



On the Human Rights Ombudsman in the Republic of Kazakhstan

Invalidated Unofficial translation

The Law of the Republic of Kazakhstan dated December 29, 2021 No. 90-VII LRK. Became invalid by the Constitutional Law of the Republic of Kazakhstan dated 05.11.2022 No. 154-VII (comes into force after ten calendar days after the date of its first official publication).

Unofficial translation

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This Law shall determine the legal status, powers and organization of the activities of the Human Rights Ombudsman in the Republic of Kazakhstan.

Chapter 1. GENERAL PROVISIONS Article 1. Goals and objectives of the activities of the Human Rights Ombudsman in the Republic of Kazakhstan

1. The Human Rights Ombudsman in the Republic of Kazakhstan (hereinafter referred to as the Ombudsman) shall be a person holding a responsible public position, which shall be established in accordance with the Constitution of the Republic of Kazakhstan to ensure the state guarantee of the protection of human and civil rights and freedoms, their observance and respect by state bodies, bodies of local state administration and self-government, other organizations and officials.

The objectives of the Ombudsman's activities shall be to promote the restoration of violated rights and freedoms of a person and a citizen, improve the regulatory legal acts of the Republic of Kazakhstan, encourage and promote the rights and freedoms of a person and a citizen.

2. The Ombudsman shall carry out its activities in accordance with the Constitution of the Republic of Kazakhstan, this Law, other regulatory legal acts of the Republic of Kazakhstan, as well as international treaties and other obligations of the Republic of Kazakhstan.

Article 2. Principles of activity of the Ombudsman

The Ombudsman in carrying out his/her activities shall be guided by the principles of legality, fairness, impartiality, objectivity, publicity, openness, transparency and other principles enshrined in the Constitution of the Republic of Kazakhstan.

Article 3. Guarantees for the activities of the Ombudsman

1. The Ombudsman in the exercise of his/her powers shall be independent and not accountable to any state bodies and officials.

2. The conditions and procedure for proceedings in cases of administrative offences or pre-trial investigation against the Ombudsman shall be determined by the relevant laws of the Republic of Kazakhstan.

3. During the term of his/her powers, the Ombudsman may not be detained, subjected to detention, house arrest, bringing in, administrative penalties imposed in court, brought to criminal liability without the consent of the Prosecutor General of the Republic of Kazakhstan, except for cases of detention at the scene of a crime or committing serious or especially serious crimes.

4. The rights of the Ombudsman shall not be subject to restrictions, except for cases expressly provided for by the laws of the Republic of Kazakhstan.

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Part two of paragraph 4 shall enter into force six months after the day of its first official publication in accordance with this Law of the Republic of Kazakhstan dated December 29, 2021 No. 90-VII.

Intervention or obstruction of the legitimate activities of the Ombudsman shall entail liability established by the laws of the Republic of Kazakhstan.

5. The Ombudsman shall not be subject to interrogation as a witness on the circumstances that became known to him/her in connection with the performance of his /her official duties.

6. The Ombudsman shall be guaranteed the right to ensure security in the course of carrying out his/her activities in accordance with the laws of the Republic of Kazakhstan.

7. The Ombudsman shall have the right, upon presentation of an official ID, to freely visit institutions and other facilities throughout the territory of the Republic of Kazakhstan.

When visiting especially important state and strategic facilities, the Ombudsman shall observe the established requirements for access and intra-object regimes.

8. In the event of the introduction of a state of emergency throughout the territory of the Republic of Kazakhstan or in its areas, the Ombudsman shall carry out his/her activities in the manner established by the legislation of the Republic of Kazakhstan.

Article 4 Obligations of state bodies, local government and self-government bodies, organizations

1. State bodies, bodies of local state administration and self-government, organizations, their officials shall be obliged, in accordance with the procedure

established by the legislation of the Republic of Kazakhstan, to provide the Ombudsman with the necessary materials, documents, information and explanations.

2. Materials, documents, information requested by the Ombudsman must be sent to him/her within ten working days from the date of receipt of the request unless another period is specified in his/her request.

