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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ANDORRA

LAW ON THE CREATION AND FUNCTIONING OF THE OMBUDSMAN

Delegated legislation

Decree

Having regard to Article 59 of the Andorran Constitution, according to which, through a law, the General Council may delegate the exercise of the legislative function to the Government.

Having regard to the legislative delegation in favour of the Government established in the first final provision of Law 26/2017, of 23 November, amending the Law on the creation and functioning of the Ombudsman, of 4 June 1998, by which the Government is entrusted to publish in the Official Gazette of the Principality of Andorra (BOPA) the consolidated text of the Law on the creation and functioning of the Ombudsman, of 4 June 1998, which includes the amendments introduced in this Law to date, and to add a title to each of the articles that have not been amended by this Law.

Having regard to the fact that in compliance with the first final provision of Law 26/2017, the content of the Law on the creation and functioning of the Ombudsman, of 4 June 1998, is consolidated in this legislative decree to include the amendments arising from Law 79/2010, of 25 October, amending the Law on the creation and functioning of the Ombudsman, and Law 26/2017, of 23 November, amending the Law on the creation and functioning of the Ombudsman, of 4 June 1998.

Having regard, furthermore, to the fact that the transitional and final provision of the Law on the creation and functioning of the Ombudsman, of 4 June 1998, the final provision of Law 79/2010, and the final provisions of Law 26/2017 are resumed in an orderly fashion and, in order to ensure clarity in the consultation of this Legislative Decree and to preserve legal certainty, each of these provisions is accompanied by a record of the aforementioned laws from which it derives.

Given the above considerations, upon proposal by the Minister of Social Affairs, Justice and the Interior, the Government, at its session of 25 April 2018, it approves this Legislative Decree with the following content:

Sole article

The publication in the Official Gazette of the Principality of Andorra (BOPA) is approved of the consolidated text of the Law on the creation and functioning of the Ombudsman, dated 4 June 1998, which will enter into effect on the day following its publication.

This is hereby made public knowledge.

Andorra la Vella, 25 April 2018

Antoni Martí Petit

Head of Government

Consolidated text of the Law on the creation and functioning of the Ombudsman, of 4 June 1998

Title I. Legal status

Chapter I. Functions

Article 1. Mission

The Ombudsman, who acts as a delegate or commissioner of the General Council, is an institution the missions of which are the defence and protection of the fundamental rights and freedoms recognised in the Constitution, the supervision of compliance with and defence of the rights recognised in the international conventions signed and ratified by the Principality of Andorra under the terms established in this Law, in particular with regard to the rights of children and disabled persons, and also the fight against discrimination of all kinds and against racist, xenophobic, anti-Semitic and intolerant attitudes.

Article 2. Functions

1. The Ombudsman has the following functions:

- a) To inform citizens of the rights and freedoms recognised in the Constitution, and to supervise compliance therewith.
- b) To ensure that the actions of the public administrations, in general and in a broad sense, comply with the fundamental principles of defence and protection of the rights and freedoms established in the Constitution.
- c) To ensure that the actions of the public administrations, in general and in a broad sense, objectively serve the general interest and are subject to the principles of hierarchy, efficiency, transparency and full submission to the Constitution and to the rest of the legal system.
- d) To inform and to advise minors on the rights and freedoms recognised in the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989, and the optional or additional protocols to this convention in the Andorran legal system, and to ensure compliance therewith. In this area, the Ombudsman provides information, help and assistance to minors, and intervenes when it deems necessary. Specifically, if, as a result of its investigations, it should conclude that there may be signs of the commission of criminal offences, it will inform the Public Prosecutor's Office.
- e) To ensure that the actions of persons or public or private entities, including the media, respect the equality of all persons, and that the necessary measures are taken to prevent any kind of direct or indirect discrimination based on birth, race, nationality, national or ethnic origin, colour, sex, religion, philosophical, political or trade union opinion, physical or mental disability, lifestyle, customs, language, age, gender, sexual identity or orientation, or any other personal or social condition. It is also responsible for combating racist, discriminatory, xenophobic, anti-Semitic and intolerant attitudes.

Direct discrimination is understood as any difference of treatment based on one of the conditions mentioned in the above paragraph and that lacks objective and reasonable justification or, in other words, does not pursue a legitimate aim or lacks proportionality in the means employed and the aim pursued.

