

Constitution; National Ombudsman Act; General Administrative Law Act

CONSTITUTION (GRONDWET)

Chapter 4: Council of State, Netherlands Court of Audit, National Ombudsman and permanent advisory bodies
(...)

Article 78a

1. The National Ombudsman shall investigate, on request or of his own accord, actions taken by central government administrative authorities and other administrative authorities designated by or pursuant to Act of Parliament.
2. The National Ombudsman and a Deputy Ombudsman shall be appointed by the Lower House of the States General for a period to be determined by Act of Parliament. They may resign or retire on reaching an age to be determined by Act of Parliament. They may be suspended or dismissed by the Lower House of the States General in circumstances prescribed by Act of Parliament. Other aspects of their legal status shall be regulated by Act of Parliament.
3. The powers and methods of the National Ombudsman shall be regulated by Act of Parliament.
4. The National Ombudsman may be charged with other tasks by or pursuant to Act of Parliament.

(...)

(The heading of Chapter 4 was altered, and article 78a added, by Act of 25 February 1999 (Bulletin of Acts and Decrees 133) which entered into force on 25 March 1999).

NATIONAL OMBUDSMAN ACT (WET NATIONALE OMBUDSMAN)

Act of 4 February 1981 (Bulletin of Acts and Decrees 1981, 35), most recently amended by Act of Parliament of 3 February 2005, (Bulletin of Acts and Decrees 71).

We Beatrix, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. ...

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that the need exists for special provision for investigating the way in which government has acted in a particular matter towards the individual citizen and that it is desirable in this connection to proceed to the establishment of the office of National Ombudsman and to the amendment of certain Acts;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Section I. National Ombudsman Act

Chapter 1 Definitions and scope

Section 1

In this Act:

- a. Ombudsman means: the National Ombudsman referred to in section 2;
- b. public servant means: a public servant, a former public servant, a person employed by an administrative authority under a contract of employment governed by civil law, a person formerly so employed, or a conscript either before or after termination of the period of compulsory military service, and other persons working or having formerly worked under the responsibility of an administrative authority.

Section 1a

1. This Act shall apply to the actions of the following administrative authorities:
 - a. Our Ministers;
 - b. the administrative authorities of the provinces, municipalities, water boards and bodies set up under the Joint Arrangements Act, unless separate systems for dealing with petitions have been instituted for such administrative authorities by virtue of section 79q of the Provinces Act, section 81p of the Municipalities Act, section 51b of the

Water Boards Act or section 10, subsection 4 of the Joint Arrangements Act, as the case may be;

- c. administrative authorities charged by or pursuant to a statutory provision with duties relating to the police, in relation to the performance of those duties;
 - d. the administrative authorities of the provinces, municipalities, water boards and bodies set up under the Joint Arrangements Act in relation to the actions of special investigating officers working for them;
 - e. other administrative authorities, unless they have been excluded by order in council.
2. *[Lapsed on 30 June 2003]*
 3. Subsection 1 notwithstanding, this Act shall not apply to the actions of the Equal Treatment Commission, as referred to in the Equal Treatment Act.
 4. An action performed by a public servant during the exercise of his duties shall be deemed to be an action of the administrative authority under whose responsibility he is working.

Section 1b

1. If the Ombudsman receives an order as referred to in section 79q, subsection 2 or 3 of the Provinces Act, section 81p, subsection 2 or 3 of the Municipalities Act, section 51b, subsection 2 or 3 of the Water Boards Act or section

10, subsection 4 of the Joint Arrangements Act, he shall confirm receipt of it forthwith.

2. The Ombudsman shall keep a register of the provinces, municipalities, water boards and bodies set up under the Joint Arrangements Act which have a separate system as referred to in section 1a, subsection 1 (b). He shall publish this register.

Section 1c

1. Provinces, municipalities, water boards and bodies set up under the Joint Arrangements Act as referred to in section 1a, subsection 1(b), shall make a payment to cover the costs involved in handling of petitions relating to their administrative authorities. The amount of the payment shall be established by Our Minister of the Interior and Kingdom Relations.
2. Further rules shall be established by or pursuant to an order in council concerning:
 - a. the calculation of the payment to be made;
 - b. the way in which payment is to be made;
 - c. the date on which payment is to be made.