3. The Ombudsman and his/her representatives in the region, the city of republican significance, the capital, within the framework of their powers, shall exercise a right of prompt reception in state bodies, local state administration and self-government bodies, organizations and officials. At the request of the Ombudsman, these bodies and officials shall be obliged to provide the Ombudsman or his/her representatives with immediate assistance.

4. Authorized state bodies, bodies of local state administration and self-government, institutions and organizations, their officials shall be obliged to provide the Ombudsman or his/her representative in the region, city of republican significance, the capital with the opportunity to freely visit and communicate with persons who are in the relevant organizations and institutions that provide special social services that provide temporary isolation from society or are intended for the execution of punishment. The Ombudsman or his/her representative in the region, city of republican significance, the capital shall conduct a conversation with the indicated persons without witnesses, personally, or, if necessary, through an interpreter, as well as with any other person who can provide relevant information.

Chapter 2 PROCEDURE FOR ELECTION AND DISMISSAL OF THE OMBUDSMAN

Article 5. Procedure for the election of the Ombudsman

1. The Ombudsman shall be elected to office for a period of five years by the Senate of the Parliament of the Republic of Kazakhstan on the proposal of the President of the Republic of Kazakhstan.

2. A person elected to the position of the Ombudsman shall meet the following requirements:

1) possess citizenship of the Republic of Kazakhstan and permanently reside on its territory for the last ten years;

2) have higher education;

3) have at least five years of experience in protecting human and civil rights and freedoms;

4) be at least thirty years old;

5) to know the state language;

6) be capable.

3. Upon taking office, the Ombudsman shall take the following oath:

"On assuming the position of Human Rights Ombudsman in the Republic of Kazakhstan, I solemnly swear to honestly and conscientiously protect the rights and freedoms of man and citizen and fulfil my duties, guided by the Constitution of the Republic of Kazakhstan, other legislation of the Republic of Kazakhstan, as well as justice and conscience. I undertake to act independently, impartially, objectively in the interests of the rights and freedoms of man and citizen."

Article 6. Dismissal of the Ombudsman

1. The Ombudsman shall be dismissed from office by the Senate of the Parliament of the Republic of Kazakhstan on the proposal of the President of the Republic of Kazakhstan.

2. The Ombudsman may be early dismissed from his/her position by the Senate of the Parliament of the Republic of Kazakhstan upon the proposal of the President of the Republic of Kazakhstan.

3. The grounds for early dismissal of the Ombudsman shall be:

1) non-compliance with the requirements and restrictions established by this Law and other laws of the Republic of Kazakhstan;

2) entry into legal force concerning his/her guilty verdict of the court;

3) the entry into force of a court decision on recognizing the Ombudsman as incapable or of limited legal capacity or on the application of compulsory medical measures against him/her;

4) termination of citizenship of the Republic of Kazakhstan;

5) appointment, election to another position or transfer to another job;

6) leaving for a permanent place of residence outside the Republic of Kazakhstan;

7) commission of criminal offences incompatible with the position held;

8) an application for the resignation of their powers.

Article 7. Restrictions related to the activities of the Ombudsman

1. The Ombudsman shall not be entitled to engage in political activities.

For the period of exercising his/her powers, the Ombudsman shall suspend his/her membership in a political party.

2. The Ombudsman may not be in the public service, engage in entrepreneurial activities, participate in the management of a commercial organization, regardless of its organizational and legal form, as well as other paid activities, except for teaching, scientific or other creative activities.

3. The Ombudsman shall be prohibited from exercising official duties if there is a conflict of interest. He/she must take measures to prevent and resolve conflicts of interest.

4. The Ombudsman may not be a deputy of a representative body.
5. The Ombudsman shall not be entitled to:
 - 1) use for non-official purposes the means of material and technical, financial and information support of his/her official activities, other state property and official information;
 - 2) to participate in actions that impede the functioning of state bodies and the performance of official duties, including strikes;
 - 3) in connection with the performance of official powers, use the services of citizens and legal entities for personal purposes.

