

## **LAW ON THE PROTECTOR OF CITIZENS**

### **I. INTRODUCTORY PROVISIONS**

#### **Article 1**

The Protector of Citizens is hereby established, as an independent body that shall protect the rights of citizens and control the work of government agencies, the body authorized for legal protection of property rights and interests of the Republic of Serbia and other bodies and organisations, enterprises and institutions which have been delegated public authority (hereinafter: administrative authorities).

The Protector of Citizens shall also ensure that human freedoms and rights are protected and promoted.

In the context of this law, the term 'citizen' covers not only local nationals but also any physical person who is a foreign national, as well as any local or foreign legal person whose rights and responsibilities are determined by the administrative authorities specified under paragraph 1 of this Article.

#### **Article 2**

The Protector of Citizens is independent and autonomous in performance of his/her duties established under this Law and no one has the right to influence the work and actions of the Protector of Citizens.

In performance of duties within his/her competence the Protector of citizens shall act in accordance with the Constitution, law and other regulations and general acts, as well as the ratified international treaties and generally accepted rules of international law.

#### **Article 3**

The seat of the Protector of Citizens shall be in Belgrade.

The Protector of Citizens may issue a decision to establish an office outside its seat.

The general act determining the organisation of the Protector of Citizens shall also govern the organisation of offices outside its seat.

### **II APPOINTMENT AND END OF OFFICE**

#### **Article 4**

The National Assembly of the Republic of Serbia (hereinafter: the Assembly) shall appoint the Protector of Citizens following the proposal of the National Assembly Committee for Constitutional Issues (hereinafter: the Committee).

Each parliamentary group in the National Assembly has the right to propose to the Committee its candidate for the Protector of Citizens.

Several parliamentary groups may propose a joint candidate for the Protector of Citizens.

The proposal of the Committee has to be supported by a majority vote of all the members of the Committee.

Before the proposals for the Protector of citizens are finalized, the Committee can decide to hold a session where all candidates will be able to express their views on the role and manner of fulfilment of the Protector of Citizens' function.

The Protector of Citizens is appointed for a period of five years and the same person may be elected at most twice in succession.

The procedure for the appointment of the Protector of Citizens shall start at least six months before the end of office of the outgoing Protector of Citizens.

### **Article 5**

A person is eligible for the position of the Protector of Citizens if they are nationals of the Republic of Serbia and meet the following requirements:

- 1) bachelor's degree in law;
- 2) at least ten years of experience in jobs related to the purview of the Protector of Citizens;
- 3) high moral character and qualifications;
- 4) significant experience in the protection of civil rights.

### **Article 6**

The Protector of Citizens shall have four deputies that help him/her in performing the duties prescribed by this Law, and within the powers delegated to them by the Protector of Citizens.

When delegating powers to deputies, the Protector of Citizens shall in particular ensure special expertise for the performance of duties under the Protector of Citizens' competency, primarily in respect to the protection of rights of persons deprived of their liberty, children's rights, rights of national minorities and rights of disabled persons.

The Protector of Citizens shall designate a deputy who will replace him/her when absent or prevented from performing his/her duties.

Deputies of the Protector of citizens shall be appointed by the Assembly following the recommendation of the Protector of Citizens.

Deputies of the Protector of Citizens shall be appointed to a five-year term of office and the same person may be elected at most twice in succession.

A person is eligible for the position of Deputy Protector of citizens if they are nationals of the Republic of Serbia and meet the following requirements:

- 1) university degree;
- 2) at least five years of experience in jobs related to the purview of the Protector of citizens;
- 3) if they are persons of high moral character and qualifications
- 4) have significant experience in the protection of civil rights.

### **Article 7**

The Protector of Citizens and his deputies shall swear the following oath before taking office: "I solemnly swear to perform my duties responsibly, impartially and independently, in compliance with the law and the Constitution and to conscientiously work on the protection of human rights and freedoms."

The Protector of Citizens shall swear the oath before the National Assembly, and his/her Deputies before the Speaker of the National Assembly.

### **Article 8**

The Protector of Citizens, i.e. his/her Deputies, shall take office the moment he/she swears the oath.

