

**ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS
ACT
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I GENERAL PROVISIONS

Subject of the Law

Article 1

This Law shall regulate and/or determine:

- types and aspects of human rights violations as basis for investigation of accountability;
- persons against whom proceedings for investigation of accountability for human rights violations are instituted;
- principles and rules of procedure for investigation of accountability for human rights violations;
- composition, competence and proceeding of competent bodies, and
- measures pronounced against persons found to have violated human rights.

Accountability for Human Rights Violations

Article 2

Accountability for human rights violations (hereinafter: lustration) designates the procedure of investigation and determination of human rights violations set out in this Law, determination of individual accountability for human rights violations and pronouncing of measures in respect of determined human rights violations.

Human Rights in Terms of this Law

Article 3

- (1) Human rights for the purpose of this Law are the rights set out in the International Covenant on Civil and Political Rights, signed and ratified by the Socialist Federative Republic of Yugoslavia, rights and liberties of man and citizen as set out in the 1974 Constitution of the Socialist Federative Republic of Yugoslavia; the Constitution of the Federal republic of Yugoslavia from 1992 and the Republic of Serbia Constitution from 1990.

Time of Application of this Law

Article 4

Provisions of this Law shall apply to all human rights violations occurring after 23 March 1976, as the day of coming into effect of the International Covenant on Civil and Political Rights, under terms set out by this Law.

II FORMS AND ASPECTS OF HUMAN RIGHTS VIOLATIONS AS BASIS FOR ACCOUNTABILITY

General Forms of Human Rights Violations

Article 5

Violation of human rights for the purpose of this Law is every action undertaken by a person specified in this Law in discharge of duty and/or task, which:

1. represents a criminal offence or other punishable act which is prosecuted ex officio, which has fallen under the statute of limitations for criminal or other penal prosecution, in whose commission the person specified under this Law participated as a perpetrator, instigator, accomplice, abettor, organiser of criminal conspiracy or whose commission such person failed to prevent in accordance with his/her legal powers.
2. has as its aim to deprive a person of his/her lawful rights or to hinder exercise of such rights, or to enable a person to acquire a right or benefit to which such person is not entitled under law; or
3. has as its aim to influence a state body, organisation, enterprise or other legal entity to take a decision or undertake an act which brings citizen into an unequal position.

Special Forms of Human Rights Violations through Infringement of the Right to Privacy

Article 6

- (1) Violation of human rights for the purpose of this Law is any act of a person specified herein which infringes the right to privacy of another, undertaken with the aim to acquire information relevant to such person or in his/her possession in order to deliver such information to the Security Information Agency or the preceding and/or other corresponding service.
- (2) Violation of human rights occurs also when the act specified in paragraph 1 of this Article is committed on orders from a superior and also when such act was not in contravention of domestic regulations in force at the time of commitment but was

in contravention of the provisions of the International Covenant on Civil and Political Rights.

Special Forms of Human Rights Violations through Infringement of Equality under Law

Article 7

- (1) Violation of human rights for the purpose of this Law is also every act undertaken by a person specified by this law, which in court proceedings or a proceeding before other state body, or in a proceeding before an organisation exercising public authority, or during conclusion of legal business and other forms of legal transactions by a state body or organisation exercising public authority:
1. grants unwarranted privileges to a person in respect of another or other persons, by processing cases outside of the order of their submission, or by concluding legal transactions under privileged conditions, unless otherwise specified by law;
 2. discriminates against a person in respect of another or others, in contravention of the principle of equality under law regardless of sex, age, race, colour, nationality, political views or other personal traits even when discrimination is not a criminal offence, or rendering of public service is refused in contravention of the principle of equality under law; or
 3. fails to undertake measures to ensure equality of persons when so stipulated by law.
- (2) Violation of human rights also occurs when the act specified in paragraph 1 of this Article is committed on orders of a competent person or body, or a superior, and also when such an act was not in contravention of domestic regulations at the time of commitment but was in contravention of the provisions of the International Covenant on Civil and Political Rights.

Exclusion of Accountability for Human Rights Violations

Article 8

There shall be no culpability for human rights violations specified under Articles 6 and 8 of this Law if the act:

1. was committed by a person under 18 years of age;
2. was committed under duress, threat, blackmail or other prohibited pressure; or
3. was committed through information supplied to the Security Information Agency or its predecessor and/or other corresponding service, in a statement during questioning by the police and/or during detention by the police, in prison or custody.

