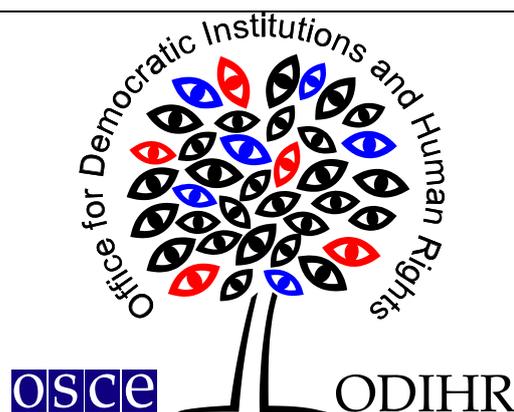


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**OPINION ON THE
LAW OF THE REPUBLIC OF LITHUANIA
ON THE SEIMAS OMBUDSMEN**

**based on an official English translation of the Law provided by
the Ministry of Foreign Affairs of the Republic of Lithuania**

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I. INTRODUCTION

1. *On 20 July 2011, the Vice-Minister of Foreign Affairs of the Republic of Lithuania sent a letter to the Director of the OSCE/ODIHR asking for a review of the current Law of the Republic of Lithuania on the Seimas Ombudsmen¹ (hereinafter “the Law”). In his letter, the Vice-Minister stated that in order to ensure compatibility with the United Nations Principles relating to the status of national institutions (hereinafter “the Paris Principles”)², the Government of Lithuania is considering to establish an independent National Human Rights Institution, possibly in the form of a Parliamentary Ombudsman. For this purpose, the Seimas Human Rights Committee will set up a working group.*
2. *This Opinion has been prepared in response to this request, which specifically asked ODIHR to assess the Law’s compatibility with the Paris Principles and make recommendations that would be useful to the Government in setting up a National Human Rights Institution.*

II. SCOPE OF REVIEW

3. The scope of the Opinion covers only the above-mentioned Law, which was submitted for review, while taking into account relevant provisions of the Constitution of Lithuania³. The Opinion does not constitute a full and comprehensive review of the question of human rights protection through the Seimas Ombudsmen (hereinafter “the Ombudsmen”) in light of all available framework legislation governing the issue in the Republic of Lithuania. The ensuing recommendations are based on international standards and practices governing National Human Rights Institutions (hereinafter “NHRIs”), as found in the Paris Principles⁴ and the General Observations of the Sub-Committee on Accreditation of the International Coordination Committee of National Institutions (see par 11 *infra*) which has developed the Paris Principles further, as well as OSCE Commitments. Furthermore, the Opinion will be grounded on the basic rule of law principles of legality, transparency and foreseeability of laws.
4. The Opinion is based on an official translation of the Law. Errors from translation may nevertheless result.
5. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Law and related legislation that the OSCE/ODIHR may make in the future.

¹ Republic of Lithuania Law on the Seimas Ombudsmen, no. VIII-950, adopted on 3 December 1998, last amended on 13 May 2010 by Law no. XI-808.

² Defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

³ The Constitution of the Republic of Lithuania, adopted by the citizens of Lithuania per referendum of 25 October 1992.

⁴ *Op cit.* note 2.

III. EXECUTIVE SUMMARY

6. A number of provisions of the current Law on the Seimas Ombudsmen reflect good international practice on how to ensure a strong and effective NHRI. However, many articles of the Law would benefit from certain amendments; indeed, it may even be preferable to draft a completely new Law in order to ensure full compliance of the Law or a future Law on the Seimas Ombudsman with international standards.
7. Based on the above, it is thus recommended as follows:

1. Key Recommendations

- A. to consider drafting a new restructured law on the Ombudsman, which would foresee only one Ombudsman and which would adopt a broader human-rights based approach, in accordance with the Paris Principles; [pars 17-19, 22, 24 and 70]
- B. to make explicit reference to the mandate of promoting and protecting human rights in the purpose of the Law; [par 20]
- C. to include a reference to the obligation of the Ombuds Office to engage closely with civil society when fulfilling its mandate, as well as with regional and international human rights mechanisms; [par 21]
- D. to explicitly strengthen the independence of the Ombuds Office in the Law, including its financial independence [pars 25, 66 and 67]
- E. to include in the Law a wide immunity clause for the Ombudsmen and staff of the Ombuds Office; [par 26]
- F. to ensure that Ombudsmen are elected, not appointed, by a two-thirds majority of the Seimas, following a pluralistic, inclusive and transparent recruitment and selection procedure; [pars 35-37]

2. Additional Recommendations

- G. to amend Article 1 as follows:
 1. Delete the terms “bureaucracy” and “abuse of power” and their definitions from pars 1 and 4, and the Law in general, or at the very least, merge this definition with them into one general definition of abuse of power; [par 29]
 2. Regulate cases involving excess of power separately from general abuse of power cases; [par 30]
- H. to use gender-neutral terminology throughout the Law; [par 31]
- I. to make changes to Article 6 so that also persons with non-legal background are eligible to apply for the position of Ombudsman, provided they have high moral standards, a strong education/professional background and recognized human rights experience; [par 33]
- J. to amend Article 9 as follows:

1. Clarify par 1 (4) on the termination of the Ombudsmen's powers due to extended temporary incapacity; [par 40]
 2. Specify that the end of the mandate of an Ombudsman shall always be decided by a qualified majority vote in the Seimas; [pars 41 and 43]
 3. Stress that also a no-confidence vote against an Ombudsman under par 1 (6) needs to be supported by a qualified majority in the Seimas and that in such a case, the Ombudsman shall have the right to defend himself/herself; [par 42]
 4. In cases where an Ombudsman resigns, dies, is declared permanently incapacitated, is convicted of a crime, or is removed by a no-confidence vote, the other Ombudsman shall replace him or, in case the structure of the Ombuds Office is changed, a designated deputy; [par 44]
 5. In order to ensure a smooth transition from one Ombudsman to the next, the Law should include a provision obliging the Seimas to initiate the recruitment process for a new Ombudsman six months before the expiry of the incumbent Ombudsman's term of office; [par 45]
- K. to include the participation in and membership of a political party in Article 10 as an activity incompatible with the duties of an Ombudsman; [par 46]
- L. to enhance Article 11 by obliging the Seimas to hold a special session to discuss the Ombudsmen's annual report, ideally within a month of receiving it; [par 47]
- M. to amend Article 12 as follows:
1. Widen the Ombudsmen's investigatory powers under par 2 so that the Ombudsmen may review all cases of potential human rights abuses against all public institutions, including, to a degree, the judiciary; [par 48]
 2. Specify that while the Ombudsmen should not deal with private labour relations (par 4), labour relations between the State and civil servants should fall within their mandate; [par 49]
- N. to make the following changes to Article 13:
1. Remove *ex officio* investigations from this provision and regulate them in a separate article; [par 50]
 2. Delete par 2 on the referral of cases by members of the Seimas; [par 51]
- O. to specify in Article 15 that the one-year deadline for filing complaints shall not apply to ongoing human rights violations; [par 52]
- P. to extend the deadline for assessing admissibility conditions to at least 14 days or, optimally, 30 days and allow for an extension of this time limit where necessary, in which case the complainant should be informed of such extension; [par 53]

- Q. to ensure that the Ombudsman's rights during investigations, his/her general mandate of monitoring legislation, and the right to take action once a violation or abuse of power has been determined, all currently contained in Article 19, are clearly regulated in separate provisions of the Law; [par 54]
- R. to amend Article 19 as follows:
1. Specify that the Ombudsman's meetings with persons detained or imprisoned shall take place in the absence of detention centre/prison personnel and ensure that all detainees/prisoners have unrestricted access to the Ombudsman; [par 56]
 2. Change par 1 (11) so that the Ombudsman has the right to approach the Constitutional Court directly; [par 57]
 3. Clarify the meaning of par 1 (16) on the Ombudsmen's relationship with prosecution authorities; [par 58]
 4. Provide the Ombudsman with the right to lodge cassation appeals against final judgments in court cases and to appear as a third party in proceedings before international human rights protection mechanisms; [par 59]
- S. to make clearer the potential liability of officials who do not cooperate with the Ombudsman under Article 20; [par 60]
- T. to explain the nature of the Ombudsman's statement under Article 21 and clarify how it relates to the Ombudsman's final decision under Article 22; [par 62]
- U. to be more specific as to the meaning of Article 22 par 2 (excluding the investigation period from the limitation period for imposing disciplinary penalties); [par 63]
- V. to include in the Law a clear legal basis for allowing the Ombuds Office to receive additional subsidies from external, including international, donors; [par 67]
- W. to specify in Article 25 who/which body shall propose the number of employees (ideally, this should be the Ombudsman); [par 71]
- X. to ensure in the Law that the remuneration of the Ombudsmen is sufficiently high to ensure their independence and impartiality; [par 72]
- Y. to see to it that the Ombuds Office's staff receives adequate competitive remuneration and has a distinct legal status; [par 73]
- Z. to allow the Ombudsman to hire external experts, as necessary. [par 73]
- AA. to ensure an open and transparent process in completing a new Law on the Ombudsman; [par 74] and
- BB. to conduct a gender impact assessment and ensure that the general impact assessment also measures impact on vulnerable groups. [par 75]

