



REPUBLIC OF SERBIA

Ministry of Interior

REGULATIONS ON PROCEDURE OF ADDRESSING COMPLAINTS

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PRAVILNIK O POSTUPKU REŠAVANJA PRITUŽBI

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Pursuant to Article 180, paragraph 7 of the Law on Police ("Official Gazette of RS", No. 101/05), Minister of Internal Affairs passes a

REGULATIONS ON PROCEDURE OF ADDRESSING COMPLAINTS

I. BASIC PROVISIONS

Article 1

This regulation sets out in detail the procedure on addressing complaints submitted by individuals (hereinafter: complainants) against police employees, including the protection of data, record keeping, monitoring and reporting.

Article 2

Head of the Organisational Unit of the Ministry of Internal Affairs (hereinafter: Ministry) shall address a complaint, where in case that the complaint implies a suspicion on commission of a crime which is prosecuted by virtue of authority he/she shall examine the facts and circumstances with respect to allegations referred to in the complaint, submitting the whole case-file to the Commission to follow up the procedure as to the complaint concerned (hereinafter: Commission).

Pursuant to paragraph 1 of the Article, a case shall be also examined and submitted to the Commission to follow up when a complainant is summoned to speak to Head of the organisational unit and he/she fails to appear or he/she does appear, but does not agree with his/her view.

In the procedure of addressing complaints, a complainant and a police employee who is the subject of the complaint (hereinafter: Defendant) may be provided with legal aid at their own expense.

Participation in the procedure of addressing complaints shall be considered for the Defendant as a professional duty that he/she would normally carry out.

Head of the Organisational Unit referred to in paragraphs 1 and 2 of the Article shall imply Chief of Minister's Cabinet, Secretary of the Ministry, Head of Sector, Head of the Internal Control Service, Director of Police, Head of Regional Police Directorate and Commander of Police Station, i.e. an authorised police employee (hereinafter: Head of the Organizational Unit).

II. SUBMISSION AND RECEIPT OF COMPLAINTS

Article 3

A complainant may file a complaint in writing, as an oral statement or in the electronic form to the Ministry, i.e. the organisational unit of the Ministry competent by place of residence or abode of the complainant (hereinafter: competent organisational unit).

An oral complaint shall be given to and recorded by the competent organisational unit of the Ministry Office at headquarters (Bureau for Complaints and Submissions), i.e. in a region, which is competent for complaints or designated to that effect by Heads of competent organisational units (hereinafter: Complaint Unit). The records shall be signed by the complainant and a police representative who has received a complaint. A copy of the records shall be delivered to the complainant.

Signatory of a complaint received in the electronic form shall be considered a person named as a signatory.

A complaint must be comprehensible, containing as follows: name and surname of the complainant, place, time and description of activities or failures being the reason why the complainant finds that his/her rights or freedoms have been violated, signature of the complainant.

Article 4

It is the duty of a police representative receiving an oral complaint to introduce the complainant to the procedure of addressing complaints. If a complaint has been filed in person, the complainant shall be issued a confirmation receipt on a complaint received. Date of receipt of a complaint sent by post or in the electronic form shall be considered the date of submitting it to the Post Office or the electronic post outbox date.

When a complaint has been transmitted to the Ministry or to a police organizational unit that is not competent to receive it, the aforementioned shall, without due delay, forward it to the competent organisational unit employing the defendant against whom a complaint has been brought, save when a suspicion on the commission of a crime prosecuted by virtue of authority is concerned. To that effect, the complaint shall be transmitted to the organisational unit of the Ministry in charge of suppression of criminality and to the organisational unit employing the defendant.

If a complaint is incomplete or incomprehensible Head of the police organization unit, i.e. a police representative authorized by Minister and designated for Chairman of the Commission (hereinafter: Chairman of the Commission) shall request from the complainant to make additions to it, i.e. corrections within a period of three days. The request shall be submitted in writing. If the complainant fails to do so, the complaint shall be rejected. The information on the latter shall be communicated to the defendant, Police Directorate and the complaint unit at the main Ministry which shall examine the grounds for rejecting the complaint.

Article 5

Head of the organizational unit who receives a complaint to be addressed must, without undue delay, inform on the complaint received the main Ministry's complaint unit and Director of Police, i.e. a person authorised by him/her if in the acts referred to in the complaint:

- 1) somebody has been injured, particularly if heavily injured or he/she has passed away;
- 2) fire arms have been used or some other means of force has been resorted to against three persons at least;
- 3) an action has been exercised or allegedly exercised which may be the subject of a broader attention in the media distributing newspapers and disseminating other information across the whole territory of the country.

