

THE NETHERLANDS

National Ombudsman Act

Act of 4 February 1981 (Bulletin of Acts and Decrees 1981, 35), most recently amended by Act of Parliament of 12 May 1999 (Bulletin of Acts and Decrees 1999, 214).

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:

Definitions

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 cooperation areas under the Joint Regulations Act designated in accordance with section 1b;
- 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 cooperation areas in relation to the actions of investigating officers employed by them;
- e. other administrative authorities, unless they have been excluded by order in council.

2. Lapsed.

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. The administrative authorities of the provinces, municipalities, water boards and cooperation areas under the Joint Regulations Act to which this Act applies shall be designated by ministerial order.

2. Designation as referred to in subsection 1 shall be granted by Our Minister of the Interior at the request of the executive of the relevant province, municipality, water board or cooperation area. At a request of or on behalf of the provinces or water boards their respective designation shall take place simultaneously.

3. A request for designation shall be submitted to Our Minister of the Interior before 1 July in the year preceding that in which designation is to take effect. Our Minister shall immediately confirm receipt of such a request.

4. Designation of eligible administrative authorities shall take place on 1 January of the year in question. Nevertheless, Our Minister of the Interior may order designation to take effect as of another date if there are compelling reasons to do so. The designation order shall be published in the Government Gazette.

5. Designation shall be valid for a period of four years. This shall on each occasion be extended for a period of two years, unless the executive of the province, municipality, cooperation area (under the Joint Regulations Act) or water board has requested the Minister of the Interior, before 1 January of the year preceding that in which the extension will take effect, to terminate designation. Our Minister shall immediately confirm receipt of such a request. The termination of designation shall be announced in the Government Gazette by Our Minister of the Interior.

Section 1c

1. The legal entity to which the administrative authority designated under section 1b belongs shall make a payment, the amount of which shall be established by Our Minister of the Interior, to cover the costs of making the National Ombudsman's services available to the authority in question.

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.

Section 2

1. There shall be a National Ombudsman.

2. The Ombudsman will be appointed by the Lower House of Parliament. In making an appointment, the Lower 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 Lower House 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 Lower House to appoint a new Ombudsman in time, the Lower House shall provide for the temporary occupation of the office of Ombudsman. Section 10, 5th to 7th subsection shall apply mutatis mutandis.

Section 3

1. The Lower House 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 Lower House 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 Dutch citizenship;
- e. if he is convicted of an offence, or is deprived of his liberty by a final and conclusive court judgement;
- 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 for the payment of his debts or has been imprisoned for non-payment of debt by a final and conclusive court judgement;
- g. if, in the opinion of the Lower House of Parliament, he has as a result of his acts or omissions seriously undermined the confidence placed in him.

Section 4

1. The Lower House shall suspend the Ombudsman if:

- a. he is remanded in custody;
- b. he is convicted of an offence or deprived of his liberty by a court judgement which has not yet become final and conclusive;
- c. he is made the subject of a guardianship order, or is 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 judgement which has not yet become final and conclusive.

2. The Lower House may suspend the Ombudsman if he is the subject of a preliminary judicial examination instituted in respect of an 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 Lower House may however extend the suspension for periods of up to three months at a time.
4. The Lower House shall lift the suspension as soon as the reasons for suspension cease to exist.
5. The Lower House may order, when suspending the Ombudsman, that he will receive no salary, or only a specified part of his salary, during his suspension.
6. If the suspension ends otherwise than by dismissal, the Lower House 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 for 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, solicitor, 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.

Section 6

The provisions of the General Pensions (Holders of Political Office) Act shall apply to the Ombudsman, in such a way that he is treated as a member of the Lower House of Parliament, but that his income is settled according to section 9 of the said Act.

