

БОСНА И ХЕРЦЕГОВИНА
ПАРЛАМЕНТАРНА СКУПШТИНА
БОСНЕ И ХЕРЦЕГОВИНЕ

СЕКРЕТАРИЈАТ
ЗАЈЕДНИЧКА СЛУЖБА

Истраживачки сектор



BOSNA I HERCEGOVINA
PARLAMENTARNA SKUPŠTINA
BOSNE I HERCEGOVINE

SEKRETARIJAT / TAJNIŠTVO
ZAJEDNIČKA SLUŽBA

Istraživački sektor

BOSNIA AND HERZEGOVINA
PARLIAMENTARY ASSEMBLY
OF BOSNIA AND HERZEGOVINA
SECRETARIAT
COMMON SERVICE
Research Section

Number: 75
03/10-50-3-199-01/10
Sarajevo, 15th January 2010

*Unofficial Translation
from the Bosnian Language*

**ROLE AND FUNCTION OF THE PARLIAMENTARY COMMISSIONER FOR
MILITARY AFFAIRS**

Prepared by:
Sena Bajraktarević
Aida Osmanović
Research Section

ROLE AND FUNCTION OF THE PARLIAMENTARY COMMISSIONER FOR MILITARY AFFAIRS

Based on the available documents, we hereby provide you with the information on the status, powers and functions of the respective Parliamentary Commissioners for Military Affairs in Germany, Ireland, Norway, Sweden and Great Britain.

GERMANY

Commissioner for the Armed Forces of the German Bundestag ¹

Working on behalf of the Bundestag

The Commissioner for the Armed Forces of the German Bundestag (House of Representatives of the German Parliament) is elected by the members of the Bundestag in a secret ballot for a five-year term of office. The Commissioner is neither a member of the Bundestag nor a civil servant - he occupies a special position.

The Commissioner works to “safeguard basic rights and to assist the Bundestag in exercising parliamentary control” over the armed forces - a task enshrined in the German Constitution.

The Commissioner’s exact tasks and powers are set out in the Act on the Parliamentary Commissioner for the Armed Forces. This Law specifies two reasons in particular for the Commissioner to take action: upon instructions from the Bundestag or the Parliamentary Defence Committee, and due to circumstances which suggest a violation of the basic rights of a member of the armed forces or of the principles of the Interior Service.

Parliamentary control over the armed forces

The Commissioner is appointed to assist the Bundestag in exercising parliamentary scrutiny of the German Armed Forces. The Commissioner is thus subject to the instructions of the Bundestag and has clearly defined duties towards it.

For example, on the instructions of the Bundestag or its Defence Committee, the Commissioner must investigate critical incidents in the German Armed Forces and report on his findings. In addition, the Commissioner must submit an annual report on his work to the Parliament. The Commissioner’s duties also include the obligation to be present in the Bundestag if requested by Parliament or the Defence Committee.

¹ Source: Bundestag/Commissioner for the Armed Forces: <http://www.bundestag.de>

Safeguarding basic rights and principles

Since the first Parliamentary Commissioner for the Armed Forces took up office in 1959, the Bundestag has issued no instructions for investigations and the Defence Committee has done so on only 25 occasions. The Commissioner therefore works primarily on his own initiative.

The Commissioner investigates incidents within the German Armed Forces which give rise to the suspicion that, for example, human dignity, freedom of opinion or the legal protection of service personnel have been unlawfully restricted.

The Commissioner's attention can be drawn to special incidents which lead to investigations during visits to military units and through press reports, information from members of the Bundestag or petitions from service personnel.

The right of service personnel to petition the Commissioner

The Commissioner has another important function, in addition to assisting Parliament in the scrutiny of the armed forces. He is the ombudsman of the armed forces and can thus be contacted directly and without going through official channels by every member of the armed forces. Service personnel can bring to the attention of the Commissioner all matters which they feel reflect wrong or unfair treatment. Petitions can therefore cover the entire spectrum of everyday military routines, including official, social and personal problems.

