

## **The role of the Human Rights Ombudsman in supervising the Armed Forces of the Republic of Slovenia**

### 1. The competences and powers of the Human Rights Ombudsman

The concept of the Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman) is of a classical Scandinavian type of ombudsman whose basic activity is to deal with individual initiatives. The basis for the establishment and operation of the institution was provided in Article 159 of the Constitution of the Republic of Slovenia of 1991. It basically states that in order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities, and bearers of public authority, the office of the Ombudsman shall be established by law. In accordance with the Constitution, special ombudsmen for particular fields may also be established by law; however, these powers have not hitherto been used. The Ombudsman still covers all the areas of the protection of human rights and all territorial authority levels.

The Human Rights Ombudsman Act was adopted by the National Assembly in 1993 by the regular legislative procedure, which requires three readings. A particularity of the Ombudsman Act is the fact that it was not adopted on the proposal of the Government, but on the proposal of a single deputy. The Slovenian Ombudsman Act set an example of a successful legal model in many countries in transition in Central and Eastern Europe.

The Ombudsman may investigate cases of illegal or irregular operation of state authorities and in performing its function it is obliged **to act in accordance with the provisions of the Constitution and international legal acts governing human rights and fundamental freedoms**. We chose not to quote any individual laws, as they are not taken into consideration should the Ombudsman assess that they are not in compliance with the Constitution or with ratified international treaties. This assessment, of course, needs to be grounded on sufficiently convincing arguments.

In its interventions, the Ombudsman may also refer to the **principles of justice and good management**. On this basis, it can propose exceptional solutions in cases not foreseen by regulations. If several individuals find themselves in such a position, amendments to regulations need to be proposed, as the Ombudsman's proposals must not compromise the principles of legality and non-discrimination in the use of regulations (equality before the law). In some cases, exceptional proposals on the part of the Ombudsman have already been accepted.

Pursuant to Article 25 of the Act, the Ombudsman may communicate its opinion, from the aspect of the protection of human rights and fundamental freedoms, irrespective of the type or stage of proceedings that are being conducted by the respective body. This provision is of utmost importance as it enables the Ombudsman to act in cases where

proceedings have not yet been concluded, for instance in courts. It defines the possibility to file a brief with the court as an *amicus curiae* –“friend of the court”.

Pursuant to the Constitutional Court Act, the Ombudsman is entitled to initiate a procedure for the review of constitutionality or legality of regulations or general acts issued for the exercise of public authority or, in agreement with the affected party, file a constitutional complaint due to the violation of a human right or a fundamental freedom by an individual act. In both cases, the Ombudsman holds the authorised position of applicant, since proving a legitimate interest is not required; its request must only be in connection with the violation of human rights.

The Ombudsman is entitled to present initiatives to amend laws and other regulations to the Parliament and the Government. The Ombudsman may also make suggestions to state bodies and affiliated organisations for improving their work and attitude towards their clients, contributing in this way to more client-friendly work on the part of public officials and of the public administration in general. The Ombudsman carries out these tasks particularly through regular annual and special reports submitted to the National Assembly or its working bodies.

## **2. The role of the Human Rights Ombudsman in supervising the Armed Forces of the Republic of Slovenia**

In view of supervision of the Armed Forces, the Ombudsman shall have no special competences or powers. The Ombudsman shall use the powers and competences provided by the Human Rights Ombudsman Act and other acts. The Ombudsman shall also be an independent supervisor (National Preventive Mechanism) on the basis of the additional Protocol to the UN Convention against torture; however, the Ombudsman does not exercise these powers in supervising the Armed Forces because there are no longer any conscripts, i.e. persons whose personal freedom is restricted.

Most of the issues dealt with by the Ombudsman in relation to the Armed Forces result from the area of employment relationships. To be more precise, particularities for arranging employment relationships and acts adopted by management and supervisory bodies in the Armed Forces.

The Ombudsman regularly monitors the status of employees in the Slovenian Armed Forces. For this reason, the Ombudsman invited the representatives of military trade union organisations to become acquainted with the social and general position of members of the Armed Forces. At this meeting, the Ombudsman was informed of the issue of the retirement of military personnel, fixed-term employment, long-lasting lawsuits before the courts, and other topics. Each Ombudsman shall receive, on a

working visit, the Chief of the General Staff of the Slovenian Armed Forces with his colleagues. Primarily outstanding issues brought to the attention of the Ombudsman by trade unions or individual initiators are discussed at these meetings. The issues of the pay policy, abuse in the workplace (mobbing), arranging employment relations and renewing contracts with female soldiers are discussed.

One of the issues with which the Ombudsman has been dealing with for a long time is the question of the specificity of acts concerning military command and control against which there is no judicial protection of the rights deriving from the employment relationship before the Labour Court. Military trade unions and certain individuals have proposed that the Ombudsman should file a request for the review of the constitutionality and legality of disputed articles of the Defence Act and the Service in the Slovenian Armed Forces Act. It is an important topic and, therefore, the Ombudsman intends to discuss this in particular with the initiators. A decision on the eventual filing of a request for the review of constitutionality shall be taken by the Office of the Ombudsman on the basis of criteria adopted in advance for such cases and after a careful examination of the concrete initiatives.

Finally, I would like to conclude with the following highlights:

- For an institution such as the Ombudsman it is very important that it has the possibility of direct access to the National Assembly and the possibility to propose amendments to regulations.
- It is also very important, especially in the event the possibility referred to in the preceding point cannot be ensured for various reasons, to have direct access to the Constitutional Court and the possibility to review the constitutionality and legality of regulations.