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards on Ombuds and Related Institutions

8. The Seimas Ombudsmen are *inter alia* responsible for protecting human rights and freedoms and investigating complaints of abuse of authority of officials. This brings their Office within the purview of the United Nations Principles relating to the status of national institutions, commonly known as the Paris Principles.⁵ The Paris Principles do not prescribe any particular model for National Human Rights Institutions, but set minimum standards as the baseline for ensuring the operation and efficiency of NHRIs. Depending on the state and context, NHRIs around the globe have therefore chosen different models for their set-up. However, the basic elements of such institutions that ought to be common to all include independence from the executive, both institutionally and financially, and a broad-based human rights mandate set forth by a constitutional or legislative text.
9. The Paris Principles were adopted by the UN General Assembly as an annex to General Assembly resolution 48/134 in 1993. The commitment contained therein to develop national institutions as instruments for promoting human rights, disseminating human rights information and providing human rights education was reiterated in the 1993 Vienna Declaration and Programme of Action, adopted at the conclusion of the Vienna World Conference on Human Rights organized by the UN in the same year⁶.
10. Since then, the UN General Assembly and the UN Commission on Human Rights⁷ have passed numerous resolutions on the importance of developing effective, independent and pluralistic national institutions and on the role of Ombudsmen, mediators and other NHRIs in protecting and promoting human rights.⁸
11. Also in 1993, the International Coordination Committee of National Institutions (hereinafter “ICC”) was created to review the compliance of NHRIs with the Paris Principles. The ICC is an international association of NHRIs which operates under the auspices of the UN Office of the High Commissioner for Human Rights. It evaluates individual NHRI’s through a specific accreditation process. Once accredited with the so-called ‘A’ status, NHRIs become voting members of the ICC and receive their own speaking right at the UN Human Rights Council. In addition, they become entitled to report on their own behalf to the UN treaty bodies commenting on the level at which their state has implemented the international human rights treaty in question.

⁵ *Op. cit* footnote 2.

⁶ Vienna Declaration and Programme of Action, A/CONF.157/23, adopted by the World Conference on Human Rights on 25 June 1993.

⁷ It should be noted that in 2006, the UN Commission on Human Rights was replaced by the UN Human Rights Council, which was created by the UN [General Assembly](#) on 15 March 2006.

⁸ Resolution 63/169 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, adopted by the UN General Assembly on 20 March 2009, resolution 63/172 on the role of national institutions for the promotion and protection of human rights, adopted by the UN General Assembly on 20 March 2009, resolution 64/161 on the role of national institutions for the promotion and protection of human rights, adopted by the UN General Assembly on 12 March 2010, resolution 65/207 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, adopted by the UN General Assembly on 28 March 2011. See also Human Rights Resolution 2005/74 of the UN Commission on Human Rights on national institutions for the promotion and protection of human rights, adopted on 20 April 2005.

12. Next to the UN, the OSCE has also focused on the issue of NHRIs. As early as 1990, participating States of the OSCE (then the Conference of Security and Cooperation in Europe (CSCE)) committed to “facilitat[ing] the establishment and strengthening of independent national institutions in the area of human rights and the rule of law”.⁹ This was confirmed in numerous ensuing OSCE Commitments, in particular with regard to Ombuds Offices¹⁰ and with the aim of protecting the human rights of vulnerable groups such as Roma and Sinti¹¹ and various forms of discrimination¹², in particular discrimination based on gender¹³.

2. The Status, Position and Independence of the Ombudsmen

13. The Seimas Ombudsmen are established as constitutional figures, according to Article 73 of the Constitution of the Republic of Lithuania¹⁴, which defines them as bodies responsible for dealing with citizens’ complaints about abuse of authority and bureaucracy by state and local government officials. Article 73 further sets out that the powers of the Ombudsmen shall be established by law.
14. The Law on the Seimas Ombudsmen thus regulates the activities and powers of the Ombudsmen, as well as the organizational structure of the Office of the Ombudsmen (Article 1). Based on Article 7 par 2 of the Law, there are two Ombudsmen who have separate fields of competence – one Ombudsman is competent to investigate activities of officials of state institutions/agencies, and the other deals with the investigation of activities of officials of municipal institutions/agencies. When appointing the Ombudsmen, the Seimas (Parliament) appoints one of the two Ombudsmen as head of the Ombudsmen’s Office (Article 28 par 1).
15. This structure is unusual when comparing it to Ombuds Offices in other OSCE participating States, which usually have one Ombudsperson assisted by one or more deputies dealing with different thematic fields.¹⁵ In such cases, the Ombudsperson heads both the substantive and the administrative part of his/her office’s work.
16. The Lithuanian model is different in that it has two Ombudsmen who are hierarchically on equal footing and jointly head a team of advisors who presumably work on cases and complaints. On the other hand, all other matters (documents and archiving, public relations, finance and maintenance, as well as human rights monitoring) are decided on by only one person, namely the head of the Ombudsmen’s Office. In case of absence, this Ombudsman is replaced by the other Ombudsman.

⁹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, par 27.

¹⁰ Document of the Ninth Meeting of the Ministerial Council, Bucharest, 3-4 December 2001, Annex to the Decision on Combating Terrorism: The Bucharest Plan of Action for Combating Terrorism, par 10.

¹¹ Document of the Eleventh Meeting of the Ministerial Council, Maastricht, 1-2 December 2003, Annex to Decision No. 3/03: Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, par 22.

¹² Document of the Fifteenth Meeting of the Ministerial Council, Madrid, 29-30 November 2007, Decision 10/07 on tolerance and non-discrimination: promoting mutual respect and understanding, par 10.

¹³ Document of the Twelfth Meeting of the Ministerial Council, Sofia, 6-7 December 2004, see also the Annex to Ministerial Council Decision 14/04, OSCE Action Plan for the Protection of Gender Equality, par 42.

¹⁴ *Op cit.* note 3.

¹⁵ See, e.g., Article 15 of the Slovenian Human Rights Ombudsman Law (2-4 possible Deputy Ombudsmen), no. 40/93, adopted on 20 December 1993, Article 21 of the (up to three deputies) of the Polish Ombudsman Act, adopted on 15 July 1987, or Section 27 of the Danish Ombudsman Act, No. 473 of 12 June 1996 concerning the Ombudsman as amended by Act No. 556 of 24 June 2005 and Act No. 502 of 12 June 2009 (one Ombudsman, who may appoint temporary replacements out of his/her staff).

17. While it is possible that this structure works well in practice, it does raise certain questions. The necessity of having two Ombudsmen with separate fields of work – state and municipal – remains unclear. Especially in the case of Ombudsmen, which are very “personalized” institutions (as opposed to “de-personalized” councils or commissions), it would appear that one Ombudsman, with one or more deputies, would have a much stronger societal and political position than two Ombudsmen. Cases may arise in which it is not clear whether they are of a municipal or of a central nature – this could cause confusion and possibly overlapping actions, which would, in the end, weaken the positions of both Ombudsmen. Additionally, this could well lead to a situation where certain human rights issues are not addressed properly or where specific cases are overlooked due to overlapping competences or unclarities of whom to approach.
18. On a practical note, it is also questionable whether one Ombudsman is actually able to adequately replace the other in times of absence, given his/her lack of experience with regard to the other Ombudsman’s portfolio, whether dealing with state, or municipal matters. Also, it is noted that neither Ombudsman has a deputy to assist him/her in the normal course of events, which may lead to bottlenecks in their daily work. The structure of the Ombudsmen Office as it stands today would benefit from certain discussions on this structural matter. In order to strengthen the position of an Ombuds Office, facilitate work flows and avoid bottlenecks, but particularly in order to ensure an all-encompassing and strong human rights protection mechanism, it is recommended to consider changing this structure so that there is only one Ombudsman responsible for all cases, assisted by one or more deputies.
19. Further, it would appear that the mandates of the current Ombudsmen are very much focused on preventing maladministration and abuse of power of the executive rather than on protecting and promoting human rights of individuals. The Paris Principles stress that NHRIs shall be vested with the competence to “promote and protect human rights” and shall be given “as broad a mandate as possible”.¹⁶ In order to ensure a wide scope of activities and compliance with the Paris Principles, it is recommended to restructure and amend the Law so that the mandate of the Ombudsman/men explicitly covers the promotion and protection of human rights. Such a mandate should include, e.g., advising the government, parliament and other relevant bodies on legislation and policies with a human rights implication, undertaking awareness-raising activities (focused in particular on human rights education), monitoring/identifying patterns of human rights violations, handling complaints and mediation (briefly mentioned in Article 22 par 3 of the Law, but currently listed as a core activity of the Ombudsmen).
20. Furthermore, the Ombudsmen’s mandate should also include advocating for the ratification of international human rights instruments and advising the state on the implementation of such instruments. It is therefore recommended that Article 1 on the purpose of the Law be amended to include the promotion and protection of human rights as the main tenant of the mandate of the Ombudsmen.
21. The Law should also specifically include a reference to the obligation of the Ombudsmen to engage closely with civil society when fulfilling their mandates, as well as with regional and international human rights mechanisms.