Upon request of the organizational unit or a person referred to in paragraph 1 of the Article, he/she shall be obliged, without undue delay, to inform them also about the other complaint received.

The complaint unit at the main Ministry shall inform the Minister, i.e. a person authorized thereby, about complaints referred to in paragraph 1 of the Article.

Head of the organizational unit may, in cases referred to in paragraphs 1 and 2 of the Article, request feedback, propose that police employees from relevant organizational unit at the main Ministry participate in the procedure of addressing complaints or propose other persons authorized to participate. The request may be also submitted in the oral form, to be confirmed in writing within a period of 24 hours.

III. EXAMINATION OF COMPLAINTS

Article 6

Examination of complaints entails all actions and procedures designed to examine relevant facts and circumstances with respect to allegations in a complaint, particularly effects and consequences thereof.

Article 7

Head of the organizational unit, i.e. the Commission conducting the procedure of addressing complaints shall conclude the procedure when it has established as follows:

- 1) the complainant has relinquished a complaint, having provided a statement of that in writing or in the oral form to be recorded;
- 2) the complaint concerned has already been decided upon in the procedure of addressing complaints;
- 3) a final decision on the point of a request being a subject matter of a complaint has been already passed effectively before another organ;
- 4) a complaint has been submitted late;
- 5) a complaint has been submitted by an unauthorized person.

The complainant shall be notified in writing on the conclusion of the procedure. Excerpts from the notification to the complainant shall be delivered to Head of the complainant unit seated at the main Ministry and to Director of Police.

Article 8

Examination of a complaint shall be conducted by Head of the organisational unit employing the defendant.

When addressed by the Commission, examination of a complaint shall be conducted by Chairman of the Commission and Head of the Sector of Police Internal Control or some other authorised professional from the Internal Control Sector who shall be authorised by Head of the Sector (hereinafter: Sector Representative).

Having passed a decision, Minister shall designate Chairman of the Commission for an individual case or permanently, whereas Sector Representative shall be appointed by Head of the Internal Control Sector.

Chairman of the Commission and Sector Representative must meet requirements to have access to classified information in alignment with regulations on such information.

Article 9

Head of organisational unit, i.e. Chairman of the Commission or Sector Representative shall by means of written summons, accompanied with a copy of a complaint, summon the defendant to give a statement on the complaint. The defendant shall be granted a period of minimum three days that must pass as of the day of service of summons to the time of conducting an interview with the defendant. Exceptionally, said timeframe may be shortened upon prior agreement of the defendant.

In the course of examination of a complaint the complainant and the defendant may propose documents and other evidence. In the event of the documents and evidence possessed by the police, upon request of the complainant and the defendant, it is the duty of Head of the organizational unit, i.e. Chairman of the Commission or Sector Representative to provide them with said documents and evidence and enable them to look at the documents and evidence pertaining to the complaint concerned.

Records shall be kept after the interview with the defendant to be signed also by the defendant.

Article 10

Heads of all organisational units shall be obliged to provide Head of the unit, i.e. Chairman of the Commission or Sector representative conducting examination of a complaint with all required information and documents possessed by the police and allow an insight into and the copying of such data, i.e. documents.

Should there be a well-founded danger that the application of powers referred to in paragraph 1 of the Article may prevent or significantly impede the application of powers provided for in the Criminal Procedure Code or other police powers relevant to prevention and suppression of criminality or their application may endanger life and affect health of authorised professionals exercising them, Head of the organisational unit referred to in paragraph 1 of the Article may provisionally refuse to allow

insight into documents, access to premises and delivery of certain information and data. In such case, Minister shall decide on the resumption of the procedure of examination of a complaint.

Head, i.e. Chairman of the Commission or Sector Representative may look at the documents pertaining to the application of powers referred to in paragraph 2 of the Article, marked as classified, and copy data from only in the presence of an authorised person, i.e. another person authorised by him/her.