Indirect discrimination is understood to mean that an apparently neutral factor, such as a rule, a criterion or a practice, cannot be respected equally as easily by persons belonging to a particular group because of any of the conditions mentioned in the first paragraph of this point e), unless this factor has objective and reasonable justification, as defined in the preceding paragraph.

In this area, it is the Ombudsman responsibility to:

- i) Provide information, help and assistance to the victims of any discrimination or racist, xenophobic, anti-Semitic and intolerant attitudes so that they may make use of the appropriate means or resources to defend their rights and interests, and intervene when it deems necessary. Specifically, if, as a result of its investigations, it should conclude that there may be signs of the commission of criminal offences, it will inform the Public Prosecutor's Office.
- ii) Monitor the content and effects of the regulations that influence the fight against discrimination and racist, discriminatory, xenophobic, anti-Semitic and intolerant attitudes; to make proposals to improve these regulations, and to report in a prior, mandatory and non-binding manner on draft laws, regulations and bills relating to non-discrimination, racism, xenophobia, anti-Semitism and intolerance. The reports may also deal with strategic documents, action plans and government policies related to the above-mentioned issues.
- iii) Encourage public awareness of issues in everything related to discrimination, racism, xenophobia, anti-Semitism and intolerance by means of the publication of appropriate documents and information, to participate, if so required, in training programmes on these issues, and to support the activities of organisations and bodies that combat discrimination, racism, xenophobia, anti-Semitism and intolerance by receiving and considering their concerns and leaving record thereof in respective reports.

This function must be undertaken with a spirit of dialogue and in collaboration with the entities and bodies concerned with fighting discrimination and racist, discriminatory, xenophobic, anti-Semitic and intolerant attitudes.

f) To inform, assist and advise people with disabilities of the rights recognized in the Convention on the Rights of Persons with Disabilities, adopted by the General Assembly of the United Nations on 13 December 2006, and the optional or additional protocols to this Convention that form part of the Andorran legal system, and to ensure compliance therewith. In this area, the Ombudsman must:

- i) Promote, follow up and supervise the application of the above agreement by exercising the state's function of independent control established in Article 33, paragraph 2.
- ii) Promote the participation of civil society and, particularly, of persons with disabilities and the entities and bodies that represent them in performing the functions mentioned in the above letter i).

2. The functions indicated in letters e) and f) of the previous section of this Article are exercised without prejudice to the fact that in the future they may also be entrusted concurrently to other independent entities or bodies the mission of which is to promote and defend human rights.

3. To fulfil the functions detailed in paragraph 1 of this Article, the Ombudsman collects and processes complaints and claims regarding citizens' relations with the public administrations and other public entities and bodies of the Principality of Andorra.

That notwithstanding, in matters of defence and protection of the rights of minors and disabled persons, and of the struggle against racism, intolerance and discrimination, it also receives and processes complaints and claims concerning citizens' relations with other persons or private entities.

Article 3. Complaints and claims

1. Complaints or claims received by the Ombudsman from citizens concerning the functioning of the Administration of Justice will not be processed by the Ombudsman, who will simply forward them to the High Court of Justice.

2. Without prejudice to the above, the Ombudsman will mention in his/her annual report to the General Council, complaints received in relation to the operation of the Administration of Justice.

Article 4. Scope of complaints and claims

1. The Ombudsman may not intervene in complaints and claims brought before him/her in matters in which proceedings have been lodged before a court, nor may he/she annul or amend an administrative act, and he/she must limit him/herself to making such recommendations and suggestions as he/she deems appropriate.

2. Complaints and claims addressed to the Ombudsman neither interrupt the time limits for lodging an administrative or jurisdictional appeal, nor alter the effects thereof.

3. If the Ombudsman has initiated intervention and the same matter becomes subject to court proceedings, the interested party must inform the Ombudsman as soon as possible. If the Ombudsman has initiated the appropriate proceedings, he/she must halt them, in accordance with the provisions of paragraph 1 of this Article.

4. Notwithstanding the provisions of paragraph 1 of this Article, even if proceedings have been initiated before a court with regard to the same matter, the Ombudsman may continue to inform, help, advise and assist minors, victims of any discrimination and persons with disabilities.