¹⁶ See the Paris Principles, Competence and responsibilities, pars 1 and 2, *op cit.* note 2.

22. As mentioned under par 18 *supra*, having one Ombudsman instead of two would ensure the proper organization and handling of all of these aspects of the mandate, avoid duplication of tasks and strengthen human rights protection throughout Lithuania. However, given the structural and considerable changes that all of the above would encompass, it may well be preferable to draft a new Law on the Ombudsman, instead of attempting to revise the existing Law.
23. Moreover, the Law's explicit focus on individual maladministration by government officials does not take into account the fact that at times, the practices and overall procedures of certain public institutions as a whole, may be in violation of human rights. In such cases, it is neither appropriate, nor possible to single out the behaviour of individuals but rather, institutional questions should be addressed as well.
24. Further, an Ombudsman should be able to investigate serious systemic and structural human rights problems on his/her own as he/she becomes aware of them, and not only in case of individual complaints. To focus only on individual complaints could also mean that serious human rights violations are not tackled, especially in cases involving vulnerable groups, which often do not approach NHRIs to complain of human rights abuses. This is often due to a lack of proper access to or knowledge of the NHRIs and their work, or simple mistrust towards the NHRI as a public institution. Especially in such cases, it is very relevant that an Ombudsman has the possibility to review systematic and structural human rights issues *per se*, regardless of whether they are linked to individual cases/complaints or not.
25. Additionally, the Ombudsmen appear to be strongly linked to the Seimas, as their recruitment and appointment procedures are very Seimas-driven (see also pars 34-37 *infra*), they receive complaints from the Seimas (see also par 51 *infra*) and the Seimas appears to be the only body that determines the maximum number of staff of the Ombudsmen's Office (see par 71 *infra*). This is in contrast with the Ombuds Institutions that have been established and operate in other OSCE participating States, which are *sui generis* institutions independent from the executive, legislative and judicative.¹⁷ Such strong links could potentially compromise the Ombudsman's independence, as certain actions of the Ombudsman may have an influence on the work of the Seimas, e.g. in cases where there are attempts to change or initiate a law. The Law also does not explicitly establish the Ombudsmen as an independent institution, but only mentions the Office's budgetary independence under Article 24. In order to emphasise the independence of the Ombudsmen and their Office, it is recommended to include, at the very beginning of the Law, a clear reference to such independence (see par 66 *infra* concerning financial independence).

¹⁷ As an example, see Article 2 of the Albanian Law on the People's Advocate, no. 8454, adopted on 4 February 1999, last amended in 2005, which states that the People's Advocate shall "safeguard the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration or third parties acting on their behalf" and that he/she shall be guided by the principles of, *inter alia*, impartiality and independence. See also Article 1 of the Portuguese Statute of the Ombudsman, Law no. 9/91, of 9 April 1991, last amended in 2005 ("(1) In accordance with the Constitution, the Ombudsman is a State body elected by Parliament whose main duties shall be to defend and to promote the rights, freedoms, guarantees and legitimate interests of the citizens, ensuring, through informal means, that public authorities act fairly and in compliance with the law. (2) The Ombudsman shall have complete independence in the performance of his duties."), and Article 2 of the Armenian Law on the Human Rights Defender, adopted on 21 March 2003, last amended in 2010 ("The Human Rights Defender is an independent and unaltered official who, guided by the fundamental principles of lawfulness, social co-existence and social justice, protects the human rights and fundamental freedoms violated by the state and local self-governing bodies or their officials").

26. Aside from the overall status and structure of the Ombudsmen and their Office respectively, it is noted that the Law does not provide for any form of immunity for the Ombudsmen and their staff from prosecution and other court proceedings for actions and statements related to their work and mandates. Such immunity is necessary to ensure that the Ombudsmen and their staff are able to conduct their work properly and without fear of time-consuming, possibly politically-motivated lawsuits. Such an immunity clause would constitute a further guarantee of the Ombudsmen's independence and impartiality in all cases before them. It should cover not only statements and documents, but also baggage, all correspondence, and means of communication belonging to the Ombudsmen and their staff.

3. Definitions and Terminology

27. Article 2 contains definitions of certain terms used in the Law, namely the terms "bureaucracy", "official", "complainant" and "abuse of office".
28. Under Article 2 par 1, bureaucracy involves actions of public officials who do not deal with a matter based on its merits, but rather "[observe] unnecessary or invented formalities" or "unreasonably [refuse] to settle issues within [their] jurisdiction or [delay] decision-making or carrying out of official duties". Malfeasance or misfeasance in office (refusal to inform a person of his/her rights, deliberately misleading advice, etc) is also considered to be "bureaucracy", as is officials' failure to implement or properly implement laws or other legal acts.
29. The said definition of bureaucracy appears to be quite detailed, and covers numerous actions on the side of public officials. While certain inaccuracies may also stem from translation errors, it is noted that numerous aspects of this definition would appear to be quite difficult to determine in practice, e.g. whether formalities are unnecessary or invented in a given case, or whether a refusal to settle an issue is unreasonable, or indeed whether misleading advice was actually given deliberately. In keeping with the general tenor of the Law, this term is too focused on the wrongdoing of individuals, and does not cover possible human rights violations or malfeasance/misfeasance of entire parts of an administration. As stated above (see pars 23-24 *supra*), the task of an Ombudsperson should be to generally ensure good administration, and not to pinpoint individual malfeasance without trying to reform the system. It is thus recommended to delete the definition of bureaucracy in Article 2 par 1, and all further references to this term in the Law, as well as the definition of abuse of office under Article 2 par 4, which also presupposes acts or omissions of officials for "self-seeking purposes" or for other personal considerations. At the very least, both terms ("bureaucracy" and "abuse of power") should be merged into one definition of abuse of power, as this term would appear to cover what is now defined as bureaucracy (deliberate or negligent failure to implement the Law or to fulfill one's duty as a public official).
30. Should it still be considered necessary to include such a definition for abuse of office, then it should be simplified to cover all cases where public officials make use of the powers granted to them in a manner that violates administrative legislation or the civil servants' code of ethics. Cases of excess of power should be treated separately and should not be defined as abuse of power, as they do not concern cases where existing power is abused, but rather cases where an official pretends to have powers that he/she actually does not have.

31. Aside from the definitions laid down in Article 2 of the Law, it is noted that throughout the Law, only masculine pronouns are used. In order to accurately reflect that women and men have the same chances of becoming Ombudsmen, it is recommended to use male and female pronouns throughout the Law, thereby ensuring its gender neutrality.

4. Term of Office

32. Chapter II on the Seimas Ombudsman deals mainly with eligibility for the office of Ombudsman, and the appointment and dismissal from office of Ombudsmen, as well as activities that are considered incompatible with the duties of Ombudsman.
33. According to Article 6, citizens of Lithuania are eligible for the position of Ombudsman if they are persons of high moral character, have a BA or MA in law/are university graduates of law, and have a record of at least ten years of practice or teaching of law. While this may be understandable and even appropriate for an institution with a strong focus on maladministration, such requirements would appear quite restrictive and unnecessary with regard to an independent human rights body. As they are, they do not permit persons with non-legal backgrounds to become Ombudsmen, even if they have substantive experience working in the field of human rights. In line with previous recommendations on enhancing the human rights profile of the Ombudsmen (see pars 23-24 *supra*), it is thus recommended to expand the eligibility requirements under Article 6 so that also persons with other, non-legal educational and professional backgrounds would be eligible to apply for the position of Ombudsman, provided that they have high moral standards, an adequately strong educational and professional background and recognized human rights experience.
34. Article 7 states that the Seimas shall appoint two Ombudsmen for a term of five years following their nomination by the Seimas Speaker. It would thus appear that the entire recruitment and appointment process is very much Seimas-driven and implemented, and not particularly transparent, inclusive or pluralistic. It does not appear to involve any actors outside the Seimas, such as civil society, academia or other relevant actors. For this reason, as mentioned above (see par 25 *supra*), the independence of the Ombudsmen may be brought into question.
35. Further to the above, according to the Paris Principles, the appointment of members of an NHRI shall be established in accordance with a procedure which affords all necessary guarantees to ensure the “pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of human rights NGOs, trade unions, concerned social and professional organizations”, e.g. lawyers, doctors’, journalists’ and “eminent scientists”” associations, trends in philosophical or religious thought, universities and qualified experts, parliament, and government departments (in an advisory capacity).¹⁸ It would also be important to include representatives from vulnerable groups of society, such as ethnic, national, linguistic, sexual or other minorities, as well as organizations protecting the rights of women, children and the elderly.