Chapter II. The National Ombudsman

Section 2

1. There shall be a National Ombudsman.
2. The Ombudsman shall be appointed by the House of Representatives of the States General. In making an appointment, the House shall take account, as it sees fit, of a recommendation made, after joint consultations, by the vice-president of the Council of State, the president of the Supreme Court and the president of the Netherlands Court of Audit containing the names of at least three persons.
3. The appointment shall be for a term of six years.
4. If the House of Representatives wishes to re-appoint the current Ombudsman, it may set aside the second sentence of subsection 2.
5. If it proves to be impossible for the House of Representatives to appoint a new Ombudsman in time, the House shall provide for the temporary occupation of the office of Ombudsman. Section 10, subsections 5 to 7 shall apply *mutatis mutandis*.

Section 3

1. The House of Representatives shall terminate the employment of the Ombudsman at the commencement of the first month following that in which he reaches the age of sixty-five.

2. The House of Representatives shall also terminate the employment of the Ombudsman:
 - a. at his request;
 - b. if he is permanently unable to carry out his duties because of illness or disability;
 - c. if he accepts an office or post declared by this Act to be incompatible with the office of Ombudsman;
 - d. if he loses his Dutch nationality;
 - e. if he is convicted of a serious offence, or deprived of his liberty by a final and conclusive court judgment;
 - f. if he has been made the subject of a guardianship order, has been declared bankrupt, has agreed to a debt rescheduling arrangement, has been granted a moratorium on the payment of his debts or has been imprisoned for non-payment of debt by a final and conclusive court judgment;
 - g. if, in the opinion of the House of Representatives, he has as a result of his acts or omissions seriously undermined the confidence placed in him.

Section 4

1. The House of Representatives shall suspend the Ombudsman if:
 - a. he is being held in pre-trial detention;
 - b. he is convicted a serious offence or deprived of his liberty by a court judgment which has not yet become final and conclusive;

- c. he has been made the subject of a guardianship order, has been declared bankrupt, has agreed to a debt rescheduling arrangement, has been granted a moratorium on the payment of his debts or has been imprisoned for non-payment of debt by a court judgment which has not yet become final and conclusive.
 2. The House of Representatives may suspend the Ombudsman if he is the subject of a preliminary judicial investigation instituted in respect of a serious offence, or if there is a strong suspicion that facts or circumstances exist which could lead to dismissal, other than those referred to under section 3, subsection 2 (b).
 3. In the case referred to in subsection 2 of this section the suspension shall end after three months. The House of Representatives may however extend the suspension for periods of up to three months at a time.
 4. The House of Representatives shall lift the suspension as soon as the reasons for suspension cease to exist.
 5. The House of Representatives may order, when suspending the Ombudsman, that he is to receive no salary, or only a specified part of his salary, during his suspension.
 6. If the suspension ends otherwise than by dismissal, the House of Representatives may decree that all or a specified part of the salary the Ombudsman has not received shall be paid to him.

Section 5

1. The Ombudsman may not:
 - a. be a member of a public body to which elections take place in a manner prescribed by law;
 - b. hold public office for which he receives a fixed salary or remuneration;
 - c. be a member of a permanent government advisory body;
 - d. act as an advocate, procurator litis, or notary.
2. The Ombudsman shall not hold any position which is incompatible with the proper performance of his official duties or with his impartiality and independence or with public confidence therein.
3. The Ombudsman shall publish a list of any offices he holds other than the office of National Ombudsman.

Section 6

The provisions of the General Pensions (Holders of Political Office) Act shall apply to the Ombudsman, on the understanding that he is treated as a member of the House of Representatives of the States General.

Section 7

We shall lay down by order in council rules governing entitlements in the event of illness,

and the other rights and duties of the Ombudsman which pertain to his legal status, insofar as these are not prescribed by statute law.

Section 8

Before accepting office the Ombudsman shall swear on oath or solemnly affirm in the presence of the President of the House of Representatives:

- a. that he has not given or promised anything on any pretext whatsoever to any person, either directly or indirectly and either in his own name or that of any other person, to obtain his appointment, and that he has not accepted and will not accept any present or any promise from any person, either directly or indirectly, to do or to refrain from doing anything in the exercise of his office;
- b. to observe faithfully the Constitution.