Article 5. Ex officio action

1. Even if no specific complaint or claim has been lodged, the Ombudsman may, ex officio, draft reports or make recommendations on matters of interest to citizens or society in general, or on matters related to any of the functions entrusted to him/her.
2. Even if no specific complaint or claim has been lodged, if the Ombudsman becomes aware of any case of discrimination, racism, xenophobia, anti-Semitism or intolerance, he/she may undertake an ex officio enquiry in accordance with the procedure regulated in Title II of this Law.

Chapter II. Character of the Ombudsman**Article 6. Principle of independence**

1. The institution of Ombudsman is independent from any other and performs its functions objectively and with total independence.
2. In exercising his/her duties, the Ombudsman may not be prosecuted —and therefore enjoys immunity— for the opinions he/she expresses or the acts he/she performs.

Article 7. Remuneration

The General Council shall determine, and charge to its budget, within the general framework of effective remuneration for public office, the remuneration to be paid to the Ombudsman for the performance of his/her duties.

Chapter III. Appointment and cessation**Article 8. Appointment**

1. The person who holds the office of Ombudsman shall be appointed by the General Council with a vote in favour of two thirds of its members in the first ballot. If this majority is not obtained in a first ballot, the candidate who obtains an absolute majority of the votes in a second ballot shall be elected.
2. If the office of Ombudsman remains vacant, the provisions established in the Regulations of the General Council for the election of persons should be followed.
3. The appointment of the Ombudsman is published in the Official Gazette of the Principality of Andorra (BOPA).
4. Once appointed, the Ombudsman must swear or promise obedience before the Syndic General, in accordance with the procedures established in the Regulations of the General Council.

Article 9. Term of office and cessation

1. The office of the Ombudsman lasts for a term of six years.
2. The mandate is not renewable.
3. The Ombudsman must cease to hold office only in the following events:
 - a) By express resignation, in writing, before the Syndic General.
 - b) Death, political disqualification or judicially declared invalidity. If it is at the request of the General Council, the same majority as that established for appointment is required to initiate the disqualification procedures.
 - c) His/her term of office ends.
 - d) Conviction by final judgement for a wilful offence.
 - e) Incurrence of incompatibility, in accordance with the provisions of this Law.
 - f) Manifest negligence or carelessness in the exercise of his/her office.
4. In the first five events mentioned in the above section, the Syndic General shall declare the office vacant, once it has established, by means of the corresponding document, the cause that has given rise to it.
5. Negligence or carelessness in the exercise of the office may only be declared by the Plenary Session of the General Council, in public session, by an absolute majority of its members and after having heard the person concerned.

Article 10. Vacancy

1. Should the office of Ombudsman become vacant, the Syndic General must proceed as envisaged in Article 8.
2. Should the vacancy arise because of expiry of the mandate, the Ombudsman will continue to hold office until the new Ombudsman takes office.
3. In other events of vacancy, once a vacancy has been declared, the Ombudsman shall immediately cease to hold office and his/her functions shall be exercised on an interim basis by the person freely appointed, for a maximum of six months, by the Board of Presidents of the Parliamentary Groups of the General Council.

Article 11. Eligibility and incompatibility

1. Any citizen of Andorran nationality, of age and with full use of their civil and political rights, may be Ombudsman.
2. Exercise of the office of Ombudsman is incompatible with the exercise of any other public or political office, whether elected or appointed; with the exercise of judicial or prosecutorial careers and with any form of legal advice other than that entailed in its functions; with the

exercise of any liberal, commercial or labour profession; with positions or functions in organisations, associations or companies, whether public or private, and with membership of any political party or business or trade union organisation.

3. The Ombudsman must abstain from intervening in cases that incur any of the causes for abstention or disqualification foreseen in the Code of Administration and in the Qualified Law of Justice. In this event only, he/she shall be replaced by the person appointed by the Board of Presidents of the Parliamentary Groups of the General Council.

4. During the exercise of his/her functions, the Ombudsman may not stand as a candidate or undertake acts of political propaganda in any election, whether general or local.

5. If a cause of incompatibility should arise and he/she does not resign, the vacancy shall be declared as envisaged in Article 9(4).

6. When there exists a cause of incompatibility in the person who has been elected as Ombudsman, prior to swearing in or making a pledge of allegiance before the Syndic General, he/she must give up the post or activity that is the object of the incompatibility or have obtained the respective leave of absence.

If, fifteen days from the election elapse and he/she has not complied with the provisions of the above paragraph, he/she will be understood not to have accepted the appointment.