Section 7

We shall lay down by order in council 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 Speaker of the Lower House of Parliament:

- 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 Lower House 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. On the recommendation of the new Ombudsman the Lower House may extend the term of office of the Deputy Ombudsman by a period not exceeding six months.
3. If the Lower House wishes to re-appoint a Deputy Ombudsman, it may stipulate that second sentence of subsection 1.
4. Sections 3 to 8, 18 to 24 and 27, subsection 5 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 the sections 25, 26, 27, subsection 1 to 4, and 28, subsection 3, may also be exercised by a Deputy Ombudsman. The Ombudsman may draw up directions 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 Lower House 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 his office under section 3, the Deputy Ombudsmen will stay on, the provisions of section 9,

subsection 2, sentence one notwithstanding, until the date on which a new Ombudsman takes up his duties. In the event of such death or removal from office, the Lower House 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 Lower House shall provide for the office of Ombudsman to be occupied temporarily by a substitute as soon as possible.

5. The replacement 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 en 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 and 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 and dismissed by the Ombudsman.

The investigation

Section 12

1. Any person has the right to request the Ombudsman in writing to investigate the way in which an administrative authority has acted towards a natural person or legal entity in a particular matter, unless more than a year has elapsed since the action in question. If the action in question is submitted to the judgement of a judicial tribunal or is referred for judgement to another body pursuant to a statutory provision of administrative law within one year of the date on which it took place, the term of one year shall end one year after the date on which the court gives a judgement from which no appeal lies, or after the proceedings have ended in some other way.

2. Before submitting the petition referred to in subsection 1, the petitioner shall submit a complaint about the action to the appropriate administrative authority, unless this cannot reasonably be expected of him. If the complaint was submitted within a period of one year after the action took place, the term referred to in subsection 1 shall end one year after the notification by the administrative authority of the findings of the investigation.

3. The petition should contain:

a. the name and address of the petitioner;

b. as clear as possible a description of the action concerned and the name of the person whose actions are complained of and the name in relation to whom the action took place;

c. the grievances relating to the action;

d. the way in which a complaint was submitted and if possible the findings of the investigation of the complaint by the relevant administrative authority.

4. If the petition is couched in a foreign language and the proper processing of the complaint makes a translation necessary, the Ombudsman may decide not to deal with the petition, provided the petitioner has had the opportunity to supply a translation of the petition within a period determined by the Ombudsman.

5. Unless section 16 applies, the Ombudsman shall be entitled, and, unless section 14 applies, shall also be grant a petition as referred to in subsection 1.

Section 13

If the Ombudsman believes that some other statutory remedy is available to the petitioner under administrative law regarding the action complained of in the petition, the Ombudsman shall refer the petitioner forthwith to the competent authority and shall submit the petition to that body after the date of receipt has been noted on it. For the purposes of the rules governing the remedy available, the petition shall be deemed to satisfy the provisions of such rules governing the way in which the petition should be lodged. Moreover, the date of receipt of the petition by the Ombudsman shall be deemed to be the date on which proceedings are instituted before the body referred to in such rules. The said body shall allow the petitioner thirty days (from the date of notification), to supplement or amend the petition in accordance with the relevant rules and to pay such fees as may be owed for hearing of the case.

Section 14

The Ombudsman shall not be obliged to institute or to continue an investigation as referred to in section 12, subsection 1, if:

a. the petition is filed too late or does not meet the requirements listed in section 12, subsection 3 and 4;

- 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. a petition concerning the same act is either being considered by himself, by a parliamentary committee empowered to deal with petitions, drawn from the Upper or Lower House 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 - has been dealt with by him or the parliamentary committee concerned has presented its conclusions on the petition to the Upper or Lower House of Parliament or to the States General in a joint session;
- f. 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 provision;
- g. a statutory remedy under administrative law was available to the petitioner but was not used;
- h. judgement has been given by a judicial tribunal other than pursuant to a statutory provision of administrative law;
- i. the requirements of section 12, subsection 2 have not been met, unless it cannot reasonably be expected of the petitioner that he should await the outcome of the processing of the complaint by the administrative authority;
- j. if a case is pending before a judicial tribunal concerning an action by an administrative authority, which act is closely related to the substance of the petition, or if such a case is pending before any other body pursuant to a statutory provision of administrative law.
- k. if the petition relates to an action which is closely related to an issue concerning which proceedings are pending before a court or tribunal other than pursuant to a statutory provision of administrative law.