Section 9

1. At the request of the Ombudsman the House of Representatives shall if necessary appoint one or more persons as Deputy Ombudsman. For this purpose, the Ombudsman shall draw up a recommendation containing the names of at least three persons.
2. Any Deputy Ombudsman shall be appointed for the term of office of the Ombudsman requesting his appointment, plus one year.
3. If the House of Representatives wishes to

re-appoint a Deputy Ombudsman, it may stipulate that the second sentence of subsection 1 shall not apply.

4. Sections 3 to 8 and 15 of this Act and sections 9:21 and 9:30 to 9:34 of the General Administrative Law Act shall apply mutatis mutandis to a Deputy Ombudsman.
5. The Ombudsman shall determine the activities of the Deputy Ombudsman.
6. The Ombudsman may stipulate that the powers referred to in section 16, subsection 3, of this Act and sections 9:27, 9:35 and 9:36 of the General Administrative Law Act, may also be exercised by a Deputy Ombudsman. The Ombudsman may draw up guidelines for the exercise of those powers.

Section 10

1. The Ombudsman shall make arrangements for his replacement by a Deputy Ombudsman, in case he is temporarily unable to perform his duties.
2. If no Deputy Ombudsman is present or available, the House of Representatives shall provide for a substitute as soon as possible. In such cases, substitution will end as soon as the Ombudsman is able to resume his duties, or, if the Ombudsman has been suspended, when the suspension is lifted.
3. If the Ombudsman dies or is removed from office under section 3, the House of

Representatives shall provide, as soon as possible, for the office of Ombudsman to be occupied temporarily by a Deputy Ombudsman.

4. If no Deputy Ombudsman is present or available, the House of Representatives shall provide for the office of Ombudsman to be occupied temporarily by a substitute as soon as possible.
5. Substitution shall end automatically when a new Ombudsman takes up his duties.
6. Section 2, subsection 2, second sentence and subsections 3 and 4, section 3, subsection 1, and sections 6 and 9 of this Act shall not apply to the person deputising or substituting for the Ombudsman pursuant to subsections 2 or 4.
7. If the person deputising or substituting for the Ombudsman as referred to in subsection 6 holds or is about to hold an office or membership as referred to in section 5, subsection 1, (b) and (c), the office or membership shall automatically be suspended for the period in which he is deputising or substituting.

Section 11

1. The Ombudsman shall be provided with an office.
2. The personnel of the office shall be appointed, promoted, suspended or dismissed by Us on the recommendation of the Ombudsman.
3. We shall decide in which cases members of the office personnel may be appointed, promoted, suspended or dismissed by the Ombudsman.

Chapter III. Supplementary provisions concerning the investigation

Section 12

The Ombudsman shall not be obliged to institute or to continue an investigation as referred to in section 9:18, subsection 1, of the General Administrative Law Act if a petition concerning the same action is being considered by a parliamentary committee empowered to deal with petitions, drawn from the Senate or House of Representatives or from the States General in joint session, or – unless a new fact or a new circumstance has come to light which might justify a different evaluation of the said action – if the parliamentary committee concerned has presented its conclusions on the petition to the Senate or House of Representatives of the States General or to the States General in joint session.

Section 13

Section 9:31, subsection 1, third sentence, of the General Administrative Law Act shall not apply to Our Ministers.

Section 14

Our Ministers may deny the Ombudsman entry to certain places if in their opinion entry would be detrimental to the security of the state.

Section 15

The Ombudsman may order that persons who fail to appear despite an official summons to attend shall be brought before him by the police to discharge their obligations.