Participation in Politically Motivated Judicial or Extra-judicial Proceedings

Article 9

Violation of human rights for the purpose of this Law occurs also when a person specified under this Law, acting in official capacity in court proceedings or a proceeding before a state body or organisation where another person is being deprived of certain rights, or such rights are restricted, or an obligation is imposed to do or abstain from doing or to endure, or any punitive or other enforceable measure is pronounced against him/her, if such person was aware or had to be aware that the proceeding was being conducted for the sole purpose of applying political attitudes and criteria that are overtly or covertly represented as legal rules or criteria.

III PARTICIPANTS AND RULES OF PROCEDURE

1. Persons against whom proceedings are instituted

Persons accountable for human rights violations

Article 10

Lustration proceedings are instituted against persons holding or are candidates for following office:

1. deputies of the National and Province Assemblies;
2. president of the Republic
3. prime minister and members of the republic government and province executive council;
4. mayor and municipal president and deputy president;
5. president and members of the executive board of the council of local self-government unit;
6. secretary of the National and Province Assembly;
7. head and managing officer of National and Province Assembly services;
8. head and managing officer of services of the president of the Republic;
9. deputy and assistant minister, managing official of republic and/or province bodies and organisations and other heads of bodies and organisations in republic and/or province bodies and organisations, appointed by the republic government and/or province executive council;
10. secretary of municipal and city council;
11. district administrator;
12. president and judge of the Constitutional Court of Serbia (hereinafter: Constitutional Court), president and judge of courts of general jurisdiction and special courts, member of the High Judicial Council, public prosecutors and their deputies, administrator of misdemeanor court and misdemeanor judges;
13. director and managing board member of enterprises founded by the Republic, province or local self-government;

14. director and managing board member of public organisations founded by the Republic, province or local self-government, as follows:
 - president and members of University Council, president of university and dean of faculty;
 - president or member of managing board or other relevant managing body, director, deputy director, editor-in-chief, deputy editor-in-chief and editor of section of public media or publishing organisation;
 - director, president and member of the management board of mandatory social insurance organisation;
15. governor and vice-governor of the National bank;
16. director of bank with majority state capital;
17. director of tax administration, deputy director of tax administration, assistant to the director – chief inspector of the tax police, head of regional tax administration, head of regional tax administration police, director of branch office tax police;
18. official and sworn officer of the Security Information Agency and/or other similar service;
19. director and managing officer of penal institution;
20. head of diplomatic mission in a foreign country and international organisation and/or consul; or
21. chief of staff of the army and/or head of counter intelligence service.

2.Participants and Investigation of Accountability

Participants in Proceedings

Article 11

- (1) A party to the proceedings is a person whose accountability for human rights violations is being examined before the Commission for investigation of accountability for human rights violations (hereinafter “the Commission”).
- (2) The provisions of the Law on Criminal Procedure shall accordingly apply to representation, status, right to defence and legal counsel of the person specified in paragraph 1 of this Article.
- (3) The Commission shall request the Ombudsman to participate in the proceedings if it deems so necessary for producing of evidence, and particularly for taking of statement of the person whose human rights have been violated.
- (4) The Commission shall, until such time the Ombudsman commences activity, and under conditions specified in paragraph 3 of this Article, request a public prosecutor or his/her deputy from the list of public prosecutors and deputy public prosecutors in the Republic, to participate in the proceeding, taking into account the location where the human rights violation has occurred and the territorial jurisdiction of the invited public prosecutor and/or deputy.

Investigation of Individual Accountability

Article 12

- (1) The accountability of a natural person in respect of human rights violation is examined in lustration proceedings.
- (2) Affiliation with a particular political party, organisation or group, with the exception of affiliation with a criminal group in cases when human rights violation is concurrently a criminal offence for which the statute of limitations is effective, does not by itself represent grounds for conducting lustration proceedings or pronouncement of lustration measures.
- (3) Lustration proceedings determine that, at the time of human rights violation, preconditions of individual accountability have been met in accordance with the Criminal Code or other penal code.
- (4) If it is determined during lustration proceedings that the person against whom the proceedings are instituted is not mentally competent, or that grounds exist due to which such person may be deprived of legal competence, such proceedings shall be discontinued and the body or organisation having competent authority to nominate, select, appoint or accept into service persons specified in Article 11 hereof, together with the court of competent jurisdiction, shall be informed without undue delay of all these facts.

