

2.4.3. Complaints Procedure Regulation

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I. General provisions

Article 1

This regulation closely prescribes procedure for resolving complaints which individuals (hereinafter: complaints) file against police officers and with particular regard to data protection, recording, surveillance and reporting.

Article 2

Head of organizational unit of the Ministry of Interior (hereinafter: Ministry) resolves the complaint, and in case where complaint shows that there is reasonable suspicion that a criminal offence prosecuted ex officio was committed - he investigates facts and circumstances of allegations from the complaint and forwards all documents from the case to the Commission for further proceedings according to complaint (hereinafter: Commission).

Inquiry and forwarding the case for further proceeding to the Commission is also done according to Paragraph 1 of this Article in case when the complainant doesn't appear before the competent senior officer or appears but doesn't agree with the position taken by the unit head.

Complainant and the police officer complained against (hereinafter: respondent) can obtain legal aid at their own expense in the complaint resolution procedure.

Attendance of respondent in the complaint resolution procedure is regarded as his daily performance of his official duty.

Head of organizational unit from Paragraph 1 and 2 of this Article means, in relation to Chief of Minister Cabinet, Secretary of the Ministry, Head of Sector, Head of Internal Affairs, Director of the police, Head of regional police directorate and commander of police station or police officer authorized by the head of organizational unit (hereinafter: unit head).

II. Filing and recording of complaint

Complainant can file a complaint in writing, orally or electronically to the Ministry or to the organizational unit of the Ministry authorized according to the place of stay or residence of the complainant (herein after: authorized organizational unit).

Oral complaint is filed as a record to authorized organizational unit of the Ministry in the headquarters (Bureau for Complaints and Submissions), or on the territory authorized to receive complaints or which is set out by the head of authorized organizational unit (hereinafter: complaint unit). The record is signed by the complainant and police officer who received the complaint. Copy of the record is provided to the complainant.

The signer of the complaint received in electronic form is regarded a person whose name is stated in the complaint as a signer.

Complaint should be understandable and include following information: name and surname of the complainant, information of the time, place of events and description or brief description of action or omission for which the complainant thinks that his rights and freedoms were violated, the signature of the complainant.

Article 4

Police officer who receives oral complaint is obliged to inform the complainant with the complaint resolution procedure. If the complaint is filed directly, the complainant is issued a receipt of filed complaint. The day of the receiving a complaint sent by post or e-mail is the day when the complaint was submitted to the post or sent by e-mail.

When the complaint is submitted to the Ministry or authorized organizational unit of the police, they are must forward the complaint without delay to authorized organizational unit in which the implicated officer is employed, except in case where there is suspicion that the criminal act was committed which is prosecuted ex officio. In that case the complaint is forwarded to organizational unit of the Ministry authorized to combat crime and organizational unit of the police in which the implicated officer is employed.

If the complaint is incomplete or not understandable, unit head or police employee authorized by the Minister and appointed as the president of the Commission (hereinafter: president of the Commission) will request from the complainant to add or correct in a 3 day period. Request is sent in written form. If the complainant doesn't proceed according to the request, the complaint is dismissed. Information regarding dismissal will be sent in written to the complainant, Director of the Police and organizational unit in Ministry headquarters which will investigate grounds for dismissal of the complaint.

Article 5

Unit head who receives a complaint for resolution has to notify without delay organizational unit complained against and police director or a person authorized, if during the procedure to which complaint refers, a person:

- 1) was bodily injured, especially if a person received serious body injuries or lost life;
- 2) used fire weapon or was used another source of force towards at least three persons;
- 3) conducted or allegedly done act that could be a subject of wider inquiry in the press and other media on the whole territory of the country.

At the request of the complaint unit or respondent under Paragraph 1 of this Article, head of organizational unit must notify them also about the second received complaint without delay.

Complaint Unit in the Ministry headquarters reports to the Minister or person authorized by the Minister about complaints under Paragraph 1 of this Article,

Head of organizational unit can in cases under Paragraph 1 and 2 of this Article request return notice, propose active involvement of police officers from authorized organizational unit in the Ministry headquarters or other persons authorized to participate in complaint resolution procedure. Request can be submitted also orally but must be confirmed in written in 24 hour period.

III. Investigation of complaint

Article 6

Investigation into a complaint includes all acts and procedures where relevant facts and circumstances into allegations from the complaint are investigated, especially impacts and consequences.

Article 7

Head of organizational unit or the Commission who conducts the proceeding of complaint resolution will conclude the procedure when:

- 1) the complainant withdraws the complaint and gives written oral statement for the record;
- 2) the complaint was resolved in resolution complaint procedure;
- 3) the request which is the case of the complaint was legally resolved by the state authority;
- 4) complaint was filed too late;
- 5) complaint was filed by unauthorized person.