Petitions need not be submitted by service personnel themselves. Comrades, elected spokespersons and family members can also contact the Commissioner on behalf of a member of the armed forces. The soldier concerned is then asked to give consent before the Commissioner takes action.

Powers

In order to carry out his constitutional tasks, the Commissioner for the Armed Forces has the power to request that information be provided and to make proposals to resolve the problems. He has the right to scrutinise matters relating to the German Ministry of Defence and all of its subordinate agencies and personnel.

The Commissioner is also entitled to administrative assistance. Courts and administrative authorities of the Federation, the provinces and the municipalities are obliged to support the Commissioner in the conduct of necessary investigations.

Right to information

The Commissioner has the right to draw on various sources of information in his work.

He has the right to demand information and access to records from the German Ministry of Defence and all subordinate agencies.

The Commissioner can conduct hearings of people who have submitted complaints, as well as witnesses.

The Commissioner may, at any time and without prior announcement, visit any units, headquarters, installations or administrative agencies of the German armed forces.

He can request reports on the exercise of disciplinary power in the German armed forces and attend criminal or disciplinary proceedings in court.

Right to make proposals and recommendations

If the Commissioner finds that there have been deficiencies or incorrect behaviour, he may request that the authorities responsible take measures to prevent future recurrences.

He can propose that criminal and disciplinary proceedings be initiated by referring a matter to the authority responsible.

The Commissioner's proposals are not instructions or orders. However, his influence should not be underestimated. Experience has shown that the very existence of an independent commissioner to whom any member of the armed forces can have recourse has a positive effect on the armed forces leadership behaviour.

The paper proceeds by offering additional information on the Parliamentary Commissioner for the Armed Forces, as stated in the document *The Parliamentary Commissioner for the Armed Forces - His Role in Exercising Parliamentary Control over the Armed Forces*, by dr Karl Gleumes, Edition 2005.

The Parliamentary Commissioner is neither a member of the Bundestag nor a civil servant. His position is specified by the Act on the Parliamentary Commissioner for the Armed Forces. In defining his legal status, the legislator had the rights and duties of the Parliamentary State Secretary as its base.

During his mandate, the Parliamentary Commissioner may not assume any other position or exercise any other activity or political duty.

The German Bundestag elects the Commissioner in a secret ballot, with no previous discussion. Candidates may be nominated by the Defence Committee and the Parliamentary Group in the Bundestag. The candidate that wins the majority vote of the members of the Bundestag will be elected. Any national of Germany having turned 35 may be elected. There is no formal requirement for the candidates to have earlier military experience. The Parliamentary Commissioner is appointed by the President of the Bundestag and he shall take his oath of office before the Parliament.

The term of office of the Parliamentary Commissioner will last for five years, that is, one year longer than the mandate of the members of the Parliament. This assists in safeguarding independence of the Commissioner in case that the Parliamentary majority changes due to the new elections. The Commissioner may be re-elected for a consecutive term for more than twice.

The term of office of the Commissioner shall be terminated in case of the Commissioner's death, release of duty by Parliament or at his request.

Job description

According to the Constitution, the Parliamentary Commissioner shall be appointed to "safeguard basic rights and to assist the Bundestag in exercising parliamentary control over the Armed Forces" of Germany. His tasks have been detailed in the Act on the Parliamentary Commissioner for the Armed Forces.

The term of office of the Parliamentary Commissioner is set out in the Part I, paragraphs 2 and 3 of the Act on the Parliamentary Commissioner, which specifies two reasons for the Commissioner to take action:

- Upon instructions from the Bundestag or the Defence Committee to investigate certain incidents (paragraph 2 – field of control being the subject matter of the instructions)
- On his own initiative and conduct of the procedure and in his own estimate due to circumstances which suggest a violation of the basic rights of a member of the armed forces or of the principles of the Interior Service (paragraph 3 – field of control on his own initiative)

The Parliamentary Commissioner may demand the Defence Committee to issue instructions for the investigation of certain incidents. The tasks of the Parliamentary Commissioner are not restricted to exercising the parliamentary control over the German armed forces on behalf of the Bundestag. The Act on the Parliamentary Commissioner for the Armed Forces also tasks him with deciding on the petitions from service personnel (citizens in uniform).