¹⁸ See the Paris Principles, Composition and guarantees of independence and pluralism, par 1, *op cit.* note 2.

36. When amending the Law, it would therefore be advisable to make the selection and appointment procedure more transparent, inclusive and pluralistic, by involving the above-mentioned groups in the selection procedure.¹⁹ Throughout the process, the relevant stakeholders should ensure that a proper gender and societal (including ethnic) balance is reached between the candidates reflecting the diversity of society. At the end of the selection procedure, the Seimas should not appoint one candidate, but rather elect an Ombudsman/Ombudsmen from a shortlist of 2-4 candidates.
37. The Law is also recommended to specify whether the Seimas shall elect the Ombudsmen by simple or qualified majority. In order to ensure that each Ombudsman is backed by an adequate majority of Seimas members, and not only the governing coalition, it would be advisable to have the Ombudsmen elected by a qualified majority of elected parliamentarians, preferably a 2/3 majority. Such a majority (including members of parliament from opposition parties), would provide the Ombudsmen's positions with greater stability and independence from the Government.
38. Article 9 of the Law focuses on the "expiry of powers" of the Ombudsmen. Presumably, this refers to the termination of office. According to Article 9 par 1, the powers of the Ombudsman shall terminate upon "expiry of the Ombudsman's powers" (presumably the end of the regular term of office), an Ombudsman's resignation or death, in specific cases of absence, when an Ombudsman is convicted of a crime, or has been given a no-confidence vote by over half of the Seimas members.
39. According to Article 9 par 1 (4), the powers of an Ombudsman shall terminate where he/she has been absent from work due to temporary incapacity for more than 120 calendar days in succession or for more than 140 calendar days during the last twelve months, unless the law establishes that he/she shall retain his/her office for a longer period due to a certain illness, or when he/she is incapable or performing his/her duties, as established in the opinion of a medical commission/commission on disability.
40. This provision, while extremely detailed, also appears to contain a number of ambiguities. Absence due to temporary incapacity for approximately 4 months at a stretch, or for more than 140 days in one year, appears to automatically lead to the termination of office, unless the Law establishes that "due to a certain illness", the Ombudsman shall retain his/her office for a longer period. Overall, it is not clear why an Ombudsman shall lose his/her office in cases where the incapacity to fulfill his/her work is only temporary. This also does not appear to be consistent with the wording of Article 9 par 3, which states that the Seimas shall terminate the powers of an Ombudsman only upon receipt of a finding of a commission of doctors established by the Health Minister. Also, it is not clear which law would allow an Ombudsman to retain his/her office "due to certain illness", and which illnesses would permit him/her to stay in office and which would not. This part of par 4 should be amended and made clearer, to ensure stability and independence of the office, and of human rights protection in general.

¹⁹ One way to ensure a pluralist and inclusive recruitment procedure could be to initiate the procedure by issuing a general vacancy notice. This would ensure that all parts of society are aware of the process and may participate in it, and could enhance legitimacy and credibility of the institution in the eyes of the general public.

41. Generally, the mandate of an Ombudsman should only be terminated in cases where he/she is permanently incapacitated. It is appropriate to have permanent incapacity determined by an independent medical council, to ensure a neutral and non-politicized process. Based on the findings of such a medical council, the Seimas should then terminate the Ombudsman's mandate by qualified majority vote.
42. Under Article 9 par 1 (6), the term of office of an Ombudsman also ends in case of a no-confidence vote by over half of the members of the Seimas. Presumably, the no-confidence vote pertains to the Ombudsman's alleged inability or failure to perform his/her functions properly. In order to ensure that this no-confidence vote is supported by a clear majority in the Seimas, it is recommended to have this decided by a qualified majority, ideally a two-thirds majority, same as the appointment/election of the Ombudsman (see par 37 *supra*). In such instances, the qualified majority is even more essential, to prevent abuse and undue political influence. The Ombudsman should also have the right to defend him/herself before the Seimas prior to a decision on removal from office.
43. Article 9 par 2 states that in case of resignation of an Ombudsman, or when he/she is temporarily incapacitated, the decision concerning the end of his/her mandate shall be taken by the Seimas upon recommendation of the Speaker of the Seimas. Also in case an Ombudsman is no longer able to exercise his/her mandate due to a criminal conviction, or due to a no-confidence vote, the formal end of his/her term of office should be decided by decision of the Seimas. As stated above, this decision should be taken by a qualified, ideally a two-thirds majority.
44. In cases where the Ombudsman's term of office ends, or where he/she has resigned, the Ombudsman shall continue in office until a new Ombudsman is appointed (Article 9 par 4). While this is reasonable in cases where the mandate expires after five years, an Ombudsman who has resigned cannot always, depending on the reasons for his/her resignation, be expected to stay in office until the Seimas has appointed a successor. At the same time, this provision does not indicate what will happen in other cases, namely where an Ombudsman dies, is declared permanently incapacitated, convicted of a crime, or removed by a no-confidence vote. In such cases, and in cases of resignation of an Ombudsman, the other Ombudsman should ideally take the place of the absent Ombudsman, as laid down in Article 25 par 2. In case of structural changes to the Ombudsmen and their Office (see par 18 *supra*), the Ombudsman's tasks should be taken over by an appointed deputy. This should be stated expressly in Article 9.
45. Generally, in order to ensure a smooth transition from one Ombudsman to the next, it would be advisable to include in the Law a provision obliging the Seimas to initiate the process of recruiting a new Ombudsman six months prior to the end of the incumbent Ombudsman's term of office²⁰.
46. Article 10 describes which activities are incompatible with the duties of an Ombudsman. While these activities include other elective or appointive office in state and municipal institutions and agencies, as well as employment in private entities,

²⁰ A similar principle can be found in Article 13 of the Bulgarian Law on the Ombudsman (promulgated by State Gazette No. 48/23.05.2003, effective 1 January 2004, as amended in 2006), based on which the election of a new Ombudsman shall take place at least two months before the expiry of the term of office of the incumbent Ombudsman. See also Article 5 par 4 of the Ombudsman Law of the former Yugoslav Republic of Macedonia (No. 07-4502/1, adopted by Parliament on 10 September 2003), according to which election procedures shall begin three months before the expiry of tenure.

active participation and membership in a political party are not mentioned therein. In order to ensure an Ombudsman's neutrality, this should also be included in the list of incompatible activities under Article 10. Should the Ombudsman have belonged to any party prior to appointment, then he/she should suspend his/her party membership for the duration of his/her term of office, to ensure that the office is perceived as being objectively independent.

47. According to Article 11 of the Law, the Seimas Ombudsmen shall submit an annual report to the Seimas by the 15th of March for the preceding calendar year, which the Seimas shall consider. This report shall be published on the homepage of the Seimas Ombudsmen. The Seimas' obligation under Article 11 to "consider" the annual report would benefit from clarification and enhancement. In order to strengthen the position of the Ombudsmen and ensure follow up to the annual report, it is recommended to include in Article 11 an obligation for the Seimas to hold a special session at which it discusses the Ombudsmen's annual report.²¹ This session should be held shortly after the Seimas receives the Annual Report, ideally within a month of receipt of this report.

5. Complaints Procedure before the Ombudsmen

48. Chapter III of the Law describes the acceptance and investigation of complaints. Article 12 specifies which complaints lie within the jurisdiction of the Seimas Ombudsman. According to Article 12 par 2, the activities of the President of the Republic, of members of the Seimas, of the Prime Minister, the Government (as a collegial institution), the State Controller and judges, municipal councils (as collegial institutions) are not covered by the Ombudsman's investigatory mandate. This limits the Ombudsmen's investigatory powers, without explaining why such limitation would be necessary or even desired. It would rather appear that the Ombudsmen should have wide powers to review all cases of potential human rights abuses and abuses of power. This could even include the behaviour of judges in cases involving fairness of proceedings, impartiality and independence of judges, and access to court (including the execution of judgments). Article 12 par 3 differentiates in a similar way with regard to the Ombudsmen's mandate to investigate prosecutors; it is recommended to adopt the same approach with regard to judges.
49. Article 12 par 4 states that the Ombudsmen shall not investigate complaints arising from labour legal relations. This should, however, only apply to private labour relationships, not to labour relations between the State and civil servants. Article 12 par 4 should differentiate accordingly between the two.
50. The filing of complaints is regulated under Article 13, which also allows an Ombudsman to open investigations *ex officio* if he receives verbal complaints, or learns of potential abuse of power or human rights violations from other sources (par 3). Since *ex officio* investigations do not involve the filing of complaints, this type of investigation procedure should be regulated in a separate provision, not in Article 13.
51. Under Article 13 par 1, "complainants", namely natural or legal persons filing a complaint with the Ombudsmen's office, have the right to file a complaint. The

²¹ Such sessions are obligatory according to, e.g., Article 36 of the Ombudsman Law of the former Yugoslav Republic of Macedonia (*op. cit.* note 20), and Article 44 of the Slovenian Human Rights Ombudsman Law, (*op. cit.* note 15).