Chapter 3. COMPETENCE OF THE OMBUDSMAN Article 8. Competence of the Ombudsman

Ombudsman in his/her activities shall:

- 1) submit proposals to the President of the Republic of Kazakhstan, the Parliament of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan on the development of draft laws, improvement of the legislation of the Republic of Kazakhstan on the promotion and protection of human and civil rights and freedoms;
- 2) prepare and distributes an annual report on its activities, as well as special reports;
- 3) participate by invitation in joint and separate meetings of the Chambers of the Parliament of the Republic of Kazakhstan in accordance with paragraph 3 of Article 8 of the Constitutional Law of the Republic of Kazakhstan "On the Parliament of the Republic of Kazakhstan and the status of its deputies", meetings of working groups of the Chambers of the Parliament of the Republic of Kazakhstan and other events with the participation of deputies of the Parliament Republic of Kazakhstan;
- 4) participate by invitation at the plenary sessions of the session of maslikhats of regions, cities of republican significance or the capital in accordance with the laws of the Republic of Kazakhstan;
- 5) participate by invitation at meetings of the Government of the Republic of Kazakhstan, the Constitutional Council of the Republic of Kazakhstan, collegial and other bodies formed in state bodies;
- 6) submit recommendations and proposals to the Government of the Republic of Kazakhstan and other state bodies, bodies of local state administration and self-government, other organizations and officials regarding measures aimed at preventing violations and restoring human and civil rights and freedoms;
- 7) contribute suggestions to the President of the Republic of Kazakhstan, the Government of the Republic of Kazakhstan, deputies of the Parliament of the Republic of Kazakhstan and state bodies of the Republic of Kazakhstan in accordance with the objectives specified in this Law;

8) coordinate the activities of the participants of the national preventive mechanism in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on December 10, 1984;

9) consider complaints on violations of human and civil rights and freedoms in the manner prescribed by this Law;

10) contribute suggestions on the ratification of international treaties in the field of human rights and freedoms or in another way for the Republic of Kazakhstan to express its consent to be bound by an international treaty;

11) participate at the invitation of the authorized bodies in the preparation and discussion of national reports that are submitted to the bodies and committees of the United Nations, as well as regional institutions in pursuance of the contractual obligations of the Republic of Kazakhstan, and expresses an independent opinion on these issues in accordance with the procedures for these bodies and committees ;

12) cooperate with international, regional and other organizations, as well as national human rights institutions of other states, including through the conclusion of agreements (memorandums), to promote the promotion and protection of human and civil rights and freedoms;

13) promote the development of educational and research programs on human and civil rights, take part in their implementation in educational organizations and other organizations;

14) approve:
procedure for handling complaints;
regulation on the Coordinating Council under the Ombudsman;
regulation on the expert council under the Ombudsman;
procedure for selecting participants in the national preventive mechanism;
procedure for forming groups of participants in the national preventive mechanism for preventive visits;
guidelines for preventive visits;
position and description of the symbol and flag of the Ombudsman;

15) exercise other powers in accordance with the legislation of the Republic of Kazakhstan.

Article 9. Consideration of a complaint

1. The Ombudsman, within the limits of his/her competence, within fifteen working days from the date of receipt of the complaint, shall consider complaints of citizens of the Republic of Kazakhstan and foreigners and stateless persons located on the territory of the Republic of Kazakhstan, filed personally and (or) through representatives (hereinafter referred to as the Applicants).

To protect the rights of a citizen and with his/her written consent, public associations may apply to the Ombudsman.

2. The Ombudsman shall not consider complaints against actions (inaction) and decisions of the President of the Republic of Kazakhstan, the First President of the Republic of Kazakhstan - Elbasy.

3. The complaint shall contain information on the last name, first name, patronymic (if it is indicated in the identity document) and the place of residence or work of the applicant, a statement of the essence of the decisions or actions (inaction) that violated or violate, in the opinion of the applicant, his/her rights and freedoms. Documents and other materials confirming the applicant's arguments shall be attached to the complaint.

