rebalance would lead to a decrease in the draft budget of another budget user, or when the draft budget is not in accordance with the provisions of the Law on Fiscal Council of BiH.

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Article 51
(Annual Financial Report)

- (1) The Institution shall draft and publish detailed annual financial report. Financial report shall be published no later than March 31 for the previous calendar year and shall be forwarded together with the Annual Report on Human Rights and Freedoms in Bosnia and Herzegovina to the legislative bodies for their information.
- (2) The financial report shall also be published on the website of the Institution no later than March 31.

Article 52
(Salary of the Lead Ombudsman and Ombudsman)

- (1) The salary of the Lead Ombudsman shall be equal to the salary of a minister of the Council of Ministers of Bosnia and Herzegovina and the salary of the Ombudsman shall be equal to the salary of deputy ministers of the Council of Ministers of Bosnia and Herzegovina.
- (2) Salaries of advisors, assistant Ombudsman, and other employees of the Institution of the Ombudsman shall be in line with salaries of civil servants and officers employed in the institutions of BiH.

CHAPTER X
TRANSITIONAL AND FINAL PROVISIONS

Article 53
(Appointment of Lead Ombudsman)

- (1) If the Ombudsman are appointed prior to the entry into force of this Law, in accordance with the Law on the Human Rights Ombudsman of Bosnia and Herzegovina ("Official Gazette of BiH," no. 19/2002), the Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina ("Official Gazette of BiH," no. 35/2004), and the Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina ("Official Gazette of BiH," no. 32/2006), following the entry into force of this Law, the Parliamentary Assembly of Bosnia and Herzegovina shall initiate the appointment procedure for only the Lead Ombudsman for the duration of the remaining term of office of the already appointed Ombudsman.
- (2) Already appointed Ombudsman shall remain in the term of office until the expiration of the term for which they have been appointed. Ombudsman that have also preformed this function in the previous term of office cannot be reappointed.
- (3) The division of duties among the Ombudsman shall be performed in accordance with this Law.

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Article 54
(Cessation of Validity)

By the entry into force of this Law, the Law on the Human Rights Ombudsman of Bosnia and Herzegovina ("Official Gazette of BiH," no. 19/2002), the Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina ("Official Gazette of BiH," no. 35/2004), and the Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina ("Official Gazette of BiH," no. 32/2006) shall cease to apply.

Article 55
(Entry into Force)

This Law shall enter into force on the eighth day of its publication in the Official Gazette of BiH.