Powers of the Parliamentary Commissioner

In exercising his term of office as stipulated by the Constitution, the Parliamentary Commissioner has the right to demand access to information and to make proposals and recommendations.

Right to information

The Parliamentary Commissioner has the right to demand information and access to the records from the Minister of Defence and all subordinate agencies.

Upon initiating an investigation of a certain incident based on the instructions of the Bundestag or the Defence Committee and when dealing with a petition concerning a certain complaint, the Parliamentary Commissioner is entitled to hearing of a person who has submitted a complaint, as well as of experts and witnesses.

The Parliamentary Commissioner may, at any time and without prior announcement, visit any units, headquarters, installations or administrative agencies of the German armed forces.

These visits enable the Commissioner to meet and have discussions with personnel at all levels, and to thus acquire first-hand information on the situation in the armed forces. During these visits the Commissioner learns about all of the problems the personnel face in performing their everyday military duties, as well as about their concerns and other important issues which are often not entirely, if at all, stated in the petitions. This enables the Commissioner to take preventative actions by forwarding his findings to the Minister of Defence without delay. The Commissioner also has another main source of information: he has the right to demand reports on the exercise of disciplinary power in the armed forces and to attend criminal or disciplinary proceedings at court, in his capacity as observer.

Right to make proposals and recommendations

The Parliamentary Commissioner may offer a possibility to the agencies involved in resolving certain issues to resolve them themselves. For example, upon closure of the investigation which indicated deficiencies and incorrect behaviour, he may request that certain measures be taken in order to prevent future recurrences.

He may also refer certain matters to the authorities responsible for initiation of the criminal or disciplinary proceedings. The proposals and recommendations made by the Commissioner are not binding, nor are they orders.

The fact that the powers of the Commissioner are restricted to gathering information and making recommendations may suggest that his influence on a certain matter might not be significant. In practice, however, this is not the case. The existence of an independent commissioner whom any member of the armed forces, from the lowest rank to the rank of a General, can address for help has a positive effect on the leadership behaviour. It is of particular importance that the Parliamentary Commissioner is empowered to involve in the case the higher-level authorities, up to and including the Minister of Defence of Germany and, by its annual and special reports, to draw attention of the Bundestag to all deficiencies he has revealed. The influence of the Parliamentary Commissioner is therefore not only based on his powers, but also on his moral authority which the relevant agencies cannot simply ignore.

Annual Report of the Parliamentary Commissioner

The Parliamentary Commissioner is obliged to submit an annual report to the Bundestag on a calendar-year basis. There exist no detailed instructions on its content. That is why it has to be based on the two tasks as stipulated by the Constitution – to exercise control and consider the petitions. Therefore, the report basically includes negative incidences and incidents in the armed forces. Consequently, former Commissioners considered the annual reports to primarily be the reports on deficiencies, rather than the reports on the situation in the armed forces in general.

In his annual report, the Commissioner addresses violence by the superiors and military authorities. However, it also considers general working conditions of the armed forces and those under which soldiers perform their assignments. The Commissioner acts as an early

warning system for Parliament. Naturally, his comments and commentaries cannot always be exempt from the political and Parliamentary aspects.

Parliament and the Defence Committee in particular take the annual report of the Commissioner as the basis for the discussions and decisions on the internal development of the armed forces. For that reason, the report draws attention of Parliament to special matters, not only with regard to individual members of the armed forces, but to the armed forces as a whole.

The Commissioner's annual report is always considerably covered by the media. The media reports of the Commissioner's annual report help the public to be informed of the problems the armed forces face. At the same time, this helps with having the attention of the Parliament focused on the report.