4. Having received a complaint, the Ombudsman shall take one of the following decisions:

1) accept the complaint for consideration in the manner approved by the Ombudsman;

2) explain the ways and means that the applicant can use to protect his/her rights and freedoms;

3) send appeals to the competent state bodies or officials for verification of the circumstances to be clarified;

4) refuse to accept the complaint for consideration, which must be motivated. Refusal to accept a complaint for consideration shall not be subject to appeal.

5. The term for consideration of a complaint may be extended by a reasoned decision of the Ombudsman for a reasonable period, but not more than up to two months, of which the applicant shall be notified within three working days from the date of extension of the term. The Ombudsman shall notify the applicant and the relevant state bodies, local government and self-government bodies, officials whose decisions and (or) actions (inaction) are being appealed about the decision taken.

Article 10. Rights of the Ombudsman when considering a complaint

1. When considering a complaint, the Ombudsman shall have the right to:

1) request and receive from state bodies, bodies of local state administration and self-government, other organizations and officials documents, materials and information necessary for considering a complaint, except for cases and materials that are in court proceedings;

2) receive access in accordance with the established procedure to the documents of state organizations and public associations relating to issues of human and civil rights and freedoms;

3) organize prompt reception of complainants, including with the invitation of representatives of state bodies, local government and self-government bodies, as well as other organizations (joint receptions);

4) on their initiative to consider issues related to the violation of human and civil rights and freedoms if there is information about their mass violation or such violation is of public importance or is associated with the need to protect the interests of such persons who cannot independently use legal means to protect their rights and freedom;

5) send recommendations and petitions to state bodies, bodies of local state administration and self-government and organizations, officials on issues of protecting the rights and freedoms of man and citizen.

2. Providing the Ombudsman with information constituting a state or other secret protected by law is carried out in accordance with the legislation of the Republic of Kazakhstan.

Article 11. Peculiarities of consideration of a complaint

1. When considering a complaint, the Ombudsman shall be obliged to provide the state body, body of local state administration and self-government or official, whose decisions or actions (inaction) are being appealed, with the opportunity to give their explanations on any issues to be clarified in the process of consideration.

The Ombudsman shall have the right to apply to a state body, a body of local state administration and self-government or an official for assistance in clarifying the circumstances that have become the subject of the complaint.

2. Recommendations and petitions of the Ombudsman shall be subject to consideration within fifteen working days from the date of their receipt, the results of the consideration are reported to the Ombudsman in the manner prescribed by the legislation of the Republic of Kazakhstan.

In cases where an additional study is necessary, the term for consideration of the recommendations and petitions of the Ombudsman shall be extended by the entity to which they were sent for no more than thirty calendar days, which is reported to the Ombudsman within three working days from the date of extension of the consideration period.

3. The materials received during the consideration of the complaint shall not be subject to disclosure until the Ombudsman makes a final decision.

4. The Ombudsman shall not be entitled to disclose information about the private life of the applicant and other persons that became known to him during the consideration of the complaint without their written consent.

Article 12. Results of consideration of the complaint

Based on the results of consideration of the complaint, the Ombudsman, depending on the decision taken by him shall:

1) send to state bodies, bodies of local state administration and self-government, officials, civil servants, whose actions (inaction) violated the rights and freedoms of the applicant, recommendations on measures to be taken to restore the violated rights and freedoms of man and citizen;

2) apply to the authorized state body or official with a request to conduct disciplinary or administrative proceedings or proceedings on a criminal offence against a person who has violated the rights and freedoms of a person and a citizen;

Note ILLI!

Subparagraph 3) shall enter into force six months after the day of its first official publication in accordance with this Law of the Republic of Kazakhstan dated December 29, 2021 No. 90-VII.

3) apply to the court with a statement of application (claim) in defence of the rights and freedoms of an unlimited number of persons violated by decisions or actions (inaction) of state bodies, local state administration and self-government bodies, officials, civil servants. The statement of application (claim) sent by the Ombudsman shall not be subject to state duty in accordance with the tax legislation of the Republic of Kazakhstan.