If the Protector of Citizens, i.e. his/her Deputies, fails to take office within 30 days from the day he/she swore the oath without justifiable reason, he/she shall be deemed not elected. This fact is concluded by the National Assembly on the basis of a Committee's notification. In such event, the procedure for the election of a new Protector of Citizens, i.e. his/her Deputies, is immediately initiated.

### **Article 9**

The Protector of Citizens, i.e. his/her Deputies, shall not hold other public office, perform another professional activity, or any duty or task that might influence their independence and autonomy.

The Protector of Citizens and his/her Deputies shall not be members of political organisations.

The Protector of Citizens and his/her Deputies shall have the status of officials pursuant to the law regulating the conflict of interests in performing public functions, and the provisions of this Law shall fully apply to them.

All public, professional and other functions of the Protector of Citizens and/or Deputies, i.e. the duties or tasks they have been performing, which are opposite to the provisions of this Law, as well as membership in a political party, shall cease on the day of taking office.

### **Article 10**

The Protector of Citizens and his/her Deputies shall not be held accountable for opinion, criticism or recommendation they made while performing their function.

The Protector of Citizens and his/her Deputies shall not make any political statements.

### **Article 11**

The term of office of the Protector of Citizens shall cease in the following cases:

- 1) with the end of mandate, unless he/she is re-appointed;
- 2) in case of death;
- 3) by resigning from office;

- 4) by loss of citizenship, which is determined based on the act of the competent state body;
- 5) by meeting requirements for mandatory retirement pursuant to the law;
- 6) by becoming permanently physically or mentally unable to carry out his/her duties, which is determined on the basis of documentation of relevant medical institution
- 7) by dismissal.

### **Article 12**

The Protector of Citizens shall be dismissed from office by the National Assembly, following the proposal of the Committee or at least one third of the total number of deputies.

If the Committee initiates the motion for dismissal, it must be supported by a majority of the members of the Committee.

The Protector of Citizens may be dismissed only in the following cases:

- 1) due to incompetence or negligence in discharging his/her duties;
- 2) if he/she holds other public function or engages in professional activity, duty or task that might influence his/her independence and autonomy, or if he/she acts contrary to the law regulating the prevention of the conflict of interests in performing public functions;
- 3) if convicted for a criminal offence which makes him/her unsuitable for this function.

The Protector of Citizens has the right to address the members of the National Assembly at the session in which his/her dismissal is to be discussed.

### **Article 13**

Following the recommendation of the Committee, the National Assembly may reach a decision to suspend the Protector of Citizens in situations when:

- 1) he/she has received measure of remand;
- 2) he/she is convicted for a criminal offence which makes him/her unsuitable for this function but his/her sentence is still not enforceable.

The National Assembly shall abolish a decision on suspension as soon as the reasons for suspension are terminated.

### **Article 14**

The provisions related to the end of office of the Protector of Citizens shall accordingly apply to his/her Deputies. The Protector of Citizens may also make the proposal for the dismissal of a Deputy.

### **Article 15**

In the event of termination of office of the Protector of Citizens or a Deputy for reasons specified under Article 11, item 1 – 6 hereof, the Assembly shall state without a debate that the conditions for the end of office have been met.

Legal consequences of the end of office shall come into effect as of the date the decision referred to in paragraph 1 of this Article was passed.

## **Article 16**

In the event of end of office of the Protector of Citizens, a Deputy designated by the Protector of Citizens to replace him/her when absent or prevented from work shall perform this function until the election of a new Protector of Citizens.

The election of the new Protector of Citizens shall be made at latest within 6 months from the end of office of the preceding Protector of Citizens.

## **II POWERS**

### **Article 17**

The Protector of Citizens shall have the power to control the respect of the rights of citizens, establish violations resulting from acts, actions or failure to act by administrative authorities, if they are violations of the laws, regulations and other general acts of the republic.

The Protector of Citizens shall have the power to control the legality and regularity of the work of administrative bodies.

The Protector of Citizens shall not have the power to control the work of the National Assembly, President of Republic, Government of Serbia, Constitutional Court, courts and public prosecution's office.

### **Article 18**

The Protector of Citizens shall have the power to launch initiatives with the Government or National Assembly for the amendment of laws or other regulations or general acts, if he deems that violations of citizens' rights are a result of deficiencies of such regulations. He shall also have the power to launch initiatives for new laws, other regulations and general acts, if he considers it significant for exercising and protecting citizens' rights.