The Commissioner submits his annual report to the Parliament. The report is filed with the Chairman of the Bundestag in the first quarter every year, and is printed as a Bundestag document. Once published, the report is distributed to the personnel. The Chairman forwards the report to the Defence Committee, for comments. After the Minister has made his comments on the report, the Committee discusses his report and produces its own report and recommendations for Parliament to decide. In the course of the Parliament discussion, the Commissioner is allowed to take the floor, if demanded so by a Parliamentary group or at least five percent of the members of the Bundestag. In making comments on the Parliamentary Commissioner's annual report, the Minister of Defence elaborates the measures that should be taken for the described deficiencies to be eliminated. Next year, Pa

liament will be notified of the progress thereof.

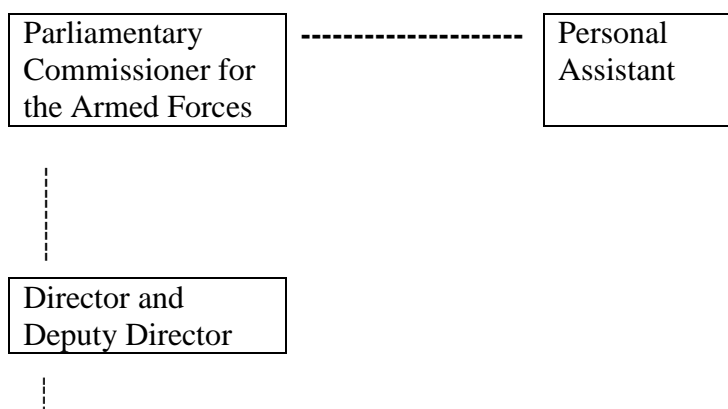
Personnel of the Office of the Parliamentary Commissioner for the Armed Forces

When established, it was believed that the Office of the Parliamentary Commissioner for the Armed Forces would require a small number of employees to make it functional. However, due to the number of petitions which increased soon, the number of personnel had to increase as well. That was the only way to secure that the Commissioners for the Armed Forces exercise their task of the Parliamentary control over the armed forces.

Currently, the Office of the Parliamentary Commissioner numbers about 50 employees, half of which being directly involved in considering the complaints submitted to the Commissioner.

This Office employees belong to the Bundestag administration within which they make a special Directorate named *Parliamentary Commissioner for the Armed Forces*. As for their work, they are under the sole supervision of the Commissioner. The Directorate is headed by the Director and is divided under the principles of the ministerial organisation to the sections the size and powers of which are defined so as to meet the tasks in the best way possible. There are six sections for the time being.

The Directorate organisational scheme graph presents the Office structure:



Section 1	Section 2	Section 3	Section 4	Section 5	Section 6 *
Policy/ Internal Leadership Principles/ Internal Management	Armed Forces Leadership / Soldiers Abroad	Conscript and Reservist Personal Issues / Women in the Armed Forces	Personal Issues of Professional Soldiers and Temporary Professional Volunteers	Social Welfare and Care / Soldiers and Their Families	Visits to Troops and Fact Finding Visits / Relations with the Media and the Public / Military Issues

* Section 6 is presented in the Directorate organisational scheme of September 2007

Statistics

Number of petitions submitted to the Commissioner for the Armed Forces between 1959 and 2005:

Year	Total	Year	Total	Year	Total	Year	Total	Year	Total
1959	3368	1969	7033	1979	6684	1989	10190	1999	5885
1960	5471	1970	7142	1980	7244	1990	9890	2000	4952
1961	3829	1971	7891	1981	7265	1991	9864	2001	4891
1962	5736	1972	7789	1982	6184	1992	8084	2002	6436
1963	5938	1973	6673	1983	6493	1993	7391	2003	6082
1964	5322	1974	6748	1984	6086	1994	5916	2004	6154

1965	4408	1975	6439	1985	8002	1995	5979	2005	5601
1966	4353	1976	7319	1986	8619	1996	6264		
1967	4503	1977	6753	1987	8531	1997	6647		
1968	6517	1978	6234	1988	8563	1998	6122		

IRELAND²

Function

The Ombudsman for the Defence Forces was established by the 2004 Ombudsman Defence Forces Act. The Ombudsman for the Defence Forces investigates complaints by members and former members of the Defence Forces. The Ombudsman is impartial. He is independent of the Minister for Defence, the Department of Defence and the military authorities.