Ombudsmen also investigate complaints of complainants referred to them by members of the Seimas, if they are in conformity with the requirements of this Law (Article 13 par 2). As proceedings before Ombudspersons are normally free of charge, it is unclear why these complainants would not approach the Ombudsmen directly, rather than submit complaints via members of the Seimas. In case this would lead to special or priority treatment, it would run counter to the principle of fairness and impartiality under Article 4 par 5. It is thus recommended to delete Article 13 par 2. In case members of the Seimas hear about potential human rights abuses, they should tell the respective individuals to address their complaints directly to the Ombudsman, or inform the competent Ombudsman, who will then under Article 13 par 3 decide on whether to initiate proceedings *ex officio*.

52. According to Article 15, complaints shall be filed within one year from the commission of the disputed act or decision. It is recommended that Article 15 should specify that this limitation period does not apply to cases of ongoing human rights violations.
53. Under certain formal admissibility conditions listed in Article 17, the Ombudsmen may refuse to investigate a complaint within 7 working days. It is noted that this time limit is quite short – it may not always be possible to assess a case adequately within this timeframe, in particular if the substance of a complaint is complex or if a decision depends on information that needs to be received from other bodies. It is thus recommended to extend this time limit to at least 14 days or even 30 days. Article 17 should also allow the competent Ombudsman to extend this time limit where necessary, an option which is also foreseen in Article 18 regulating the time limit in which to investigate a complaint. As in Article 18, Article 17 should also oblige the Ombudsman to inform the complainant about a delay in admissibility proceedings.
54. Article 19 is titled “[r]ights of the Seimas Ombudsman”, but appears to focus on a wider variety of issues ranging from an Ombudsman’s rights during investigations to his/her general mandate of monitoring legislation, to possible actions to take once a violation or abuse of power has been determined. While par 1 (1), (3)- (6) focuses mainly on the rights of the Ombudsmen while investigating a complaint, other parts of par 1 appear to combine investigative rights with more general aspects of the Ombudsmen’s mandate, or with actions to be taken once investigations have been completed. For the sake of clarity, it is recommended to differentiate properly with regard to the Ombudsmen’s general competences, rights during investigations, and actions that they may take once investigations have been completed, preferably by regulating all three matters in separate provisions.
55. Under Article 19 par 1 (1), the Seimas Ombudsman may ask for information, material and documents required to fulfill his/her functions and may obtain access to state, professional, commercial or bank secrets “in the manner prescribed by laws”. While Article 19 does not specify which laws it is referring to, these presumably relate to data protection and access to information. Generally, in order to conduct his/her investigations properly, an Ombudsman should have unlimited access to all relevant documents, including those of a confidential nature, if he/she deems this necessary to adequately assess a case.
56. According to par 1 (2) of Article 19, an Ombudsman shall meet with persons detained or imprisoned in state facilities in an unrestricted manner. The Law should also specify that these meetings shall take place in the absence of detention centre/prison personnel. Further, all detainees or prisoners in Lithuania should have unlimited

access to the Ombudsmen, meaning that any communication with an Ombudsman shall be permissible at any time and shall be free from any census or monitoring. This could, e.g., be ensured by establishing hotlines or special Ombudsmen mailboxes in prisons or detention areas, which are regularly checked by Ombudsmen staff.

57. Article 19 par 1 (11) states that an Ombudsman may propose to the Seimas to apply to the Constitutional Court regarding the conformity of legal acts with the Constitution and laws of the Republic of Lithuania. Presumably, this right is limited to legislation dealing with or impacting on individuals' rights and freedoms. In order to strengthen the role of the Ombudsmen (and avoid unnecessary administrative steps), the Ombudsmen should have the right to approach the Constitutional Court directly.
58. An Ombudsman may also approach the competent prosecutor and recommend to him/her to apply to court proceedings according to the procedure prescribed by the law for the protection of public interest (Article 19 par 1 (16)). The meaning of this provision is not clear – surely, the Ombudsman is obliged to inform about any kind of potentially criminal behavior? Article 19 does not specify the nature of the procedure for the protection of public interest, nor does it clarify which law regulates this procedure. This aspect of Article 19 is recommended to be amended.
59. In addition to the above rights, it would be advisable to include in Article 19 or in other relevant provisions the right of an Ombudsman to lodge cassation appeals against final judgments in court cases, and the right to appear as third party in the context of international human rights mechanisms.
60. Article 20 specifies that all officials have the obligation to cooperate with requests of the Ombudsman. Under par 4 of this provision, persons interfering with the performance of an Ombudsman's duties shall be held liable under the law. This raises several questions, namely, which actions would fit this description, and what type of liability such actions would lead to. In order to ensure clarity and foreseeability of this Law, it is recommended to outline these matters under Article 20.
61. According to Article 21, an Ombudsman shall investigate the circumstances specified in a complaint and then draw up a statement revealing the circumstances disclosed, the evidence collected and a legal evaluation of an official's activities. This statement shall be presented to the complainant and may also be submitted to the head of the respondent institution or agency, or the official whose actions were subjected to an investigation.
62. The nature of the statement mentioned under Article 21 is unclear. In particular, it is not apparent whether this statement and the decision on a case under Article 22 are separate documents or whether they are one and the same thing. This is proposed to be clarified – ideally, the summary of the facts of the case, the evidence collected and the evaluation of the case should all be part of an Ombudsman's final decision on a case once investigations have been completed. The finality of an Ombudsman's decisions should be stated in the Law.
63. Article 22 par 2 states that the period of complaint investigation shall be excluded from the limitation period which laws allow for the imposition of a disciplinary penalty. The meaning of this provision is not clear and should be made more explicit in this provision.

6. The Ombudsmen's Office

64. Chapter IV of the Law describes the Ombudsmen's Office (Article 24), its structure (Article 25) and head (Article 28). Guarantees of the Ombudsmen's activities and of related matters are laid down under Chapter V.
65. According to Article 24, the Ombudsmen's Office is a budgetary institution and an independent state institution, with legal personality. While the stated independence of this institution is welcomed and in line with the financial independence required by the Paris Principles²², the Law is not very specific on how to ensure and safeguard this financial independence.
66. At this point it should be mentioned that financial independence is essential for the very existence and working capacity of an Ombuds institution – without such independence, investigations may be impeded or prevented, work flows may be blocked and the institution's ability to survive financially may be compromised. The Law would thus benefit from further buttressing Article 24 by stipulating that the Ombudsmen Office is entitled to sufficient state funds to ensure its proper functioning in accordance with the Law, in addition to having its own bank account and seal, as already provided by Article 24.
67. Further, all budgetary processes relevant to the Ombudsmen Office shall be conducted directly between this office and the Seimas – it is paramount that the executive is not involved in this process, given the Ombudsmen's role as human rights monitor of government activities. As a safeguard to maintain the Ombudsmen Office's budget at an appropriate level, the Law could stipulate that from one year to the next, the budget of the Ombudsmen Office may only be reduced by a certain percentage. The Law should also provide a clear legal basis for the Ombudsmen Office to receive additional subsidies from external, including international donors.
68. Structurally, the Seimas Ombudsmen Office consists of the Ombudsmen, civil servants and other employees (Article 25). The Office is headed by one of the Ombudsmen, as appointed by the Seimas under Article 28 upon nomination of the Speaker of the Seimas. In case of absence, this Ombudsman shall be replaced by the other elected Ombudsman.
69. As stated earlier (par 17 *supra*), the practical efficiency of this structure raises certain doubts. Generally, it is questionable whether it is advisable to have two Ombudsmen, but only one head of the Ombudsman Office which, after all, is meant as a support body for both Ombudsmen. With such a structure, the other Ombudsman will only be involved in the running of the office if the actual head of the office is absent, and may then not have the knowledge or experience to adequately replace the head of office. Moreover, Article 25 does not provide for cases where the second Ombudsman is unable or not available to replace the head of office. This could lead to problems in practice with the ultimate negative result of reducing the effectiveness of the institution in dealing with human rights violations.
70. This is another reason why it would be advisable to simplify the structure of the Ombudsmen Office so that there is only one Ombudsman dealing with all cases, both

²² Under the section on “[c]omposition and guarantees of independence and pluralism”, par 2, the Paris Principles stress that a national institution shall have “an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence” (*op.cit* note 2).

those on a state level and those on a municipal level. This Ombudsman should have one or more deputies, and a body of Ombudsman staff, including senior management to deal with administrative issues and logistics. In cases where the deputy or deputies are not available, the Ombudsman or one of the deputies shall appoint a temporary replacement from the staff body.