The Government, or the competent Committee of the National Assembly, shall be obliged to consider the initiatives of the Protector of Citizens.

In the process of drafting of regulations, the Protector of Citizens shall have the power to give his opinion to the Government and National Assembly on draft laws and regulations if they concern the issues relevant for the protection of citizens' rights.

### **Article 19**

The Protector of Citizens shall have the power to initiate proceedings before the Constitutional Court for the assessment of legality and constitutionality of laws, other regulations and general acts which govern issues related to the freedoms and rights of citizens.

### **Article 20**

The Protector of citizens shall have the power to publicly recommend the dismissal of an official who is responsible for violation of citizen's right, i.e. to initiate disciplinary proceedings against an employee of the administrative authorities who is

immediately responsible for performed injury, when the recurring behaviour of the official or employee reveals the intent to refuse co-operation with the Protector of Citizens or when it is determined that the injury made to the person caused material or other serious damage to that person.

If revealed that activities of an official or an employee of the administrative authorities contain elements of criminal or other punishable act, the Protector of Citizens shall have power to submit request, i.e. to file a motion to initiate misdemeanour, criminal or other appropriate proceedings.

### **Article 21**

Administrative authorities shall co-operate with the Protector of Citizens and enable his access to their premises and information available to them, which are of importance for the proceedings he runs, i.e. for the fulfilment of the goal of his preventive operation, regardless of the degree of confidentiality of such information, unless it is contrary to the law.

The Protector of Citizens shall have power to interview any employee of administrative authorities when it is of significance for the proceedings he runs.

The Protector of Citizens, i.e. Protector of Citizens' Deputy, shall have the duty of confidentiality as regards the information acquired during his term of office even after the end of office.

Everyone working in the Protector of Citizens' Secretariat is subject to the pledge of secrecy.

### **Article 22**

The Protector of Citizens shall have authority to freely access correctional institutions and other places where persons deprived of liberty are held and to speak in privacy with those persons.

### **Article 23**

The President of the Republic, the Prime Minister and members of the Government, the Speaker of the National Assembly and officials in administrative agencies are obligated to receive the Protector of Citizens at his request at latest within fifteen days.

## **IV PROCEDURE**

### **Article 24**

The Protector of Citizens initiates proceedings following the complaint of a citizen or on his own initiative.

In addition to the right to initiate and run proceedings, the Protector of Citizens shall have the right to act preventively by offering good services, negotiating and giving advice and opinions related to issues from his competency, with the view

of improving the work of administrative authorities and protection of human rights and freedoms.

### **Article 25**

Any physical or legal, local or foreign person who considers that their rights have been violated by an act, action or failure to act of an administrative authority may file a complaint with the Protector of Citizens.

In case of violation of child's rights, the complaint referred to in paragraph 1 of this Article may be submitted by his/her parent, i.e. legal representative on behalf of the juvenile. In case of violation of the rights of a legal person, a person authorized to represent that legal person may file the complaint.

Prior to submitting a complaint, a citizen is required to endeavour to protect their rights in appropriate legal proceedings.

The Protector of Citizens shall direct the complainant to instigate relevant legal proceedings when such proceedings are provided, and shall not instigate investigation until all legal remedies have been exhausted.

Exceptionally, the Protector of Citizens may initiate proceedings even before all legal remedies have been exhausted if the complainant would sustain irreparable damage or if the complaint is related to violation of good governance principle, particularly incorrect attitude of administrative authorities towards the complainant or other violations of rules of ethical behaviour of administrative authorities employees.

The Protector of Citizens shall not proceed on anonymous complaints.

Exceptionally, if the Protector of Citizens considers that an anonymous complaint provides basis for his operation, he may initiate proceedings on his own initiative.

### **Article 26**

A complaint is filed in writing or orally on record and shall not require payment of any fees or other dues.

A complaint may be filed not later than one year from the day the violation of the right of citizen occurred, and/or from the date of the last action undertaken by the administrative authority in respect of the violation.

### **Article 27**

The complaint shall contain the name of the administrative authority involved, description of the violation of the right, facts and evidence supporting the complaint, information about the legal remedies already used and data on the complainant.