Title II. Action

Chapter I. Submission of complaints and claims

Article 12. Submission of complaints and claims

1. Complaints and claims relating to the functions of the Ombudsman must be addressed and submitted to this institution.

2. Complaints and claims may not be anonymous. They must contain all the details of identification of the person lodging the complaint, the reasons for the complaint or claim, a statement of the facts and the persons involved, and they must also be accompanied by supporting documentation, if available.

3. Other than that established in the above section, complaints and claims are not subject to any formal requirements. They may be lodged in person or by proxy or representative with sufficient power of attorney.

Article 13. Legitimation

1. Complaints or claims may be lodged by any natural person or legal entity with a claim to legitimate interest, whatever their nationality, age, status or residence. For minors under 12 years of age and disabled persons, this must be done by their legal representatives, without the need for special power of attorney.

2. The Ombudsman, upon receiving the complaint or claim, acknowledges receipt thereof, in all cases and within a maximum period of thirteen working days, and must inform the person concerned of the action he/she has taken.

Chapter II. Procedure for complaints and claims

Article 14. Admission and rejection of complaints and claims

1. Complaints and claims of individuals submitted to the Ombudsman must be examined thereby.
2. The Ombudsman may only reject them in limine if he/she detects bad faith, lack of jurisdiction, legitimate interest, or grounds, or if the processing thereof is detrimental to the legitimate interests of third parties.
3. Reasons for rejection or non-admission must be stated and the party concerned must be informed thereof.
4. If rejection is due to lack of jurisdiction, the Ombudsman must provide, where applicable, information on the authority or procedure that he/she considers to be the most appropriate.
5. The initial rejection of complaints and claims does not prevent the Ombudsman, ex officio, from reporting on problems of a general nature about which he/she is consulted.

Article 15. Conditions for action

1. All actions of the Ombudsman are free of charge for the interested party.
2. The actions of the Ombudsman must be undertaken out with due reserve and secrecy, with no mention of the name of the complainant when the latter so requests or when, because of the nature of the matter, it may harm honour or privacy.
3. Persons involved in processing complaints and claims must, in the same events, observe the same obligation of confidentiality.
4. The reports drafted by the Ombudsman may contain necessary references to the actions undertaken, always issued with respect for the privacy and honour of the complainants and of any other person whose name has been revealed in the course of the enquiry, without prejudice to the provisions of Article 17.7.

Article 16. Unchallengeable decisions

The decisions and resolutions of the Ombudsman are not subject to appeal or to any complaint.

Article 17. Complaints and claims procedure

1. Once a complaint or claim has been admitted for processing, the Ombudsman shall initiate the relevant enquiry into the reality of the alleged facts.
2. This enquiry need not be the object of any formalized procedure.
3. The enquiry must be undertaken without delay and, as a rule, must not take longer than three months.
4. If the complaint or claim concerns a public administration or any other public entity or body, the Ombudsman must inform the administration, entity or body of the content, so that its head or person in charge may send a written report on the matter within one month at the latest. If, in addition, the complaint or claim concerns specific persons, the Ombudsman must also ask these persons to respond, in writing and within the same time limit, about the facts or circumstances subject to the complaint or claim, and to attach the documents or testimonies that they deem appropriate.
5. If the complaint or claim concerns a person or private entity, the Ombudsman must inform this person or the legal representative of this entity of the content of said complaint or claim, so that the latter may issue a written report in this regard within a maximum period of one month.
6. If the deadlines specified in the above paragraphs 4 and 5 have expired without the requested persons or entities having submitted the written report, the Ombudsman must remind them again of the need to do so.
7. If, despite having been notified for a second time, the requested persons or entities have not issued the written report, or if this report is incomplete or insufficient, the Ombudsman must record this fact in the annual or extraordinary reports that he/she drafts, and may publicize the identity and position, or the name of the persons or entities concerned public.
8. Once the enquiry has been concluded, the Ombudsman must inform the person who has lodged the complaint or claim, and the person or public or private entity to whom it has been addressed, of the outcome of the investigations undertaken.

Chapter III. Material and personal resources**Article 18. Internal organisation**

1. The material and personal resources necessary for the Ombudsman to exercise its functions shall be provided by the General Council, as part of its budget allocation.
2. The Ombudsman appoints the collaborative staff and the staff in the service of the institution that he/she heads, in accordance with the budget approved by the General Council.
3. The Ombudsman is required to establish the personnel, operational and internal rules of the institution he/she heads, in accordance with the provisions of this Law.