The complainant is given a written notice on the conclusion of the procedure. Excerpt from the notification which is sent to the complainant is submitted to the head of Complaint unit in the Ministry headquarters and to the director.

Article 8

Investigation in respect of the complaint conducts the head of organizational unit where the respondent is employed.

In commission resolution procedure, the president of the Commission and head of Internal Affairs Sector or other authorized official person from Internal Affairs Sector authorized by the head of the Sector conducts investigation of complaint (hereinafter: Sector representative).

The Minister appoints the president of the Commission to carry out certain case or for a permanent period of time and the Head of Internal Affairs Sector appoints sector representative. President of the Commission and Sector representative have to fulfill conditions for access to confidential data according to regulations regarding this data.

Article 9

Head of organizational unit, president of the Commission or Sector representative sends a written notice to the complainant with the copy of the complaint in which he/she is called for an interview to express views.

The complainant has at his disposal at least 3 days from the day he received the notice to respond for an interview. This deadline can be exceptionally shortened with the consent of the complainant.

Complainant and respondent can propose documents and other evidences to be added to complaint investigation procedure., In case where documents and other evidences are in the possession of the police, head of organizational unit, president of the Commission or

representative of the Sector is obliged to obtain them and enable insight into documentation and evidence connected to the filed complaint, at the request of the complainant or respondent. Record of conducted interview with the respondent is made which is signed by the respondent.

Article 10

Heads of all organizational units must submit all necessary data and documents which are in the possession of the police and allow the head or president of the Commission or representative of the Sector who conduct investigation of the complaint to check, copy and record these data and documents.

If there is a reasonable danger that the use of competences under Paragraph 1 of this Article might prevent or make difficult use of competences envisaged by Criminal Procedure Code or other police competences significant for combating and tackling crime or if their use would put in danger life and health of officially authorized persons that use these powers, head of organizational unit under Paragraph 1 of this Article can temporarily refuse to have insight into documentation, access into premises and delivery of certain data and information. In this case the Minister decides about the continuance of this complaint investigation procedure.

Head or president of the Commission or representative of the Sector can have insight into documents, which refer to the use of competences under Paragraph 2 of this Article and which have confidentiality mark, and copy from them data only in the presence of authorized person or other person authorized by him.

Article 11

Head of organizational unit or the president of the Commission or representative of the Sector who resolves the complaint can:

- 1) look into the case of complaint in the Ministry, that consists of all documents and appendixes which refer to the complaint (hereinafter: complaint case);
- 2) make interview with the complainant and respondent, police officers and other persons that were participants of the event or could get information regarding the event on the scene and also to confront with them is necessary;
- 3) gather information and opinions of expert departments from the police and the Ministry regarding the complaint resolution procedure;
- 4) if necessary introduce other evidences in order to clarify the complaint.

Article 12

President of the Commission and representative of the Sector must make a report regarding the complaint according to gathered facts and evidences in which they evaluate the consistency of respondent's procedure with current regulations.

IV. Proceeding of the head of organizational unit

Article 13

Head of organizational unit must investigate all available documents regarding the complaint, conduct necessary interviews and do everything necessary to make complete insight into police procedure which complaint refers to. He must investigate all facts necessary to determine facts and conduct interview with the respondent.

Article 14

After the investigation of the complaint is completed, head of organizational unit calls the complainant for an interview in writing or orally. Head of organizational unit can also call respondent for an interview, who can fail to respond for an interview. The complainant is informed in written or oral notice that he is not obliged to appear and that in that case the complaint will be forwarded to the Commission for resolution.

Article 15

Head of organizational unit enters all relevant facts into complaint investigation record. It is not necessary to enter into record whether the complaint is founded or unfounded. Evidences which were found are mentioned and what the complainant stated regarding these evidence. In case where the complainant agrees with the stated facts or agrees with the findings of the head of organizational unit, it is proposed to the complainant to complete complaint resolution procedure with this interview. This fact is entered on the complaint review record. Head of organizational unit and the complainant sign the record. The complaint resolution procedure is concluded with the signing of the record. Head of organizational unit submits the record to the authorized complaint unit and copies of the records of all other complaints are delivered to the complaint unit in the headquarters of the Ministry and director of the police according to Article 5 Paragraph 1 of this Regulation. Complaint register is kept in the archive which is used by the organizational unit.

Article 16

Procedure 13 to 15 of this Regulation must be concluded in 15 day period from the day of receiving the complaint. In cases under Article 180 Paragraph 4 of Police Law, head of organizational unit must forward the complaint to the Commission with all gathered documents the first following working day in order to resolve the complaint.