71. According to Article 25 par 3, the “Board of the Seimas” shall approve the maximum number of positions of civil servants/employees working for the office. The nature of this Board is not clear. Possibly, this is due to a translation error, but generally, the Law should explicitly state who decides on the number of Ombudsman staff and whether this number may be augmented from one year to the next to meet the needs of the Ombudsmen Office. Furthermore, Article 25 should specify who or which body proposes the number of employees. In order to maintain and strengthen the Office’s independence, this should be the prerogative of the Ombudsman in charge of the Office, rather than the Seimas.
72. Along with the maximum number of staff positions, the remuneration of staff is also essential to ensuring the proper and independent work of an Ombuds Office. According to Article 29, the amount of remuneration and conditions of payment to the Ombudsmen shall be established by the Law on the Remuneration of State Politicians and State Officials. It is essential that this remuneration is sufficiently high to ensure the Ombudsmen’s independence and impartiality, e.g. at the same level as the salary of the President of the Constitutional Court. Aside from ensuring the office’s independence, this is also relevant for the public perception of the office and its importance with regard to other institutions. This principle should be stated clearly in the Law.
73. Staff working for the Ombudsmen Office should also receive adequate competitive remuneration and have a distinct legal status. The Ombudsmen Office should further be permitted to hire external experts, as necessary.

7. The Law-Drafting Process

74. It is welcomed that so far, the competent lawmakers in Lithuania have involved OSCE/ODIHR and other international organizations in the development of this Law. Next to the above recommendations related to the contents of the Law, it is advised to conduct further discussions on the Law within Lithuania that would involve civil society and all relevant stakeholders, to ensure an open and transparent process in completing the new Law on the Ombudsman.
75. Along with a general impact assessment, it is also recommended to conduct a gender impact assessment. The general impact assessment should also involve measuring the Law’s possible impact on vulnerable groups of society.

[END OF TEXT]

Annex 1

**REPUBLIC OF LITHUANIA
LAW
ON THE SEIMAS OMBUDSMEN**

3 December 1998 NoVIII-950
(As last amended on 13 May 2010 – NoXI-808)
Vilnius

**CHAPTER I
GENERAL PROVISIONS**

Article 1. Purpose of the Law

This Law establishes the basic legal principles of activities and powers of the Ombudsmen of the Seimas of the Republic of Lithuania (hereinafter referred to as the Seimas Ombudsmen) as well as the organisational structure of the Office of the Ombudsmen of the Republic of Lithuania Seimas (hereinafter referred to as the Seimas Ombudsmen's Office).

Article 2. Definitions

As used in this Law:

1. “**Bureaucracy**” means actions on the part of official when the latter, instead of dealing with the matter on the merits, observes unnecessary or invented formalities, unreasonably refuses to settle issues within the official's jurisdiction or delays decision-making or carrying out of official duties or performs other malfeasance or misfeasance in office (refuses to inform a person of his rights, gives a deliberately misleading or improper advice, etc.). Also considered as bureaucracy shall be the officials' style of work when they fail to implement or to properly implement laws or other legal acts shall also be treated as bureaucracy.

2. “**Official**” means a state and municipal institution or agency employee, as well as any other employee performing public administration functions; an employee of a public institution and non-governmental organisation with powers of public administration granted according to the procedure prescribed by law, who exercises powers of administration over persons not subordinate to him; a person authorised by the state, performing the functions prescribed by law which have been granted by the state.

3. “**Complainant**” means a natural or a legal person who applies to the Seimas Ombudsmen’s Office filing a complaint about abuse of office by or bureaucracy of officials.

4. “**Abuse of office**” means acts or omission on the part of the official when the powers granted to him are exercised not in accordance with laws and other legal acts but for self-seeking purposes or for other personal considerations (abuse of official position, revenge, envy, careerism, provision of illegal services, etc.) as well as actions of the official whereby he exceeds his authority or his arbitrary actions.

Article 3. Purpose of Activities of the Seimas Ombudsmen

The purpose of activities of the Seimas Ombudsmen is to protect a person’s right to good public administration securing human rights and freedoms, to supervise fulfilment by state authorities of their duty to properly serve the people.

Article 4. Basic Principles of Activities of the Seimas Ombudsmen

The Seimas Ombudsmen shall observe the following principles in their activities:

1) respect for the person and the state. Pursuant to the Constitutional provision that state authorities shall serve the people, the Seimas Ombudsmen shall seek to ensure each person’s right to good public administration;

2) freedom and independence of activities. The Seimas Ombudsmen shall be independent from other institutions. The rights and duties of each Seimas Ombudsman shall be equal, each of them shall act independently within their spheres of jurisdiction;

3) accountability. The Seimas Ombudsmen shall be accountable for their activities to the Seimas of the Republic of Lithuania;

4) compliance with the law. The Seimas Ombudsmen shall act in accordance with the Constitution of the Republic of Lithuania, this and other laws and legal acts, international treaties and agreements and principles of law;

5) impartiality and fairness. The Seimas Ombudsmen shall protect all persons equally (equally fairly) regardless of their ethnic background, race, gender, language, origin, social status, religious beliefs or political convictions. The Seimas Ombudsmen shall be objective and fair in their activities;

6) proportionality. When defending human rights and freedoms, the Seimas Ombudsmen shall seek to maintain the balance between a person’s private interests and public interests,

and, when defending the rights and freedoms of a specific person, not to violate other persons' rights and freedoms;

7) openness. The Seimas Ombudsmen shall openly provide information to the public about their activities and the abuse of office by and bureaucracy of officials as well as about other violations of human rights and freedoms;

CHAPTER II THE SEIMAS OMBUDSMAN

Article 5. The Seimas Ombudsman

The Seimas Ombudsman shall be a state official appointed by the Seimas of the Republic of Lithuania (hereinafter referred to as the Seimas) who protects human rights and freedoms, investigates the complainants' complaints about abuse of office by or bureaucracy of officials and seeks to upgrade public administration.

Article 6. Eligibility for the Position of the Seimas Ombudsman

A citizen of the Republic of Lithuania who is a person of high moral character, has a BA and MA in law or is a university graduate in law and who has a record of at least ten years of practice or teaching of law shall be eligible for appointment to the position of the Seimas Ombudsman.

Article 7. Appointment of the Seimas Ombudsmen

1. The Seimas shall appoint two Seimas Ombudsmen for the term of five years on the nomination of the Speaker of the Seimas of the Republic of Lithuania.

2. The Seimas shall appoint one Seimas Ombudsman for the investigation of activities of officials of state institutions and agencies and one Seimas Ombudsman for the investigation of activities of officials of municipal institutions and agencies.

3. If the powers of the Seimas Ombudsmen are terminated ahead of term, the Seimas shall make a new appointment to the position of the Seimas Ombudsman.

Article 8. The Oath of the Seimas Ombudsman

1. Before entering the office of the Seimas Ombudsman, the person appointed Ombudsman shall swear an oath of allegiance to the State of Lithuania. When swearing the said oath the person shall enjoy the right to choose one of the following texts of the oath:

1) “I, Ombudsman of the Seimas of the Republic of Lithuania, (name, surname), swear to be loyal to the State of Lithuania, to observe its Constitution and laws, to perform my duties in good faith, to protect human rights, freedoms and lawful interests, to be always impartial and to protect the secrets entrusted to me.

So help me God.”;

2) “I, Ombudsman of the Seimas of the Republic of Lithuania, (name, surname), swear to be loyal to the State of Lithuania, to observe its Constitution and laws, to perform my duties in good faith, to protect human rights, freedoms and lawful interests, to be always impartial and to protect the secrets entrusted to me.”

2. Repealed

3. The oath shall be sworn to the Speaker of the Seimas of the Republic of Lithuania.

4. The Seimas Ombudsman shall sign the text of the oath. The text of the oath shall be kept in the Seimas.

Article 9. Expiry of Powers of the Seimas Ombudsman

1. The powers of the Seimas Ombudsman shall terminate:

1) upon the expiry of the Ombudsman’s powers;

2) upon the Ombudsman’s resignation;

3) upon the Ombudsman’s death;

4) when the Ombudsman is absent from work due to temporary incapacity for more than 120 calendar days in succession or for more than 140 calendar days during the last twelve months, unless the law establishes that due a certain illness the Seimas Ombudsman shall retain his office for a longer period or when he is incapable to perform his duties as established in the opinion of the medical commission or the commission for the establishment of disability;

5) when the judgement of conviction passed on the Ombudsman by the court becomes effective;

6) when the Ombudsman is given a no-confidence vote by over a half of the Seimas members.