Article 13. Generalization of the results of consideration of complaints

1. Based on the results of summarizing the results of consideration of complaints, the Ombudsman shall:

1) send to state bodies, bodies of local state administration and self-government, as well as to officials, their comments and proposals of a general nature related to ensuring the rights and freedoms of man and citizen, improving administrative procedures;

2) address the subjects that have adopted (issued) legal acts with proposals for making changes and additions to them, if the Ombudsman believes that decisions or actions (inaction) of state bodies, bodies of local state administration and self-government or officials that violate the rights and freedoms of a person and a citizen are committed due to its imperfection or existing gaps or contradictions between the legislation of the Republic of Kazakhstan and international treaties or other obligations of the Republic of Kazakhstan.

2. In cases of special public importance or associated with mass violation of human and civil rights and freedoms guaranteed by the Constitution of the Republic of Kazakhstan, the Ombudsman shall take the following measures:

1) send an appeal directly to the President of the Republic of Kazakhstan, the Chambers of the Parliament of the Republic of Kazakhstan or the Government of the Republic of Kazakhstan;

2) petition for sending an appeal to the Constitutional Council of the Republic of Kazakhstan by persons having such a right in accordance with the Constitution of the Republic of Kazakhstan and the Constitutional Law of the Republic of Kazakhstan "On the Constitutional Council of the Republic of Kazakhstan";

3) apply to the Supreme Court of the Republic of Kazakhstan with a proposal to provide clarifications on issues of judicial practice.

Article 14. Reports of the Ombudsman

1. The Ombudsman shall annually submit to the President of the Republic of Kazakhstan for consideration reports on his/her activities containing the results of the analysis of regulatory legal acts, consideration of complaints and the exercise of other powers in accordance with this Law.

2. On certain issues of observance of human and civil rights and freedoms in the Republic of Kazakhstan, the Ombudsman may prepare and distribute special reports.

3. Reports of the Ombudsman shall be sent to authorized state bodies for consideration on issues within their competence.

The authorized state bodies within three months from the date of receipt of the report of the Ombudsman in the prescribed manner inform him of the results of the consideration of the report.

4. The Ombudsman shall approve the procedure for preparing and distributing the reports referred to in this article.

5. Reports shall be subject to publication on the Internet resource of the Ombudsman and distribution in the manner prescribed by the legislation of the Republic of Kazakhstan.

Article 15 National Preventive Mechanism

The Ombudsman shall coordinate the activities of the participants of the national preventive mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, takes measures to ensure the necessary potential and professional knowledge of the participants of the national preventive mechanism, and also exercises other powers in accordance with the legislation of the Republic of Kazakhstan to ensure the effective operation of the national preventive mechanism.

Article 16. Legal education in the field of human and civil rights and freedoms, interaction with public associations, experts and specialists

1. The Ombudsman shall promote legal education in the field of human and civil rights and freedoms, participates in the development of educational programs and raise the level of knowledge of the population of the legislation of the Republic of

Kazakhstan and the most important international acts on human and civil rights and freedoms.

2. The Ombudsman may initiate the creation of a scientific and educational centre and other organizations to promote knowledge about the rights and freedoms of a person and a citizen, organize scientific and applied research, as well as regularly improve knowledge and skills in the field of protecting the rights and freedoms of a person and a citizen.

3. The Ombudsman shall interact with state bodies, public associations and other organizations within the framework of information campaigns and projects to promote and encourage the rights and freedoms of a person and a citizen.

4. The Ombudsman has the right to involve organizations and specialists on a contractual basis in the preparation of reports in accordance with the legislation of the Republic of Kazakhstan.

Article 17. Suggestions for improving legislation and concluding international treaties

The Ombudsman, within the framework of his/her activities on issues of human and civil rights and freedoms and in the manner prescribed by the laws of the Republic of Kazakhstan "On legal acts" and "On international treaties of the Republic of Kazakhstan" shall:

- 1) develop and send suggestions to the interested state bodies on improving the legislation or concluding international treaties of the Republic of Kazakhstan;
- 2) consider suggestions of state bodies, organizations and citizens.

