Fifth section: The Ombudsperson

Election

§ 87  The Cantonal Council elects the Cantonal Ombudsperson and his/her deputies for a term of office of four years.

The Cantonal Council determines the number of deputies and sets the Ombudsperson's salary and compensation for his/her deputies.

The deputies officiate only if the ombudsperson cannot fulfil his/her obligations in the time set.

Controlling and accounting, approval of expenditures

§ 87 a.  The Ombudsperson is subject to the Act on Controlling and Accounting [German acronym: CRG] and the implementing regulations of the State Council with respect to that Act.

The Ombudsperson shall perform his or her own accounting. Each year, the Ombudsperson shall submit to the Cantonal Council an overview with respect to payment and finance trends, a draft budget and a report on the Ombudsperson's activities together with a statement of accounts.

With respect to expenditure authority, the Ombudsperson has authority equal to that of the State Council. §§ 19-25 CRG apply mutatis mutandis.

Seat and organisation

§ 88  The Cantonal Council determines the seat of office of the Ombudsperson.

He/she appoints his office staff in accordance with the employment plan which is determined by the Cantonal Council. The provisions which apply to the office staff of the Administrative Court also apply to the Ombudsperson's office staff.

If the Ombudsperson assumes tasks in a commune in accordance with Art. 81 par. 4 of the Cantonal Constitution, these functions are to be taken up not later than one year after the respective provision in the relevant municipal charter has come into effect.

Employment law and administrative matters

§ 88 a.  Appeals against orders and directives of the Ombudsperson in his/her own employment law or administrative matters may be filed with the Administrative Committee of the Office of the Executive of the Cantonal Council.

Duties

a. Principle

§ 89  The Ombudsperson clarifies whether the authorities have proceeded legally and fairly.

To be considered as authorities are:

a) all authorities and offices of the canton and of the districts, including the Pension Fund for State Employees as well as the dependent and independent cantonal institutions and corporations, with the exception of the Bank of the Canton of Zurich [Zürcher Kantonalbank] and the Cantonal Power Utility [Elektrizitätswerke des Kantons
b) all authorities and offices of a commune whose municipal charter provides for activities of the Ombudsperson.

b. Exceptions

§ 90 The following are exempted from review by the Ombudsperson:
a) the Cantonal Council [Kantonsrat] and Church Synods [Kirchensynode]
b) authorities with judicial independence, except when engaged in activities of an administrative nature;
c) other authorities
- with regard to the preparation, issue, amendment, repeal, approval of generally binding regulations
- in appeal procedures, except in the case of denial or delay of justice and other violations of official obligations.

Procedures

a. Introduction

§ 91 The Ombudsperson intervenes upon complaint of a party legally concerned or otherwise adversely affected. His review may encompass both a current or closed matter.

The Ombudsperson may also intervene on his/her own initiative.

b. Inquiries

§ 92 The Ombudsperson can clarify the matter in accordance with § 7 par. 1.

The authorities with whom the Ombudsperson is dealing in a particular case are obliged to provide information and to hand over files insofar as restricting provisions of the Confederation do not stipulate otherwise.

The authorities are entitled to comment.

When dealing with third parties or with the complainant, the Ombudsperson is obliged to maintain confidentiality to the same degree as the authorities concerned.

c. Settlement

§ 93 The Ombudsperson does not have the power to make binding decisions. On the basis of his/her review, he/she may
a) give advice to the complainant regarding further action he/she might take;
b) discuss the matter with the authorities;
c) if necessary, issue a written recommendation for the attention of the authority under review. The Ombudsperson also sends his/her recommendation to the relevant superior administrative body, the complainant and, according to his/her judgement, to other concerned persons and interested cantonal authorities.

d. Costs

§ 94 The services of the Ombudsperson are free of charge.

A commune the municipal charter of which provides for the Ombudsperson to be active contributes to the expenses of the Ombudsman Office.

The annual contribution amounts to between 1 and 4 Swiss francs per inhabitant and is fixed by the Cantonal Council in response to a proposal of the Ombudsperson. Such proposal takes into account the total number of inhabitants of all communes making use of the Ombudsperson’s services.
If a commune renounces the Ombudsperson’s services, the financial obligation pursuant to par. 3 continues for one more year after the corresponding amendment of the municipal charter has come into effect.

e. Confidentiality
§ 94 a. The Ombudsperson and his staff are obliged to observe confidentiality about their findings regarding authorities and private parties. The foregoing is without prejudice to § 167 of the Act on the Organisation of Courts and Administrative Authorities in Civil and Criminal Litigation [German acronym: GOG].

This obligation does not apply when
a) the person concerned agrees to the disclosure or
b) serious public or private interests justifying a disclosure of information prevail.