Article 11

Head of the organisational unit, i.e. Chairman of the Commission and Sector Representative addressing a complaint may:

- 1) at the Ministry look at the subject matter of a complaint, that entails a whole of all documents and attachments relating to a complaint (hereinafter: subject matter of a complaint);
- 2) conduct an interview with the complainant and the defendant, police staff and other persons who have taken part in the events or who could learn about it on site, as well as confront them when necessary;
- 3) gain information and views of expert police services and the Ministry on issues contained in the subject matter of a complaint;
- 4) request listening to audio recording and a transcript of the contents of observations with respect to the procedure of addressing a complaint;
- 5) when necessary present other evidence with a view to clarifying a complaint.

Article 12

On the grounds of collected facts and evidence Chairman of the Commission and Sector Representative shall develop a report on facts in respect of a complaint to evaluate the links of actions of the defendant with current regulations.

IV. ACTIONS TAKEN BY HEAD OF ORGANISATIONAL UNIT

Article 13

Head of the organisational unit must, in respect of a complaint, study all available documents, conduct relevant interviews and do anything else required to gain a comprehensive insight into police proceedings that a complaint relates to. He/She must examine all facts required for fact finding and conduct an interview with the defendant against whom a complaint has been brought.

Article 14

Upon the examination of a complaint, the complainant shall be summoned for an interview in a written or oral form to be conducted by Head of the organisational unit. Head of the organisational unit may summon the defendant as well who may refuse to appear.

The complainant shall be informed in writing or orally that he/she is not obliged to appear and that a complaint shall be submitted to the Commission to address it in such case.

Article 15

Head of the organisational unit shall enter key facts into the records about the complaint. It is not required to set out in the records whether or not a complaint is founded. Evidence presented shall be set out, including statements that the complainant has given as to that.

Should the complainant agree with the facts presented, i.e. agree with views of Head of the organisational unit, it shall be proposed to him/her that the procedure of addressing a complaint be concluded upon this interview. It shall be entered into the records about the complaint. The records shall be signed by Head of organizational unit and the complainant. Upon signing the records the procedure of addressing a complaint shall be concluded.

Head of the organisational unit shall submit the records to the competent complaint unit, whereas the complaint unit at the main Ministry and Director of police shall also receive copies of the records on all other complaints referred to in Article 5, paragraph 1 of this Regulations.

The complaint case-file shall be kept in the archives used by an organisational unit.

Article 16

The procedure referred to in Articles 13 to 15 of this Regulations must be concluded within a period of 15 days as of the day of receipt of a complaint.

In cases mentioned in Article 180, paragraph 4 of the Law on Police, Head of the organisational unit shall be obliged to hand over, on the first day that follows, a complaint, accompanied with all documents that have been collected, to the Commission to address the complaint.

V. ACTIONS TAKEN BY THE COMMISSION

Article 17

A complainant case-file shall be submitted to Chairman of the Commission to address it, who shall be obliged to comprehensively consider findings originating from the procedure conducted by Head of the organisational unit. If, according to his/her evaluation, the preceding procedure has been conducted properly and that all issues and dilemmas have been resolved, he/she shall propose to Head of the competent organisational unit that a complaint be addressed by the Commission. In such event, Head of the organisational unit shall provide a report to the Commission in session.

Should Chairman of the Commission assess that to clarify certain facts and evidence it is required to collect additional evidence or undertake additional activities as to the clarification of fact finding, i.e. that it is necessary to repeat certain steps or the whole procedure of examination of a complaint, he/she shall propose to Head of the competent complaint unit to designate an authorised person who will be in charge of conducting examination of a complaint and prepare a report aimed at a complaint to be taken into consideration by the Commission.

If the contents of a complaint imply a suspicion leading to the commission of a crime that is to be prosecuted by virtue of authority, Head of the competent organizational unit shall, upon the motion of Head of the organizational unit for suppression of criminality, designate an authorized person who will examine the complaint in full. When proposing and designating the authorized person the contents of a complaint shall be taken into account.

Article 18

Chairmen of the Commissions shall be designated by Minister, by decision.

Representatives of the public participating in the procedure of addressing a complaint in the region of the police directorate, at the motion of local self-government bodies from the territory of certain regional directorates, shall be designated, enlisted as members and released from duty by Minister. The number of representatives of certain local self-government bodies shall be defined by means of invitation. Nominated representatives of local self-government bodies shall be designated and enlisted as members by Minister, by decision.