Chapter 4 ORGANIZATION OF THE ACTIVITIES OF THE OMBUDSMAN AND HIS/HER REPRESENTATIVE IN THE REGION, CITY OF REPUBLICAN SIGNIFICANCE, CAPITAL, NATIONAL CENTER FOR HUMAN RIGHTS

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Article 18 shall enter into force six months after the day of its first official publication in accordance with this Law of the Republic of Kazakhstan dated December 29, 2021 No. 90-VII.

Article 18 Representative of the Ombudsman in the region, the city of republican significance, the capital

1. The Ombudsman shall have a representative in the region, city of republican significance, the capital (hereinafter referred to as the Representative), appoint and dismiss him/her from office in accordance with the legislation of the Republic of Kazakhstan on public service.

2. The representative shall be a civil servant and manage the activities of the representative offices of the National Center for Human Rights.

Functional duties of representatives shall be approved by the Ombudsman.

3. The representative, on behalf of the Ombudsman, shall exercise powers within the framework of his/her functional duties and on his/her behalf within the respective administrative-territorial unit.

Article 19. National Center for Human Rights

1. To ensure the activities of the Ombudsman, a working body shall be created - the National Center for Human Rights (hereinafter referred to as the National Center), which shall be a state institution, shall have a seal and forms with the image of the State Emblem of the Republic of Kazakhstan and indicate its name in the state and Russian languages, as well as the relevant accounts in banking institutions.

2. The Regulation on the National Center shall be approved by the President of the Republic of Kazakhstan at the suggestion of the Ombudsman. The structure of the National Center and its representative offices shall be approved by the Ombudsman.

3. The head of the National Center shall be appointed and dismissed by the Ombudsman.

4. The National Center shall provide information and analytical, organizational, legal and other support for the activities of the Ombudsman.

5. Employees of the National Center are civil servants, carrying out their activities based on the legislation of the Republic of Kazakhstan in the field of public service.

6. The financial allowance of the employees of the National Center and its representative offices, their medical and social support shall be determined in accordance with the legislation of the Republic of Kazakhstan in the field of public service.

Article 20. Financial and logistical support

1. Financing of the activities of the Ombudsman, his/her representatives, as well as the working body shall be carried out from the funds of the republican budget.

2. The financial allowance of the Ombudsman, his/her medical and social services, as well as the material and technical support of his/her activities shall be determined at the level of guarantees established by laws and other regulatory legal acts of the Republic of Kazakhstan for officials holding public positions, but not lower than a member of the Government of the Republic Kazakhstan.

3. In the republican budget, annually, a separate budget program shall provide for the funds necessary to ensure the activities of the Ombudsman, his/her representatives, as well as the working body.

4. Financial statements shall be submitted by the National Center in the manner prescribed by the legislation of the Republic of Kazakhstan.

5. The procedure for issuing and description of the official certificate of the Ombudsman shall be determined in the manner established by the President of the Republic of Kazakhstan.

Article 21 Advisory and advisory bodies under the Ombudsman, as well as his/her participation in advisory and advisory bodies under state bodies and organizations

1. An expert council with advisory and analytical functions shall be created under the Ombudsman, consisting of persons with experience in the field of protecting human and civil rights and freedoms.

2. A Coordinating Council shall be established under the Ombudsman to ensure effective coordination of the activities of the national preventive mechanism.

3. The Ombudsman may create working groups and commissions with the participation of representatives of interested state bodies and organizations, citizens.

4. The Ombudsman may participate independently or through his/her representatives in advisory and supervisory bodies under state bodies and organizations on his/her initiative or by invitation.

Article 22. Acts of the Ombudsman and the head of the National Center

1. To implement this Law, the Ombudsman shall issue instructions, the head of the National Center shall issue orders.

2. The Ombudsman shall have his/her form of standard pattern with the image of the State Emblem of the Republic of Kazakhstan, indicating the name of the position in the state and Russian languages.

Chapter 5. FINAL PROVISION Article 23. Procedure for the entry into force of this Law

This Law shall enter into force upon the expiration of ten calendar days after the day of its first official publication, except for part two of paragraph 4 of Article 3, subparagraph 3) of Article 12, Article 18, which shall enter into force six months after the day of its first official publication.

*President of the
Republic of Kazakhstan*

K. TOKAYEV