Section 16

1. The Ombudsman shall submit an annual report of his activities to both Houses of Parliament and to Our Ministers, and also to the representative bodies of provinces, municipalities and water boards and the boards of bodies set up under the Joint Arrangements Act as referred to in section 1a, subsection 1 (b), insofar as the Ombudsman has dealt with petitions relating to their administrative authorities. Section 10 of the Government Information (Public Access) Act shall apply mutatis mutandis, on the understanding that the Ombudsman may add items to be communicated confidentially to members of Parliament and Our Ministers.
2. The Ombudsman shall publish the report and make it generally available.
3. The Ombudsman may also, immediately after closing an investigation, communicate his findings and decision to both Houses of Parliament and to the representative bodies of provinces, municipalities and water boards and the boards of bodies set up under the Joint Arrangements Act, whenever he deems

earlier communication necessary for the bodies concerned or whenever any of the bodies referred to in this subsection request such information.

Chapter IV Transitional and final provisions

Section 17

Proposals for decrees implementing this Act shall be submitted to Us by Our Minister for the Interior and Kingdom Relations.

Section 18

If a province, municipality, water board or body set up under the Joint Arrangements Act has instituted a separate system for dealing with petitions as referred to in section 1a, subsection 1 (b), the Ombudsman shall retain his competence to deal with petitions relating to its administrative authority which were received by him before the date on which its own system was instituted.

Section 19

Up to one year following the entry into force of an order in council as referred to in section 1a, subsection 1 (e), a petition may be submitted to the National Ombudsman relating to an action of the administrative authority concerned which took place before the administrative authority

concerned was granted exceptional status by that order in council.

Section 20

This Act may be cited as the National Ombudsman Act.

(Sections II – XV of the Act establishing the National Ombudsman Act contain amendments to various Acts and a provision concerning the entry into force of the Act and are not included.)

GENERAL ADMINISTRATIVE LAW ACT (ALGEMENE WET BESTUURSRECHT)

Chapter 9, title 9.2

Title 9.2 Handling of complaints by an Ombudsman

Part 9.2.1 General provisions

Section 9:17

In this Act Ombudsman means:

- a. the National Ombudsman, or
- b. an ombudsman or ombudscommittee appointed in accordance with the Municipalities Act, the Provinces Act, the Water Boards Act or the Joint Arrangements Act.

Section 9:18

1. Any person has the right to petition the Ombudsman in writing to investigate the way in which an administrative authority has acted towards him or another person in a particular matter.
2. If the petition is submitted to an ombudsman who is not competent to deal with it, the date of receipt shall be recorded and the petition shall be sent as soon as possible to the ombudsman within whose competence it lies; at the same time, the petitioner shall be notified that this has been done.

3. Unless section 9:22, 9:23 or 9:24 applies, the Ombudsman shall be obliged to institute a petition as referred to in subsection 1.

Section 9:19

1. If the Ombudsman believes that recourse may be had to an objection, judicial review or complaints procedure, he shall inform the petitioner of this possibility as soon as possible and he shall submit the petition to the competent body, once the date of receipt has been noted on it, unless the petitioner has let it be known that the petition is to be returned to him.
2. Section 6:15, subsection 3 shall apply mutatis mutandis.

Section 9:20

1. Before submitting the petition to an ombudsman, the petitioner shall submit a complaint about the action to the appropriate administrative authority, unless this cannot reasonably be expected of him.
2. Subsection 1 shall not apply if the petition relates to the way in which the appropriate administrative authority has dealt with a complaint.

Section 9:21

Chapter 2, with the exception of section 2:3, subsection 1, shall apply mutatis mutandis to dealings with the Ombudsman.

Part 9.2.2 Competence

Section 9:22

The Ombudsman shall not be entitled to institute or continue an investigation if the petition relates to:

- a. matters of general government policy, including general policy on law enforcement or the general policy of the administrative authority in question;
- b. generally binding regulations;
- c. an action in respect of which a complaint or an application for judicial review may be lodged, unless the action consists of the failure to give a decision in good time, or if a complaint or review is pending in respect of the said action;
- d. an action in respect of which judgment has been given by an administrative court;
- e. an action in respect of which proceedings have been instituted before a judicial body other than an administrative court, or if appeal lies from a judgment given in such proceedings;
- f. an action which is subject to the jurisdiction of the courts.