The Ombudsman's task is to ensure that members and former members of the Permanent Defence Forces and Reserve Defence Forces have a rigorous, independent and fair appeal for complaints they believe have not been adequately addressed by the internal military complaints process.

Who can make a complaint?

- Serving members of the Permanent Defence Forces
- Former members of the Permanent Defence Forces
- Members of the Reserve Defence Forces
- Former members of the Reserve Defence Forces

Serving members of the Permanent Defence Forces and the Reserve Defence Forces must, first, make a complaint through the internal Defence Force structures, pursuant to Section 114 of the Defence Act 1954.

If, 28 days after you made that complaint, there is no resolution of the dispute then a serving member of the Defence Forces is entitled to bring their complaint to the Ombudsman. Former members of the Permanent Defence Forces and former members of the Reserve Defence Forces can make a complaint directly to the Defence Ombudsman.

Serving and former members of the Defence Forces have to make a complaint:

² Source: Ombudsman for the Defence Forces: <http://www.odf.ie/>

- Within 12 months of the action happening
- Within 12 months of becoming aware of the action

The Ombudsman cannot investigate actions that occurred before his position was established.

The Ombudsman for the Defence Forces can investigate complaints about actions taken by:

- Another serving member of the Defence Forces or the Permanent Reserve Defence Forces
- Former members of the Defence Forces or the Permanent Reserve Defence Forces who were serving at the time of the action
- A civil servants working in that period of time

The Ombudsman for the Defence Forces has wide powers to investigate any action that may have been:

- Taken without proper authority,
- Taken on irrelevant grounds,
- The result of negligence or carelessness,
- Based on wrong or incomplete information,
- Improperly discriminatory,
- Contrary to fair or sound administration.

The Ombudsman for the Defence Forces is excluded from investigating actions that concern:

- Security or military operations,
- Organisation, structure and deployment of the Defence Forces,
- Terms and conditions of employment,
- Administration of military prisons.

The Ombudsman for the Defence Forces is also excluded from investigating actions if the person making the complaint has lodged legal proceedings in the civil courts in relation to the matter.

Complaints can be lodged with the Ombudsman for the Defence Forces in writing or through the on-line complaints form.

NORWAY³

The Parliamentary Commissioner for the Armed Forces was established in 1952, as the world's first Parliamentary Military Ombudsman.

The Ombudsman is an organ of the Storting (the Norwegian Parliament) and part of the Parliament's oversight- and supervisory activities. The Ombudsman and the Ombudsman's Committee is elected by and reports to the Parliament.

³ Parliamentary Commissioner for the Armed Forces: <http://ombudsmann.no/>

The Ombudsman safeguards the rights of all members (and former members) of the Armed Forces. Anyone who feels that he or she has been wrongly, unjustly or unreasonably treated can bring his or her case before the Ombudsman and request him to investigate the matter to determine whether an injustice has been done, and if it has, to see to it that corrective action is taken.

All sorts of issues and circumstances arising from military service can at any given time - before, during or after time of service - be brought to the attention of the Ombudsman.

The Ombudsman's committee submits annual reports to Parliament. The Ombudsman may however at any time report a matter to Parliament. The Ombudsman acts as an advisor to Parliament and the Ministry of Defence on matters within his sphere of competence.

In its role as independent military oversight mechanism the Ombudsman's committee inspects military units home and abroad. The Ombudsman submits inspection reports with proper recommendations to the MOD, Chief of Defence and military authorities involved.

The Ombudsman may address or take actions on his own initiative in any matter which comes to his attention. He is empowered to deal with cases involving all authorities, has access to all documents and information and may hear witnesses and experts. The Ombudsman is impartial and independent of the Minister for Defence, the Ministry of Defence and the military authorities. The Ombudsman's committee consists of seven members and is headed by the Ombudsman. The Ombudsman's committee is headed by the Director.