Title III. Relations with other powers and authorities

Chapter I. Duty to cooperate

Article 19. Duty to cooperate

1. All persons or public or private entities must cooperate with the Ombudsman in the processing of complaints and claims brought to its attention.
2. Compliance with this duty to cooperate must be met in the shortest possible time and, in all events, within the deadlines established in sections 4 and 5 of Article 17 of this Law.
3. The Ombudsman may have access to any information relating to the matter subject to the investigation he/she has initiated, except for information with confidentiality protected by applicable laws.

Chapter II. Resolutions

Article 20. Warnings, recommendations, reminders and suggestions

1. In exercising the functions entrusted to him/her, the Ombudsman may issue persons or public or private entities with warnings, recommendations, reminders of their legal duties and suggestions so that they may adopt specific measures. In all events, these persons and entities must respond in writing within a period not exceeding one month.
2. If the warning, recommendation, reminder or suggestion concerns a public administration or any other public body or entity, and its head or person in charge does not take suitable measures with regard thereto or does not provide notification of why these measures have not been taken, the Ombudsman may inform the hierarchical superior of the background circumstances of the warning or recommendation issued. If, despite this, no suitable justification is provided, the Ombudsman shall leave record thereof in the annual or special reports that he/she draws up.
3. If the warning, recommendation, reminder or suggestion concerns a private person or entity, and this person or the legal representative of this entity does not take suitable measures with regard thereto or does not provide notification of why these measures have not been taken, the Ombudsman will make note thereof in the annual or special reports that he/she draws up.
4. If, in exercising the functions entrusted to him/her, the Ombudsman should conclude that there are signs of the commission of administrative or criminal offences, he/she will inform the Public Prosecutor's Office.

Chapter III. Relations with the General Council

Article 21. Presentation of the report

1. Each year, at an ordinary meeting of the first term of sessions of the General Council, the Ombudsman shall present a detailed report of his/her activities.

2. The General Council, upon proposal by the Syndic General, shall establish the manner in which the Ombudsman's report is to be discussed.
3. The Ombudsman may be required to appear before the Plenary Session of the General Council or before the Commission appointed thereby to discuss the reports submitted.
4. The Ombudsman may be required, at any time in accordance with the procedure established in the Rules of Procedure of the General Council, by a Standing Legislative Committee or by the Plenary Session of the General Council, to appear before it to report on matters within its jurisdiction.

Article 22. Reports

1. In the annual report, the Ombudsman may detail the persons or public or private entities that have disregarded his/her warnings, recommendations, reminders or suggestions.
2. The annual report must deal with all matters relating to the functions entrusted to the Ombudsman and must mention the general work he/she has performed and the cases upon which he/she has worked in an individual capacity.
3. The Ombudsman may recommend the promotion and adoption of legal or regulatory reforms in matters relating to the functions entrusted to him/her.
4. In the annual report, the Ombudsman may propose such amendments to this Law as he/she deems appropriate in order to facilitate and to improve the functioning of the institution he/she represents. These proposals may not, however, concern the requisites for appointing the Ombudsman.
5. In urgent and important cases, the Ombudsman may submit extraordinary reports, which are discussed in the manner decided by the General Council.
6. The General Council must publish the reports of the Ombudsman in the Gazette of the General Council, without prejudice to other forms of publication that may be established.

Transitional provision (Law on the creation and functioning of the Ombudsman, of 4 June 1998)

Under the terms of this Law, the General Council shall appoint the first Ombudsman within three months of its entry into effect.

Final provision (Law on the creation and functioning of the Ombudsman, of 4 June 1998)

This Law shall enter into effect on the same day as its publication in the Official Gazette of the Principality of Andorra (BOPA).

Final provision (Law 79/2010)

This Law shall enter into effect on the day following its publication in the Official Gazette of the Principality of Andorra (BOPA).

First final provision (Law 26/2017)

The Government is entrusted with the task of publishing in the Official Gazette of the Principality of Andorra, within a maximum period of three months from the entry into effect of this Law, the consolidated text of the Law on the creation and functioning of the Ombudsman, of 4 June 1998, including the amendments to this Law introduced to date, and with adding a title to each of the articles that have not been amended by this Law.

Second final provision (Law 26/2017)

This Law shall enter into effect on the day following its publication in the Official Gazette of the Principality of Andorra (BOPA).