Section 9:23

The Ombudsman shall not be obliged to institute or to continue an investigation if:

- a. the petition does not meet the requirements listed in section 9:28, subsections 1 and 2;
- b. the petition is manifestly unfounded;
- c. the interest of the petitioner or the seriousness of the action is manifestly insufficient;
- d. the petitioner is not the person in relation to whom the action in question took place;
- e. the petition relates to an action in respect of which an objection may be lodged, unless the action consists of the failure to give a decision in good time, or if an objection is pending;
- f. the petition relates to an action in respect of which the petitioner could have lodged an objection, an application for judicial review or a complaint in the past;
- g. the petition relates to an action concerning which judgment has been given by a judicial body other than an administrative court;
- h. the requirements of section 9:20, subsection 1 have not been met;
- i. a petition concerning the same action is being considered by him, or – unless a new fact or a new circumstance has come to light which might justify a different evaluation of the said action – has been dealt with by him;
- j. proceedings are pending before a judicial body concerning an action of the administrative authority which is closely related to the

substance of the petition, or if such proceedings are pending before any other body pursuant to an objection, an application for administrative review or a complaint;

- k. the petition relates to an action which is closely related to an issue concerning which proceedings are pending before a judicial body other than an administrative court;
- l. the intervention of the Ombudsman has, in his opinion, led to proper steps being taken to satisfy the grievances of the petitioner;
- m. a petition relating to the same action is being dealt with or has been dealt with by an independent complaints body pursuant to a statutory complaints procedure.

Section 9:24

1. The Ombudsman shall likewise not be obliged to institute or to continue an investigation if the petition is submitted after more than a year has elapsed:
 - a. since the administrative authority gave notification of the findings of the investigation, or
 - b. since the handling of the complaint by the administrative authority ended in some other way, or should have ended pursuant to section 9:11.
2. Notwithstanding the provisions of subsection 1, the time limit shall be one year after the action took place, if the petitioner cannot

reasonably be expected first to submit a complaint to the administrative authority. If the action in question has been submitted to a judicial body other than an administrative court within one year of the date on which it took place, or if an objection, an application for administrative review or a complaint has been lodged, the term of one year shall end one year after the date on which:

- a. the court gave a judgment from which no appeal lies, or
- b. the proceedings ended in some other way.

Section 9:25

1. If the Ombudsman decides not to institute an investigation or not to continue an investigation on the grounds referred to in sections 9:22, 9:23 or 9:24 he shall give the petitioner written notification of this as soon as possible, stating his reasons.
2. In the event that he does not continue an investigation, he shall also send the notification referred to in subsection 1 to the administrative authority and, where appropriate, the person to whose action the investigation relates.

Section 9:26

Unless section 9:22 applies, the Ombudsman shall be entitled to institute an investigation on his own initiative into the way in which an

administrative authority has acted in a particular matter.

Section 9:27

1. The Ombudsman shall determine whether or not the administrative authority acted properly in the matter under investigation.
2. If a judicial body has given judgment in respect of the action to which the Ombudsman's investigation relates, the Ombudsman shall take into account the legal grounds on which the judgment was partly or wholly based.
3. The Ombudsman may, in the light of his investigation, make recommendations to the administrative authority.

Part 9.2.3 Procedure

Section 9:28

1. The petition should be signed and contain at the minimum:
 - a. the name and address of the petitioner;
 - b. the date;
 - c. a description of the action concerned, details of the person to whose action the petition relates and details of the person in relation to whom the action took place, if this is not the petitioner;
 - d. the grounds of the petition;

- e. details of how a complaint has been submitted to the administrative authority, and if possible the findings of the investigation of the complaint by that authority, its views on the complaint, and any conclusions that it may have reached.
2. If the petition is couched in a foreign language and the proper processing of the complaint makes a translation necessary, the petitioner shall provide a translation.
3. If the requirements of this section are not met or if the petition is wholly or partly amended by virtue of section 2:15, the Ombudsman shall give the petitioner an opportunity to remedy the omission within a period to be specified by him.

Section 9:29

No person who was involved in the action to which the petition relates may assist in processing that petition.

Section 9:30

1. The Ombudsman shall give the administrative authority, the person responsible for the action in question, and the petitioner the opportunity to explain their points of view.
2. It shall be at the discretion of the Ombudsman whether they explain their points of view in writing or verbally, and in each other's presence or otherwise.