SWEDEN⁴

In Sweden, the role of the Commissioner for the Armed Forces is exercised by one of four Parliamentary Ombudsmen. His competence implies the work for the armed forces, non-combat military service and other cases related to the Ministry of Defence, including other fields such as prisons and interrogations, security, public procurements and other.

In his work, the Ombudsman is assisted by two Heads of Sections and 5 – 7 executive managers. Most of them are young judges. As a rule, they stay with the Parliamentary Ombudsmen between 4 and 6 years before they are appointed as judges.

The Office of the Ombudsman also has its Secretariat and two Secretaries. That means that the Ombudsman Office employs about 10 persons in total. Parliament also appointed two Deputies to the Ombudsman in case of his illness or a longer business journey.

The powers and the duties of the Ombudsman who also exercises the role of the Commissioner for the Armed Forces are identical to those of the remaining three Ombudsmen.

GREAT BRITAIN⁵

⁴ Source: Parliamentary Ombudsman Riksdag: <http://www.jo.se/>

The Commissioner's role is to provide a rigorous and independent oversight of how the complaints system is working and to report back to Ministers and to Parliament.

The Commissioner also provides an alternative point of contact for Service personnel, or someone acting on their behalf, such as a member of their family, a friend or MP to raise concerns.

The Commissioner has set priorities for the Armed Forces for them to:

- deal with complaints quickly
- at a level which can make fair decisions and make changes where things have gone wrong
- in a way that keeps all those concerned informed of progress and able to understand the outcome and the reasons behind it

Because of concerns that Service men and women should be treated properly, the Commissioner has special powers where a complaint is about unacceptable behaviour such as:

- bullying
- harassment
- discrimination
- victimization
- dishonest or improper behaviour

The Commissioner will present an annual report to Parliament on how efficient, effective and fair the complaints process has been during the year. This report will be available to the public.

Aims and Values

The aim of the Commissioner for the Armed Forces is to ensure all Service men and women and their families have confidence in the complaints system and are treated properly, by:

- monitoring individual complaints
- focusing on outcomes and improvements
- holding the Services to account for fairness, effectiveness and efficiency in their handling of complaints
- working with the Services and MOD to see that lessons are implemented swiftly and effectively
- accounting publicly to Ministers and Parliament

Values

- independence of judgement
- fairness and justice
- integrity
- transparency and accountability
- respect for diversity

⁵ Service Complaints Commissioner: <http://armedforcescomplaints.independent.gov.uk/>

- humanity

OTHER EUROPEAN COUNTRIES

In the European countries listed below the role of the Parliamentary Commissioner for the Armed Forces has also been established. However, we have not managed to obtain more information about them, considering that the information is either not available on the official web-sites of Parliaments or is solely available in local languages (not English or German):

1. Austria: Parliamentary Service Complaints Committee, Executive Commissioner and Commissioners for the Armed Forces
2. Belgium: Military Ombudsmen
3. France: *Controleur General des Armees Ministere de la defense, la Republique Francaise* (Military Inspector General, Ministry of Defence)
4. The Netherlands: Inspector General for the Armed Forces
5. Slovenia⁶: In Slovenia, the role of the Commissioner for the Armed Forces is exercised by the Deputy Ombudsman. His powers also include considerations of the complains within the scope of the Constitutional rights, civil servants, environment and discrimination.

⁶ Ombudsmen for Human Rights: <http://www.varuh-rs.si/>

LITERATURE AND REFERENCES:

Gleumes, Karl. *The Parliamentary Commissioner for the Armed Forces (Auxiliary Organ of the German Bundestag in the Exercise of Parliamentary Control over the Armed Forces)*. German Bundestag, Public Relation Division, 2005. (15th January 2010)

<http://www.bundestag.de/> (15th January 2010)

<http://www.odf.ie/>(15th January 2010)

<http://ombudsmann.no/>(15th January 2010)

<http://www.jo.se/>(15th January 2010)

<http://armedforcescomplaints.independent.gov.uk/>(15th January 2010)

<http://www.varuh-rs.si/>(15th January 2010)