V. Proceeding of the Commission

Article 17

Complaint document will be handed over to the president Commission, which is obliged to review comprehensively findings from the procedure conducted by the head of organizational unit. In case where the previous procedure was conducted thoroughly by president's opinion and that all questions and dilemmas were clarified, he proposes to the

head of authorized complaint unit the same review of the complaint on the Commission. In this case the speaker of the session of the Commission is the head of organizational unit.

In case where the president of the Commission deems it necessary to gather additional evidence or take additional activities in order to clarify certain facts and evidence, or that it is necessary to reiterate certain procedures or the whole complaint investigation procedure, he proposes to the head of authorized complaint unit to appoint authorized person whose duty is to investigate the complaint and prepare a complaint review report for the Commission.

If there is reasonable doubt arising from the content of a complaint that the criminal act was committed which is prosecuted *ex officio*, head of competent complaint unit appoints authorized person at the request of the head of organizational unit authorized for combating crime to fully investigate complaint. In the process of proposing and appointing authorized person, the content of the complaint is taken into consideration.

Article 18

Minister appoints presidents of the Commission.

Civilian representatives who participate in complaint resolution on the territory of certain regional directorates, the Minister appoints and relieves from duty according to the list of members. Number of representatives of certain local self-governments is determined by the notice. Proposed representatives of local self-governments appoint the Minister.

Civilian representatives who participate in resolving the complaint in the headquarters, the Minister appoints and relieves from duty according to the list of members at the proposal of the expert public and NGOs, according to public notice which is published in the media and where the exact number of civilian representatives for members of the Commission is stated. In case where the number of proposed civilian representatives surpasses the exact number which was published, organizations of expert public and NGOs jointly participate in the election between proposed members. If they do not choose in envisaged deadline, the Minister conducts the selection and appoints elected representatives by decision according to the list of members. In the process of election, candidates proposed by organizations for protection of human rights and freedoms have priority.

Civilian representatives can be relieved from the list of members of the Commission before expiration of their period of tenure, on their own request, detailed request of the proponent or by Minister's decision in case where the member of the Commission doesn't appear at the session of the Commission two times in a row without justification.

Article 19

President of the Commission manages the Commission.

Ministry conducts administrative-technical and other expert affairs for the Commission in the Ministry headquarters and headquarters of police directorates.

Session of the Commission is public. Commission can exclude the public for reasons of protection of confidential data.

All participants in the Commission's work must obey protection confidential data regulations and regulations for the protection of personal data, when they use and access data connected to the complaint.

Article 20

Head of authorized complaint unit schedules sessions of the Commission. Session is scheduled by written notice which must be delivered in 5 days period at the latest before the appointed session.

The notice with the same content that is delivered to members of the Commission contains date, place and time of session, members of the Commission from the list of civilian representatives and complaint case which will be reviewed at the session.

Civilian representative in the Commission is informed that he can have insight into complaint case until the beginning of the session in accordance with the arrangement with the speaker under Article 17 (hereinafter: speaker). Who will be speaker in single complaint case is stated in the notice.

Civilian representatives are chosen alphabetically from the list of members of the Commission.

Article 21

Complainant and respondent are summoned to the session of the Commission. They are informed in the notice that the Commission will decide regarding the complaint even if they fail to respond to the session and that they will bear the costs of their own participation in the session. Notice must be delivered 5 days before the session of the Commission.

Experts in specific areas or issues can be called to the session of the Commission in order to clarify certain expert issues. If experts which are employed in the Ministry are called, then their supervisors should allow them to participate in the session of the Commission.

Participation of the speaker and the recorder in the session is mandatory.

Persons who are called to the session of the Commission have to receive a notice 5 days before the session of the Commission.

Article 22

President of the Commission manages the work of the Commission and takes care that the complaint is comprehensively reviewed and discussed. Speaker informs the Commission about the content of the complaint and reports the results of investigation of the complaint.

Complainant and respondent can also express their views regarding the content of the complaint if they participate in the session of the Commission.

All members of the Commission can express their opinions in relation to the complaint and its grounds. Therefore, they can ask questions to the speaker, other invited experts, complainant and respondent, have insight in the complaint case and propose gathering additional evidences in order to determine the facts.

President of the Commission puts to the vote proposal of a certain member of the Commission to discontinue an investigation of the complaint. In case where the proposal is voted for, he orders the speaker to get additional evidence in order to establish certain circumstances and facts in a period no longer than 5 days. Commission can decide and propose to the head of authorized complaint unit to appoint another speaker.