2. In the case specified in subparagraphs 2 and 4 of paragraph 1 of this Article the decision concerning the termination of powers of the Seimas Ombudsman shall be taken by the Seimas on the recommendation of the Speaker of the Seimas.

3. In the case specified in subparagraph 4 of paragraph 1 of this Article the Seimas shall resolve the issue of termination of powers of the Seimas Ombudsman only upon receipt of a finding of the commission of doctors formed by the Health Minister.

4. In the cases specified in subparagraphs 1 and 2 of this Article the Seimas Ombudsman shall continue in office until the new appointment is made to the post of the Seimas Ombudsman.

Article 10. Activities Incompatible with the Duties of the Seimas Ombudsman

The Seimas Ombudsman may not hold any other elective or appointive office in state and municipal institutions and agencies, nor may he be employed in private legal entities. The Seimas Ombudsman may not receive any remuneration other than his official salary and remuneration for scientific and pedagogical work in higher educational establishments or establishments for upgrading the qualification of civil servants, informal education of adults and author's fees for creative work.

Article 11. Submission of Annual Reports

1. The Seimas Ombudsmen shall every year by the 15th day of March submit to the Seimas the annual report for the preceding calendar year. The report shall be considered in the Seimas. The entire report shall be placed on the website of the Seimas Ombudsmen's Office.

2. The Seimas Ombudsmen shall on a regular basis notify of their activities in the media.

CHAPTER III

ACCEPTANCE AND INVESTIGATION OF COMPLAINTS

Article 12. Complaints within the Jurisdiction of the Seimas Ombudsmen

1. The Seimas Ombudsmen shall investigate complainants' complaints about the abuse of office by and bureaucracy of officials or other violations of human rights and freedoms in the sphere of public administration.

2. The activities of the President of the Republic, members of the Seimas, the Prime Minister, the Government (as a collegial institution), the State Controller and judges of the Constitutional Court and other courts, municipal councils (as collegial institutions) shall be outside the Seimas Ombudsman's powers of investigation.

3. The legality and validity of procedural decisions of the prosecutors, pre-trial investigation officials shall also be outside the Seimas Ombudsmen's powers of investigation, however, complaints about the actions of the prosecutors, pre-trial investigation officials, which violate human rights and freedoms, shall fall within the investigative jurisdiction of the Seimas Ombudsmen.

4. The Seimas Ombudsmen shall not investigate complaints arising from the labour legal relations and about the legality and validity of court decisions, judgements and rulings.

Article 13. Filing of Complaints

1. The complainant shall have the right to file a complaint with the Seimas Ombudsman about the abuse of office by or by bureaucracy of officials if he believes that his rights and freedoms have been violated thereby.

2. The Seimas Ombudsman shall also investigate complaints of complainants referred to him by the Seimas members, which are in conformity with the requirements of Article 14 of this Law.

3. As a rule, complaints shall be filed in writing. If a complaint is received verbally, by telephone or if the Seimas Ombudsman establishes from the mass media or other sources the presence of elements of abuse of office by the officials, bureaucracy or instances of violation of human rights and freedoms, the Seimas Ombudsman may open investigation into the matter on his own initiative.

4. Verbal or written applications of complainants, which contain not complaints about officials but requests for explanations, other information or requested documents, etc. shall not be treated as complaints.

Article 14. Requirements of Complaint

1. The following shall be stated in the complaint:

- 1) the addressee - the Office of the Seimas Ombudsmen (the Seimas Ombudsman);
- 2) full name and address of the complainant;
- 3) full names and positions of the officials against whom the complaint is filed, the institution or agency in which they are employed;
- 4) a description of the decision or actions complained about, the date and the circumstances under which they have been performed;
- 5) a formulated request addressed to the Seimas Ombudsman;
- 6) the date on which the complaint has been drawn up and the complainant's signature.

2. Attached to the complaint may be:

- 1) a copy of the contested decision;
- 2) the available evidence or its description;

3. Non-compliance with the form of the complaint prescribed by paragraph 1 of this Article or failure to present the required particulars may not be grounds for refusing to investigate the complaint, except for anonymous complaints and in cases where the investigation may not be opened due to insufficiency of facts of the matter, while the complainant fails to submit the facts on the Seimas Ombudsman's request or in case the text of the complaint is illegible.

Article 15. Time Period for Filing a Complaint

The deadline for filing complaints shall be one year from the commission of the act complained about or adoption of the contested decision. Complaints filed after the deadline shall not be investigated unless the Seimas Ombudsman decides otherwise.

Article 16. Anonymous Complaints

Anonymous complaints shall not be investigated unless the Seimas Ombudsman decides otherwise.

Article 17. Refusal to Investigate a Complaint

1. The Seimas Ombudsman shall make a decision to refuse to investigate a complaint within 7 working days from the date of receipt thereof informing the complainant about this if:

- 1) the Ombudsman comes to the conclusion that the complaint has no substance;
- 2) the complaint is filed after the deadline set in Article 15 of this Law;
- 3) the circumstances indicated in the complaint are outside the Seimas Ombudsman's investigative jurisdiction;
- 4) a complaint relating to the matter has already been resolved or is pending in court;
- 5) a procedural decision has been taken to open pre-trial investigation in relation to the subject matter of the complaint;
- 6) the Ombudsman comes to the conclusion on the expediency of investigating the complaint in another institution or agency.

2. Where a decision is taken to refuse to investigate a complaint, grounds for refusal must be specified. In the cases where the complaint falls outside the Seimas Ombudsmen's remit, refusal to investigate shall also indicate the institution or agency the complainant may address on the matter.

3. A complaint filed repeatedly after its investigation shall not be investigated except in cases where new circumstances are indicated or new facts are presented. If the complainant abuses the right to apply to the Seimas Ombudsman, correspondence with such a complainant may be ceased upon the decision of the Seimas Ombudsman.

4. If the circumstances specified in paragraph 1 of this Article are disclosed in the course of complaint investigation the complaint investigation shall be discontinued.

5. The complaint shall be left unprocessed if the complainant fails to furnish information the absence whereof precludes the initiation of complaint investigation, also if the text of the complaint is illegible.

6. If the complainant's request not to investigate the complaint is received, the Seimas Ombudsman shall cease the investigation. The Seimas Ombudsman may open the investigation on his own initiative.

Article 18. Time-limits for Complaint Investigation

A complaint must be investigated and the complainant must be given a response within 3 months of the day of the receipt of the complaint, except for the cases where the complexity

of circumstances, abundance of information or continuity of actions being complained about necessitates prolongation of the complaint investigation. The complainant shall be notified of the Seimas Ombudsman's decision to extend the time-limit for the complaint investigation. Complaints shall be investigated within the shortest time possible.

Article 19. Rights of the Seimas Ombudsman

1. When performing his duties, the Seimas Ombudsman shall have the right to:

1) request immediate provision of information, material and documents required for the discharge of his functions, be granted access in the manner prescribed by laws to the documents which constitute a State, professional, commercial or bank secret as well as documents which contain information about personal data protected by law. Should it be necessary to execute the right, the assistance of police officials shall be enlisted and an appropriate statement of the seizure of documents shall be drawn up;

2) having produced the certificate of employment, enter the premises of institutions and agencies (enterprises, services or organisations), and at any time of the day, if persons are kept in the premises for 24 hours or more, and unrestrictedly meet and interview persons present in the premises. The territory and premises of institutions and agencies the activity of which are regulated by a statute shall be entered with the officials of the institutions and agencies accompanying;

3) request written or oral explanations from the officials whose activities are under investigation;

4) question the officials and other persons;

5) attend the meetings of the Seimas, the Government, other state and municipal institutions and agencies when the issues under consideration are related to the activities of the Seimas Ombudsmen or the matter investigated by the Seimas Ombudsman;

6) enlist the services of officials of the government agencies, ministries and local authorities, as well as officials and experts of municipal institutions and agencies;

7) inform the Seimas, the Government and other state institutions and agencies or the appropriate municipal council of the gross violations of law or deficiencies, contradictions of or gaps in laws or other legal acts;

8) recommend to the Seimas, state or municipal institutions and agencies to amend the laws or other statutory acts which restrict human rights and freedoms;

9) draw up a record of administrative violation of law for failure to comply with the demands of the Seimas Ombudsman or for interfering in any other with the fulfilment by the Seimas Ombudsman of the rights granted to him;

10) apply to the administrative court with a request to investigate conformity of an administrative regulatory enactment (or its part) with the law or Government resolution;

11) propose to the Seimas to apply to the Constitutional Court regarding the conformity of legal acts with the Constitution and laws of the Republic of Lithuania;

12) refer the material to pre-trial investigation body or the prosecutor, if elements of crime are detected;