Section 15

Unless section 16 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 16

The Ombudsman shall not be entitled to institute an investigation as referred to in sections 12, subsection 1, or 15:

- a. concerning matters of general government policy, including general policy on law enforcement or the general policy of the administrative authority in question;
- b. concerning generally binding regulations;
- c. if a statutory remedy is available under administrative law in respect of the action in question, unless section 6:12 of the General Administrative Law Act is applicable, or proceedings have been instituted to obtain such a remedy;
- d. if proceedings concerning the action in question have been instituted before a judicial body other than pursuant to a statutory provision of administrative law, or if appeal lies from a judgement given in such proceedings;
- e. if a judgement has been given by a judicial body in respect of the action in question pursuant to a statutory provision of administrative law;
- f. in matters relating to taxes and other impositions if a statutory remedy under administrative law was available in respect of the action in question;
- g. concerning actions which are subject to the jurisdiction of the courts.

Section 17

1. If the Ombudsman decides not to grant a petition to institute an investigation or not to continue an investigation on the grounds referred to in sections 14 or 16 he shall inform the petitioner as soon as possible in writing, giving his reasons. In the event that he does not continue an investigation, he shall also inform the administrative authority and, where appropriate, the public servant in question. Having regard to the provisions of subsection 3, he shall take into account the last sentence of section 19, subsection 4, of this Act and section 10 of the Government Information (Public Access) Act.
2. If, pursuant to the provisions of section 14 (i), the Ombudsman decides not to institute an investigation or not to continue an investigation, he shall inform the petitioner the possibility of notifying the administrative authority, agency or department or the company operating under the responsibility of that body, or the public servant concerned, of his complaints regarding the way in which that body or public servant has acted, giving that body or public servant an opportunity to explain its or his point of view.
3. The Ombudsman shall agree to a request by any person for a copy of or excerpt from the written statement referred to in subsection 1. The Civil Cases (Fees) Act and the 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.

Section 18

1. The Ombudsman shall give the administrative authority, the person responsible for the action in question, and in the case referred to in section 12, subsection 1, the petitioner, the opportunity to explain their point of view either in writing or verbally and, at the discretion of the Ombudsman, either in each other's presence or otherwise.

2. The parties concerned may be represented or assisted by counsel. The Ombudsman may refuse to hear as representative certain persons who make it their business to give legal advice, but who are not advocates or procurators litis.

Section 19

1. The administrative authority, the person responsible for the action in question, witnesses and the petitioner shall provide the Ombudsman with the information needed by him 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 decides which of its members is to discharge its obligations, unless the Ombudsman designates one or more members. The persons concerned may be assisted by counsel.

2. The obligation to appear before the Ombudsman shall not apply to Our Ministers. If a Minister does not appear in person, he shall appoint a representative.

3. The Ombudsman may obtain information concerning the policy conducted under the responsibility of a Minister or an administrative authority from the public servants concerned only through the Minister or the administrative authority in question.

4. The persons whose attendance is required under subsection 1 may be exempted from giving information on the grounds that they have a duty of confidentiality by virtue of their office or profession, but only regarding matters which have been disclosed to them in such a capacity. Public servants may refuse to give information on the grounds of the duty of confidentiality imposed by the Central and Local Government Personnel Act, the 1931 Military Personnel Act or the 1993 Police Act only if supplying the information required would be contrary to any other statutory provision concerning confidentiality or to the interests of the State. The Ombudsman may request the body through which information must be sought in accordance with subsection 3 to submit written confirmation to substantiate any claim that a person is entitled to exemption. The body may decide that the duty of confidentiality will be waived in respect of information supplied to the Ombudsman on condition that the information remains secret.

5. The body through which information is sought may be represented when the public servants are interviewed.

Section 20

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. Persons summoned as experts or interpreters shall be obliged to appear before the Ombudsman and render their services.

2. Section 19, subsections 3, 4 and 5 of shall apply mutatis mutandis to experts who are also public servants.

3. Experts and interpreters shall have a duty of confidentiality in respect of matters that have become known to them in the course of their duties.