Section 9:31

1. The administrative authority, persons employed under its responsibility, persons formerly so employed, witnesses and the petitioner shall provide the Ombudsman with the information necessary for his investigation, and must appear in person before him if so requested. The same obligations rest on any official body, on the understanding that the body itself shall decide which of its members is to discharge its obligations, unless the Ombudsman designates one or more members. The Ombudsman may order persons whose attendance is required to appear in person.
2. The Ombudsman may obtain information concerning the policy conducted under the responsibility of a Minister or an administrative authority from the persons and bodies concerned only through the Minister or the administrative authority in question. The body through which information is sought may be represented when public servants are interviewed.
3. Within a period to be specified by the Ombudsman, the administrative authority, the person to whose action the petition relates, and other parties shall supply any documents in their possession which the Ombudsman has requested in writing.
4. The persons whose attendance is required pursuant to subsection 1 or those who are obliged to supply documents pursuant to

subsection 3 may, if there are weighty reasons for doing so, refuse to give information or supply documents or may notify the Ombudsman that the information or documents may only be disclosed to him in person.

5. The Ombudsman shall decide whether the refusal or restriction on disclosure referred to in subsection 4 is justified.
6. If the Ombudsman decides that the refusal is justified, the obligation shall lapse.

Section 9:32

1. The Ombudsman shall be entitled to entrust certain activities to experts. He shall also be entitled to obtain the assistance of experts and interpreters to further his investigations.
2. Persons summoned as experts or interpreters shall be obliged to appear before the Ombudsman and to render their services impartially and to the best of their professional ability. Section 9:31, subsections 2 to 6 shall apply to experts and public servants *mutatis mutandis*.
3. The Ombudsman may determine that witnesses shall not be heard and interpreters shall not be permitted to perform their duties until they have taken an oath or made a solemn affirmation. Witnesses must in that case swear on oath or solemnly affirm that they will tell the whole truth and nothing but the truth and interpreters that they will carry out their duties conscientiously.

Section 9:33

1. Petitioners, witnesses, experts and interpreters required by the Ombudsman to attend shall receive payments. The cost of such payments shall be met by the legal entity with responsibility for the administrative authority to whose action the petition relates, if it is a municipality, province, water board or body set up under the Joint Arrangements Act. In all other cases, the cost of such payments shall be met by the State. The provisions laid down by or pursuant to the Criminal Cases (Fees) Act shall apply *mutatis mutandis*.
2. Persons referred to in subsection 1 who are public servants shall not receive any payment if they are summoned to appear in that capacity.

Section 9:34

1. The Ombudsman may institute an on-site investigation. For this purpose, he shall be entitled to access any site, other than a dwelling without the consent of the occupier, insofar as reasonably necessary for the performance of his duties.
2. Administrative authorities shall provide any assistance required in the interests of the investigation referred to in subsection 1.
3. An official report of the investigation shall be prepared.

Section 9:35

1. Before closing the investigation, the Ombudsman shall communicate his findings in writing to:
 - a. the relevant administrative authority;
 - b. the person to whose action the investigation relates;
 - c. the petitioner.
2. The Ombudsman shall give them the opportunity to comment on his findings within a period to be specified by him.

Section 9:36

1. Once an investigation has been closed, the Ombudsman shall draw up a report containing his findings and his decision. In doing so, he shall take account of section 10 of the Government Information (Public Access) Act.
2. If the Ombudsman decides that the action in question was not-proper, he shall specify in his report which of the standards of proper conduct was breached.
3. The Ombudsman shall send his report both to the administrative authority concerned and to the petitioner and the person to whose action the petition relates.
4. If the Ombudsman makes a recommendation to the administrative authority as referred to in section 9:27, subsection 3, the administrative authority shall notify the Ombudsman within

a reasonable period of time of the action it intends to take on the recommendation. If the administrative authority is considering taking no action on the recommendation, it must notify the Ombudsman of this and state its reasons.

5. The Ombudsman shall provide anyone who makes a request to that end with a copy of or an extract from the report referred to in subsection 1. The Civil Cases (Fees) Act and provisions made pursuant thereto shall apply mutatis mutandis to the decision as to whether these shall be provided for a fee or free of charge. He shall also deposit a copy of the report for public inspection at a place to be designated by him.