Representatives of the public participating in the procedure of addressing a complaint in the main Ministry, at the motion of organisations of professional public and non-governmental organisations, following a public invitation published in the media, which sets out the required number of Commission members/public representatives, shall be designated, enlisted as members and released from duty by Minister, by decision. If the number of nominated representatives of the public exceeds the required number that has been published, organisations of professional public and non-governmental organisations shall jointly make a selection of nominated members. Should they fail to make a selection within a specified timeline, Minister shall make the selection and enlist the selected representatives as members by decision. In the selection process, candidates who have been nominated by organisations tackling issues of protection of human rights and freedoms shall be given preference.

Representatives of the public may, at their own initiative, be released from duty as members of the Commission before the end of their term they have been designated to, upon request, containing a

rationale, of their proposer or by decision of Minister in case a member of the Commission fails to appear for no legitimate reason at two consecutive sessions of the Commission.

Article 19

The Commission shall be chaired by Chairman of the Commission.

Administrative, technical and other professional affairs shall be carried out for the Commission by the Ministry itself, at its main seat and seats of regional police directorates.

Sessions of the Commission shall be public. The Commission may exclude the public for reasons of protecting classified data.

When using and accessing data relating to a complaint, all participants in the work of the Commission shall be obliged to adhere to the regulations on protection of classified data and the regulations on protection of personal data.

Article 20

Sessions of the Commission shall be scheduled by Head of the competent complaint unit. A session shall be summoned in writing, and notifications must be serviced to the Commission members not later than five days prior to the scheduled session.

The notifications of the same contents, to be serviced to the Commission members, shall contain date, place and time of the session to be held, name of the Commission member from the list of representatives of the public, and the subject matter of a complaint to be addressed at the session.

Commission representative of the public shall be notified that he/she may, in agreement with a reporter referred to in Article 17 of the Regulations (hereinafter: reporter), look at the complaint case-file before the beginning of the session. Name of the reporter in a specific complaint case shall be set out in the notification.

Representatives of the public shall be selected from the list of Commission members in alphabetical order of the preference given.

Article 21

Both the complainant and the defendant shall be summoned to the session by written notification. The notification shall warn them that the Commission will address a complaint that has been submitted, and should they fail to appear at the session they shall personally cover costs of participation in the session. The notification must be serviced five days before the beginning of the session of the Commission.

In order to clarify some professional issues, experts in relevant areas, i.e. issues may be summoned to the session of the Commission. If the invited professionals are employed with the Ministry, Heads of internal organisational units shall be obliged to allow them to participate in the session of the Commission.

Reporter and Record keeper shall be obliged to participate in the session of the Commission.

Those summoned to the session of the Commission must receive notifications five days before the beginning of the session.

Article 22

Chairman of the Commission shall manage the work of the Commission and make sure that a complaint is comprehensively addressed and examined. Reporter shall inform the Commission on the contents of a complaint and report on the outputs of examination of the complaint.

Both the complainant and the defender may provide their opinions on the contents of a complaint if they participate in the session of the Commission.

All members of the Commission may give their opinions on reasons of a complaint and whether or not they have been founded. They may pose related questions to the reporter, other professionals who have been summoned, to the complainant and the defendant, they may look at the complaint case-file and propose additional evidence to be presented in order to establish fact finding.

Chairman of the Commission shall put a motion of a member of the Commission to voting for the purpose of the addressing of a complaint to be discontinued. When the motion is voted for, he/she

shall ask the reporter to present additional evidence to establish certain circumstances and facts within a period that, according to rules, must not be longer than five days. The Commission may decide and propose to Head of the competent complaint unit to designate another reporter.

If the addressing of a complaint is discontinued, referred to in paragraph 4 of the Article, Chairman of the Commission shall also define a new date and time for the session to be resumed, and notify those present about it, bringing to their attention that they will not receive again any notification in writing. Persons absent during the session shall be summoned in writing to the new session of the Commission, whereby no specified timelines set out in this Regulations have to be adhered to.

Article 23

According to the conducted procedure before the Commission, including the facts found, circumstances identified and evidence presented in the procedure of addressing complaints, the Commission shall, by voting not witnessed by others who have been invited, decide on whether or not a complaint has been founded. The decision passed shall be that, voted for by minimum two members of the Commission. When a member of the Commission representing the public has not voted for a decision, he/she shall be entitled to provide reasoning of his/her view in writing, his/her document being attached to the minutes referred to in Article 24 of the Regulations and becoming a component of it.

After the end of voting Chairman of the Commission shall inform those present on the decision passed and introduce them to relevant circumstances taken into account in decision making.

Article 24

Records shall be kept on the session of the Commission in a manner where Chairman of the Commission shall dictate the contents of the minutes.