13) apply to the court for the dismissal of officials guilty of abuse of office or bureaucracy;

14) recommend to the collegial body or official to repeal, suspend or amend the decisions which are contrary to the laws and other legal acts, or propose to adopt decisions the adoption whereof has been precluded by abuse of office or bureaucracy;

15) recommend to the collegial body, head of the agency or a superior institution or agency to impose disciplinary penalties on the official at fault;

16) recommend to the prosecutor to apply to the court according to the procedure prescribed by law for the protection of public interest;

17) bring to the officials' attention the facts of negligence in office, non-compliance with laws or other legal acts, violation of professional ethics, abuse of office, bureaucracy or violations of human rights and freedoms and recommend to apply measures to eliminate the violations of laws and other legal acts, their causes and circumstances;

18) propose that material and non-material damage sustained by a person due to the violations committed by the official be compensated in the manner prescribed by law;

19) notify the Seimas, the President of the Republic or the Prime Minister of the violations committed by the ministers or other officials accountable to the Seimas, the President of the Republic or the Government (except for those listed in paragraph 2 of Article 12);

20) recommend to the Chief Official Ethics Commission to evaluate whether or not the official has violated the Law on Adjustment of Public and Private Interests in the Public Service;

21) refraining from the investigation on the merits of a complaint falling outside the remit of the Seimas Ombudsman give proposals or offer commentaries to appropriate

institutions and agencies on the improvement of public administration in order to prevent violations of human rights and freedoms.

2. The Seimas Ombudsman may apply to the court for the dismissal of officials guilty of abuse of office or bureaucracy within a month's period from drawing up of the statement.

Article 20. Binding Character of the Seimas Ombudsmen's Requests

1. On the Seimas Ombudsmen's request the officials must forthwith present information, documents and material required for the performance of their functions.

2. When investigating a complaint, the Seimas Ombudsman shall have the right to apply to the official whose activities are under examination requesting the latter give an explanation within the set time period.

3. The institution and agency or official, to whom this proposal (recommendation) is addressed, must investigate the proposal (recommendation) of the Seimas Ombudsman and inform the Seimas Ombudsman about the results of the investigation.

4. Persons interfering with the performance of duties by the Seimas Ombudsman shall be held liable under law.

Article 21. Complaint Investigation

The Seimas Ombudsman shall investigate the circumstances specified in a complaint and draw up a statement stating the circumstances disclosed and evidence collected in the course of investigation as well as giving legal evaluation of the official's activities. The statement shall be signed by the Seimas Ombudsman. The statement of the Seimas Ombudsman shall be presented to the complainant as well as announced in the official website of the Seimas Ombudsmen's Office. The statement may also be submitted to the head of the institution or agency where the investigation has been conducted or the official whose actions have been subjected to investigation, also, as necessary, the head of a superior institution or agency as well as other institutions or agencies. In cases where the statement contains information which constitutes a State, official, commercial or bank secret as well as information about personal data protected under laws, not the full text of the statement shall be presented and announced.

Article 22. Decisions of the Seimas Ombudsman

1. Having completed the investigation the Seimas Ombudsman shall take a decision to:

- 1) recognise declare the complaint as justified;
- 2) dismiss the complaint;
- 3) discontinue the complaint investigation.

2. The period of complaint investigation shall be excluded from the limitation period which ~~labour~~ laws allow for the imposition of disciplinary penalty.

3. The investigation of a complaint shall be discontinued if the circumstances addressed in the complaint disappear during the investigation or the problems addressed in the complaint are resolved in good will through the mediation of the Seimas Ombudsman as well as in other cases established by this law.

Article 23. Obligation to Keep State, Professional and other Secrets or Data

Protected by Law

The Seimas Ombudsmen and other employees of the Seimas Ombudsmen's Office must keep the State, professional, commercial or bank secrets and personal data protected under laws which come to their knowledge in the exercise of their duties.

CHAPTER IV

THE SEIMAS OMBUDSMEN'S OFFICE

Article 24 The Seimas Ombudsmen's Office

The Seimas Ombudsmen's Office is budgetary institution. . independent state institution. The Seimas Ombudsmen's Office shall be a legal person, shall have a settlement account with a bank and a seal with the Lithuanian State emblem and the name "*Lietuvos Respublikos Seimo kontrolierių įstaiga*" (Office of Ombudsmen of the Seimas Republic of Lithuania) imprinted thereon and financed from the State budget. The head of the Seimas Ombudsmen's Office shall be responsible for the use and keeping of the seal of the Seimas Ombudsmen's Office.

Article 25. The Structure of the Seimas Ombudsmen's Office

1. The Seimas Ombudsmen's Office shall consist of the Seimas Ombudsmen, civil servants and other employees.

2. The Seimas Ombudsmen's Office shall be directed by the head of the Seimas Ombudsmen's Office. In the absence of the Seimas Ombudsman - head of the Office, the other Seimas Ombudsman shall act for him.

3. The Board of the Seimas shall approve the maximum number of positions of the Seimas Ombudsmen's Office's civil servants and employees working under the employment contract and receiving the remuneration from the state budget and the state monetary funds.

4. The Seimas Ombudsmen shall have advisors. The advisor to the Seimas Ombudsman shall be a civil servant. A citizen of the Republic of Lithuania, who has a BA and MA in law or the single-stage university education in law, may be an advisor to the Seimas Ombudsman.

Article 26. Repealed

Article 27. Repealed

Article 28. Head of the Seimas Ombudsmen's Office

1. On the nomination of the Speaker of the Seimas, the Seimas shall appoint one of the appointed Seimas Ombudsmen as the head of the Seimas Ombudsmen's Office.

2. The head of the Seimas Ombudsmen's Office shall be the manager of State budgetary appropriations for the Seimas Ombudsmen's Office.

3. In addition to his direct duties, the head of the Seimas Ombudsmen's Office shall also perform the following functions:

1) represent the Seimas Ombudsmen's Office in its capacity as a legal person and organise its work;

2) approve the structure of the Seimas Ombudsmen's Office, define the functions of the organisational units and the employees of the Seimas Ombudsmen's Office, and approve Regulation of the Seimas Ombudsmen's Office;

3) admit to work and dismiss civil servants and other employees of the Seimas Ombudsmen's Office according to the procedure prescribed by laws;

4) set specific salary coefficients for the employees working under the employment contract;

5) grant leave to the Seimas Ombudsman, civil servants and other employees of the Seimas Ombudsmen's Office and send them on business trips, traineeships;

6) adopt decisions concerning the in-service training of civil servants and other employees of the Seimas Ombudsmen's Office;

7) impose disciplinary penalties on the civil servants and other employees of the Seimas Ombudsmen's Office;

8) organize the preparation and submitting to the Seimas of an annual report on the activities of the Seimas Ombudsmen.

4. The head of the Seimas Ombudsmen's Office shall issue orders on the issues falling within his competence.

CHAPTER V

GUARANTEES OF THE SEIMAS OMBUDSMEN'S ACTIVITIES, OTHER GUARANTEES

Article 29. Remuneration for Work and Social Guarantees of the Seimas Ombudsmen

1. The amount of remuneration of and conditions of payment to the Seimas Ombudsmen shall be established by the Law on the Remuneration of State Politicians and State Officials.

2. The Seimas Ombudsmen shall be insured by the state social insurance in the manner prescribed by the Law on State Social Insurance.

3. The Seimas Ombudsman shall be entitled to the annual leave of 28 calendar days. The Seimas Ombudsman whose length of service in the public service in the state of Lithuania is over five years shall be granted 3 additional calendar days of annual leave for each subsequent three years of service; however, the aggregate duration of the annual leave shall not exceed 42 calendar days.

4. Upon the expiry of his term of office the Seimas Ombudsman shall be paid a gratuity on discharge in the amount of 2 monthly wages. The Seimas Ombudsman who is dismissed when he is incapable to continue in office for health reasons shall receive a gratuity on discharge in the amount of 3 monthly wages. Upon the death of the Seimas Ombudsman his family shall be paid a death benefit in the amount of the Ombudsman's 3 monthly wages. The above benefits shall be paid from the State budget appropriations allocated to the Seimas Ombudsmen's Office. Gratuity on discharge shall not be payable when the Seimas Ombudsman is dismissed at his own request or when the judgement of conviction passed on

him becomes effective or when he is given a no-confidence vote by over a half of the Seimas members.

5. Upon the expiry of the term of office of the Seimas Ombudsman, except in cases when the judgement of conviction passed on him becomes effective or when he is given a no-confidence vote by over a half of the Seimas members, the Ombudsmen shall be entitled to be reinstated in his previous job according to the procedure laid down in the Law of the Republic of Lithuania on Public Service.

I promulgate this Law passed by the Seimas of the Republic of Lithuania

PRESIDENT OF THE REPUBLIC

VALDAS ADAMKUS