At the request of the complainant, the Secretariat of the Protector of Citizens is obliged to offer technical assistance to draft a complaint, without any kind of compensation.

Persons deprived of liberty are entitled to submit their complaints in a sealed envelope.

All institutions where there are persons deprived of liberty shall visibly and publicly provide adequate envelopes, which shall be ensured by the management of such institutions and the Ministry of Justice.

### **Article 28**

The Protector of Citizens shall act on each complaint except:

- 1) if the case is not within the competence of the Protector of Citizens;
- 2) if it is filed after the expiry of the statutory deadline;
- 3) if it is filed prior to exhausting all available legal remedies, and the requirements specified under paragraph 5 of Article 25 are not fulfilled;
- 4) if a complaint is anonymous;
- 5) if it does not contain information required to proceed, and the complainant has neither corrected such deficiency even in the period determined for supplementing the complaint nor asked the Protector of Citizens' Secretariat to assist him in correcting such deficiencies.

If for any of the reasons specified in paragraph 1 of this Article, there are no grounds for an action of the Protector of Citizens, he/she shall reject the complaint and notify the complainant, stating the reasons for rejecting the complaint.

### **Article 29**

The Protector of Citizens shall notify the complainant and the administrative authority involved about the beginning and end of a proceeding.

The administrative authority is required to respond to all requests of the Protector of Citizens and to provide all requested information and documents within a period set by the Protector of Citizens that may not be shorter than 15 or longer than 60 days.

In certain justified cases, the Protector of Citizens may decide not to disclose to the administrative authority the identity of the person who submitted a complaint.

### **Article 30**

If the administrative authority involved eliminates the irregularities by itself, the Protector of Citizens shall so notify the complainant and leave him/her a 15-day period to declare whether he/she is satisfied with such action.

If the complainant declares that he/she is satisfied with the manner the irregularity has been corrected, and also when the complainant fails to respond within the set deadline, the Protector of Citizens shall discontinue the proceedings.

### **Article 31**

Upon determination of all relevant facts and circumstances, the Protector of Citizens may inform the complainant that his/her complaint is unfounded or may find that irregularities existed in the work of the administrative authority.

If the Protector of Citizens determines that irregularities existed in the work of the administrative authority, he shall deliver a recommendation to the administrative authority on steps to be undertaken in order to rectify the noted irregularity.

The administrative authority is obliged to inform the Protector of Citizens at latest within 60 days of the day it received the recommendation whether it proceeded pursuant to the recommendation and eliminated the irregularity, or about reasons why it failed to proceed pursuant to the recommendation.



Exceptionally, where there is danger that the rights of complainant might be permanently and seriously violated if irregularities are not corrected, the Protector of Citizens may, in his recommendation to the administrative authority, determine a shorter period for elimination of such irregularities, which shall not be shorter than 15 days.

If the administrative authority fails to proceed pursuant to the recommendation, the Protector of Citizens may so inform the public, the National Assembly and the Government, and may recommend proceedings to determine the accountability of the official in charge of the administrative authority.

### **Article 32**

The Protector of Citizens may act on his own initiative when on the basis of his own knowledge or information received from other sources, and only exceptionally on the basis of anonymous complaints, he estimates that an act, undertaking or inactivity of an administrative authority caused violation of human rights and freedoms.

Provisions of Articles 29 through 31 of this Law shall accordingly apply to proceedings instituted by the Protector of Citizens on his own initiative.

## **V REPORT TO THE ASSEMBLY AND CO-OPERATION OF PROTECTOR OF CITIZENS WITH OTHER BODIES**

### **Article 33**

The Protector of Citizens shall submit a regular annual report to the Assembly that shall include information on activities in the preceding year, noted irregularities in the work of administrative authorities and recommendations to improve the status of citizens in relation to administrative authorities.

The report shall be submitted not later than 15 March of the following year and shall be published in the "Official Gazette of the Republic of Serbia", and on the Internet page of the Protector of Citizens and shall also be delivered to public media.

The Protector of Citizens may submit special reports during the year, if necessary.

### **Article 34**

Relationship between the Protector of Citizens and the authorities of autonomous provinces and local self-government units authorized for the protection of citizens' rights are based on mutual co-operation within the scope of powers of the Protector of Citizens determined by this Law.