In case of discontinuance of complaint review under Paragraph 4 of this Article, president of the Commission sets new date and hour for the continuance of the session of the Commission and informs all present with warning that they will not be notified by written notice. Persons who are not present in the session will be summoned by written notice to the continuation of the session of the Commission, where it is not necessary to obey deadlines determined by this Regulation.

Article 23

According to previously conducted procedure in front of the Commission and established facts, circumstances and evidence deduced in complaint resolution procedure, Commission decides about the grounds of the complaint but without the presence of the rest of summoned persons, by putting to vote. The decision is made if two commission members vote for it. If the member of the Commission who is civilian representative doesn't vote for the decision, he has right to explain his view to the public in writing, and his record is added to the record from Article 24 of this Regulation and becomes its integral part.

After voting, President of the Commission informs all present regarding the decision and informs them with all relevant circumstances which were accepted in the decision process.

Article 24

There is a record of the session of the Commission in such a manner where the president of the Commission loudly dictates the content of the record.

The record must contain:

- 1) date, time of beginning and end of the session;
- 2) constitution of the Commission and presence of summoned persons;
- 3) warning of the duty to obey regulations on protection of personal data and protection of confidential data;
- 4) allegations of investigation of the complaint;
- 5) allegations of established evidence;
- 6) content of questions that were asked and their answers, significant for the decision about the complaint;
- 7) views, suggestions and questions of members of the Commission;
- 8) possible decision on termination of review of the complaint and assigning additional tasks and date and hour of the sequel of the session of the Commission;
- 9) decision on grounds of complaint with short specification of relevant circumstances that were accepted in the decision making;
- 10) possible statement in relation to the record which is enclosed under Article 23 Paragraph 1 of this Regulation.

Record is signed by all members of the Commission, complainant, respondent and speaker.

Article 25

President of the Commission according to Commission's decision prepares and signs a written response on the decision of the Commission for the complainant, which is explained in detail. Written response which is sent to the complainant must contain clear views in relation to all relevant and reasonable statements or allegations of filed complaint. At the end of response, the complainant is informed that complaint resolution procedure is concluded and the complainant has at his disposal all legal and other remedies for protection of all rights and freedoms.

Response to the complainant, report of the findings of the speaker and record of the session of the Commission is sent to the Police Directory in the headquarters, which delivers written response of the complainant to the respondent and organizational unit where implicated officer is employed.

The decision of the Commission on the complaint is final.

Article 26

If a complainant is a foreigner, a written notice shall be sent to him/her if he/she is located on the territory of the Republic of Serbia and if residence of stay is known. Response to the complainant who is a foreigner shall be sent to the address of his permanent residence through the Ministry authorized for foreign affairs or residence.

Article 27

Civilian representatives who participate in the work of the Commission shall be paid attendance fee in amount of the daily allowance for state employee traveling on official state business.

Members of the Commission at their own request have right for a fee for transport with their own vehicle which is determined for employees of the state authorities, for attending the session of the Commission.

According to request of the employer, member of the commission is refunded amount of earnings which he lost during participation in the session of the Commission.

Ordering for fee payment from paragraph 1 and 2 of this Article and ordering for return of profits to the employer issues the president of the Commission.

All other participants of the procedure of complaint resolution (employees, experts, legal representatives and etc) do not have right for fee or return of any expenses, which they are warned in the notice and at the first interview. Exceptionally, head of competent internal organizational unit of the Ministry in specific case can decide differently.

Sources for implementation of provisions of this Article are secured within sources for the work of the Ministry.

VI. Recording, surveillance and reporting

Article 28

According to Article 76 point 12 of Police Law, police is obliged to record all resolved complaints into complaints database.

Record of complaints contains data regarding complainant, respondent, and reason for complaint, relationship or procedure of the police which is the subject of the complaint.

Article 29

Supervision of complaint resolution by unit heads conducts the complaint unit or Police Directorate and the Commission- police officer authorized by the Minister.

Police Directorate is obliged to submit three-month, six-month and year report regarding resolution of complaints to the Minister.

Complaint unit in the headquarters of the Ministry is obliged to inform the Minister about complaint resolution and submit six-month and year complaint resolution report.

The Ministry informs the public with six-month and year complaint resolution report that is published on web page of the Ministry.

VII. Transitional and final provisions

Article 30

By entry into force of this Regulation, instructions given according to previously existing provisions which refer to complaint resolution in the ministry cease to apply.

Provisions under Paragraph 1 of this Article shall be firstly applied in resolution of complaints received until August 31, 2006.

Article 31

This Regulation enters into force on September 1, 2006, except provisions of Article 18 which come into force eight days after publication of this regulation in “Official Gazette of the Republic of Serbia”.

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In belgrade, June 6, 2006