Section 21

1. Summonses to appear under sections 19 and 20 shall be sent by registered letter.

2. 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 22

1. The Ombudsman may order that witnesses shall not be heard and that interpreters shall not be permitted to carry out their duties until they have taken an oath or made a solemn affirmation.

2. In such cases, they shall take the oath, or make the solemn affirmation, in the presence of the Ombudsman; if they are heard as a witness they shall undertake to speak the whole truth and nothing but the truth; the interpreters shall undertake to carry out their duties meticulously.

3. The experts shall be obliged to perform their task impartially, and to the best of their ability.

Section 23

1. Persons summoned to appear under this Act shall receive, on request, payment of their travel and accommodation expenses and compensation for lost working hours from State funds in accordance with the provisions of the Civil Cases (Fees) Act and the provisions made pursuant thereto.

2. Unless provided otherwise for by order in council, persons referred to in subsection 1 who are public servants shall not receive any payment as referred to in section 1 if they are summoned to appear in their capacity as public servant.

3. The Ombudsman shall determine the amount to be paid in accordance with this section.

Section 24

1. On the written request of the Ombudsman, documents or copies of documents used in performance of the government's duties in the

matter at issue shall be submitted to him for the purposes of the investigation. Section 19, subsections 3 and 4, shall apply mutatis mutandis.

2. If he considers it necessary in the interests of the investigation the Ombudsman may enter without consent any place other than a dwelling where the administrative authority responsible for the action under investigation carries out its duties. He may enter a dwelling only with consent of the occupier.

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

Section 25

1. Before closing the investigation, the Ombudsman shall communicate his findings to the relevant administrative authority in writing and, in appropriate cases, to the public servant whose actions have been the subject of the investigation, and in the case referred to in section 12, subsection 1, to the petitioner.

2. The Ombudsman shall give the administrative authority, the public servant and the petitioner the opportunity to comment on his findings within a period fixed by him.

Section 26

1. The Ombudsman shall determine whether or not the administrative authority acted properly in the matter under investigation.

2. If a judicial tribunal has given judgement, other than pursuant to a statutory provision of administrative law, in respect of the action to which the Ombudsman's investigation relates, the Ombudsman shall take into account the legal grounds on which the judgement was partly or wholly based.

Section 27

1. Once an investigation has been closed the Ombudsman shall draw up a report containing his findings and his decision. Having regard to the provisions of subsection 4, he shall take into account the last sentence of section 19, subsection 4, of this Act and the provisions of section 10 of the Government Information (Public Access) Act.

2. The Ombudsman shall send his report to the administrative authority concerned and, where appropriate, to the public servant whose actions have been investigated. If the investigation was carried out in response to a petition as referred to in section 12 he shall also send his report to the petitioner.

3. If he deems fit, the Ombudsman may notify the body concerned of any measures which he considers should be taken.

4. 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.

5. In all other respects, the Ombudsman shall have a duty of confidentiality with regard to matters that become known to him in the performance of his duties, insofar as the nature of such matters makes this necessary.

Section 28

1. The Ombudsman shall submit yearly a report of his activities to both Houses of Parliament and to Our Ministers. 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 notify both Houses of Parliament of his findings and decision immediately after closing an investigation, whenever he deems earlier communication necessary or whenever one of the Houses requests such information.

Transitional and final provisions

Section 29

Proposals for decrees implementing this Act shall be submitted to Us by Our Minister for Home Affairs.

Section 30

Section 12 shall not apply to actions performed by bodies designated by ministerial order as referred to in section 1b, prior to the date on which the said order came into force.

Section 30a

Up to one year following the entry into force of an order in council as referred to in section 1a, subsection 1(e), or on the expiry of a designation as referred to in section 1b, a petition as referred to in section 12 may be submitted to the National Ombudsman relating to an action of the administrative authority concerned which took place:

1. before the administrative authority concerned was granted exceptional status by an order in council as referred to in section 1a, subsection 1(e),or

2. before the designation of the administrative authority concerned as referred to in section 1b expired.

Section 31

This Act may be cited as the National Ombudsman Act.