The Protector of Citizens shall co-operate with the Ombudsman of an autonomous province and the civic defender (Ombudsman) in a local self-government unit, where established, as well as with the competent office of the President of Republic and the Assembly, with the aim to exchange information on noted problems and manifestations in the work of administrative authorities, from the perspective of protection and improvement of human rights and freedoms.

### **Article 35**

In case the Protector of Citizens receives a complaint related to the violation of citizens rights by an act, undertaking or inactivity of administrative authorities, not connected with the violation of the laws, other regulations and general acts of the Republic, but with the violation of regulations or general acts of an autonomous province or local self-government unit, the Protector of Citizens shall refer the complaint without delay to the Ombudsman of the autonomous province i.e. civil defender (ombudsman) of the local self-government unit, if such is established.

In case a body of an autonomous province or local self-government unit that is in charge of the protection of citizens' rights issues receives a complaint related to the violation of the law, other regulations or general acts of the Republic, it shall forward that complaint without delay to the Protector of Citizens.

In case the complainant in his/her complaint simultaneously points to a violation of the law, other regulation or general act of the Republic and a violation of a regulation or general act of an autonomous province i.e. local self-government unit, the body that received the complaint (the Protector of Citizens, Provincial Ombudsman or civil defender-ombudsman of the local self-government unit) shall handle the complaint within its own scope of powers and shall forward a copy of the complaint to the other competent body (the Protector of Citizens, Provincial Ombudsman or civil defender-ombudsman of the local self-government unit, if such is established) so that it handles the complaint within its own scope of powers pursuant to paragraphs 1 and 2 of this Article.

## **VI RIGHT TO SALARY**

### **Article 36**

The Protector of Citizens is entitled to a salary equal to that of the salary of the president of the Constitutional Court, and deputies to that of a judge of the Constitutional Court.

## **VII FUNDS FOR WORK OF THE PROTECTOR OF CITIZENS**

### **Article 37**

The funds for the work of the Protector of Citizens are provided in the Republic budget.

The Protector of Citizens shall draft a proposal for funds for the following year, pursuant to methodology and criteria in force for other budget spending units and shall deliver it to the Government for inclusion as an integral part of the proposed Republic budget.

Annual funds for the work of the Protector of Citizens should be sufficient to enable him to fulfil his duties in efficient and operational manner, and should be in accordance with microeconomic policy of the Republic.

## **VIII SECRETARIAT**

### **Article 38**

A Secretariat of the Protector of Citizens is hereby established to perform specialised and administrative tasks.

The Secretariat shall be managed by the Secretary General, who shall hold a degree in law and have minimum five years experience and meet the requirements for employment in administrative authorities.

The Protector of Citizens shall issue a general act on the organisation and job classification of the Secretariat, which is approved by the Assembly.

The Protector of Citizens shall decide on the employment of staff in the Secretariat.

The Secretary General and other employees of the Secretariat are subject to regulations on labour relations in government bodies.

## **IX TRANSITIONAL AND FINAL PROVISIONS**

### **Article 39**

The Assembly shall elect the Protector of Citizens within six months of coming into force of this Law.

The Protector of Citizens shall submit a proposal for the election of his deputies within 3 months of taking office, and the Assembly shall elect the deputies within 2 months from the date of submitting the proposal.

### **Article 40**

The Protector of Citizens shall issue a general act on the organisation and work of the Secretariat within 60 days of taking office.

Staffing of the Protector of Citizens' Secretariat should be finished within 60 days of coming into force of the general act on the organisation and work of the Secretariat.

### **Article 41**

The Assembly shall harmonise the provisions of its Rules of Procedure with the provisions of this Law within six months of entering into force of this Law.

The Rules of Procedure of the Assembly shall determine the measures to be taken upon a regular and/or special report of the Protector of Citizens.

### **Article 42**

Until the general act on the organization and work of the Secretariat comes into force, on the recommendation of the Protector of Citizens, the Government shall provide premises, means and other prerequisites necessary for the beginning of work.

**Article 43**

The Protector of Citizens shall not deal with cases that occurred prior to coming into force of this Law.

**Article 44**

This Law shall come into force eight days after publication in the “Official Gazette” of the Republic of Serbia.