Minutes must contain as follows:

- 1) date, time of the beginning and end of the session;
- 2) composition of the Commission and names of persons summoned and present;
- 3) a warning on the duty to observe regulations on personal data protection and classified data protection;
- 4) statements on considering a complaint;
- 5) statements on evidence presented;
- 6) the contents of questions asked and answers given relevant to the decision on a complaint;
- 7) opinions, proposals and questions made by Commission members;
- 8) possible decision on discontinuation of discussions on a complaint and identifying additional steps and date and time of the resumption of the Commission session;
- 9) decision on whether or not a complaint has been founded, accompanied with brief listing of relevant circumstances taken into account in decision making;
- 10) possible observation enclosing the document referred to in Article 23, paragraph 1, of the Regulations, becoming a component of the minutes.

The minutes shall be signed by all Commission members, the complainant, the defendant and record keeper.

Article 25

In line with the decision of the Commission, Chairman shall prepare and sign a written reply to the complainant where the decision of the Commission must have a separate rationale. The reply to the complainant concerning the reasons of a complaint must contain all relevant and reasonable statements, i.e. allegations of the complaint submitted. At the end of the reply the complainant shall be notified that the procedure of addressing complaints have been concluded and that the complainant may resort to all legal and other available means for protection of his/her rights and freedoms.

The reply to the complainant, report on findings of the Reporter and the minutes from the Commission session shall be transmitted to the main Police Directorate which shall service the written reply to the defendant and the organizational unit employing the defendant.

Addressing complaints by the Commission is final.

Article 26

If the complainant is a foreign person he/she shall be summoned if residing in the territory of the Republic of Serbia and provided that his/her place of residence is known.

The reply to the complainant who is a foreign person shall be addressed to his/her permanent residence through the Ministry of Foreign Affairs, i.e. competent for residence issues.

Article 27

Representatives of the public participating in the work of the Commission shall be entitled to fees for working at Commission sessions, amounting to per-diem levels for business travels, specified and applicable to employees at state institutions.

Representatives of the public, upon their request, shall be reimbursed transportation costs incurred for attending Commission sessions, including transportation by own car, applicable to employees at state institutions.

Based on the request of an employer, a Commission member shall be reimbursed the levels of their earnings which they have lost when attending Commission sessions.

Order for reimbursement referred to in paragraphs 1 and 2 of the Article and order for reimbursement of lost earnings shall be issued to employers by Chairman of the Commission.

All other participants (employees, experts, legal representatives, etc.) in the procedure of addressing complaints shall not be entitled to fees or reimbursement of any incurred costs, which they shall be warned about when invited or during the first interview. Exceptionally, Head of the competent internal organisational unit of the Ministry may decide otherwise in an individual case.

Resources for the implementation of provisions of this Article shall be provided from the resources earmarked for the Ministry operations.

VI. RECORD KEEPING, MONITORING AND REPORTING

Article 28

Pursuant to Article 76, sub-paragraph 12 of the Law on Police, the police are obliged to enter all resolved complaints into the records of complaints.

Records of complaints shall contain information on the defendant, the complainant, reasons for a complaint, treatment or actions of police being the subject matter of a complaint.

Article 29

Monitoring of the procedure of addressing complaints by Heads of organisational units shall be conducted by the competent complaint unit and Police Directorate, and a police employee authorised by Minister shall do the monitoring of the work of the Commission.

It is the duty of the Police Directorate to submit to Minister quarterly, six-month and annual reports on addressing complaints.

Complaint unit at the main Ministry shall be obliged to inform Minister about the addressing of complaints and submit to him/her six-month and annual reports on addressing complaints.

The Ministry shall introduce the public with six-month and annual reports on addressing complaints to be published and displayed on the website.

VII. TRANSITIONAL AND CLOSING PROVISIONS

Article 30

As of the day of this Regulations entering into force, guidelines provided pursuant to formerly applicable regulations pertaining to the addressing of complaints in the Ministry shall cease to be applicable.

Provisions referred to paragraph 1 of this Article shall be first applicable to the addressing of complaints received until 31 August 2006.

Article 31

This Regulations shall enter into force on 1 September 2006, save the provisions of Article 18 to enter into force on 8th day following the day of publishing this Regulations in the "Official Gazette of the Republic of Serbia".

01 No. 6079/06
In Belgrade, 6 June 2006

Minister,