Respect for the dignity of person undergoing lustration proceedings and respect of other rights

Article 13

- (1) The Commission and other bodies engaged in lustration proceedings are required to respect the dignity of the person against whom lustration proceedings are instituted.
- (2) The Commission and other bodies engaged in lustration proceedings are not empowered to apply enforcement measures to ensure attendance and participation of the person against whom lustration proceedings are instituted.
- (3) The person against whom lustration proceedings are instituted shall be entitled to all rights enjoyed by a person against whom criminal proceedings are instituted.
- (4) Any violation of procedural rights of a person against whom lustration proceedings are instituted shall represent an absolutely crucial breach of proceedings.

3. Vetting Prior to Appointment

Initiation of proceedings against a candidate

Article 14

- (1) Vetting prior to appointment shall be conducted against a person nominated for office specified in Article 10 hereof.
- (2) The authorities and organisations competent for nomination, selection, appointment or taking into service of persons specified in point 3, points 6 to 13 and point 16 to 21, Article 10 hereof, are required to, without delay, file a vetting request for human rights violations (hereinafter “vetting request”) with the Commission.
- (3) Vetting of persons specified in points 1, 2, 4 and 15 of Article 10 shall be done by the Commission *ex officio*.

Duties of the Commission subsequent to initiation of proceedings

Article 15

- (1) The Commission’s Panel for examination of accountability for human rights violations (hereinafter “Commission Panel”) is required to conduct vetting of persons specified in Article 10 hereof in respect of human rights violations, within 60 days from receiving of the vetting request.
- (2) Vetting is conducted by inspection of Security Information Agency documents or a preceding and/or other relevant service, court files, files of other government bodies and organisations exercising administrative authority.
- (3) All bodies and organisations having in their possession documents under examination are obliged to enable the Commission Panel inspection of all required documents without delay.
- (4) Within seven days following the conclusion of vetting procedure, the Commission shall inform in writing the bodies and organisations specified in Article 14, paragraph 2, and the candidate subjected to lustration proceedings, on whether the candidates for office and functions specified in Article 10 hereof have violated human rights and/or initiated, ordered, or through information supplied or otherwise, engaged in human rights violations.

Rights of Candidate Subjected to Lustration Proceedings

Article 16

- (1) A candidate for office specified in Article 10 hereof shall be entitled to, within seven days of acceptance of notice on violation of human rights, inspect all files and documents on basis of which the Commission Panel has determined that said candidate has violated human rights.
- (2) The person specified in paragraph 1 of this Article shall be entitled to, within seven days following inspection and/or expiry of the deadline for inspection, inform the Commission Panel of withdrawing his/her nomination or to file an objection with the Commission.
- (3) If the person specified in paragraph 1 of this Article withdraws his/her nomination, the commission immediately so informs the body and/or organisation competent for nomination, selection, appointment and taking into service of the person.
- (4) If the person specified in paragraph 1 of this Article files an objection with the Commission, the Commission in session decides on the objection within three days of receiving the objection.
- (5) The person submitting the objection may file a complaint with the Supreme Court of Serbia against the Commission's decision rejecting and/or refusing the objection, within seven days following delivery of the Commission's decision.

Complaint

Article 17

A complaint may set forth only facts made plausible by the plaintiff that he/she was unaware of or that he/she could not have been aware of, and/or offer only such evidence which is made plausible that was acquired or occurred after the Commission has reached a ruling in respect of the objection specified in Article 16, paragraph 2, hereof.

4. Vetting after appointment

Article 18

The Commission initiates and conducts vetting proceedings *ex officio* against a persons holding office specified in Article 10 hereof.

Rules of Procedure

Article 19

Rules specified in Articles 16 to 18 hereof shall accordingly apply to vetting after appointment.

Hearing

Article 20

- (1) A person holding office specified in Article 11 hereof may in his/her objection to the Commission request that the Commission holds a hearing for presentation of evidence of the violation of human rights.
- (2) If a hearing has been requested, the Commission shall schedule a hearing within 15 days of filing the objection.
- (3) The person specified in paragraph 1 of this Article is summoned to the hearing and, if required, the persons specified in Article 11, paragraphs 3 and 4 hereof, and they shall be warned to present at the hearing all evidence and/or bring all witnesses and court experts whose statements are being offered as proof of their allegations, under caution that subsequent proposal and presentation of evidence will not be admissible.
- (4) The hearing is held *in camera*. The Commission is required to caution all parties present of their obligation to treat all information presented at the hearing as secret.
- (5) Should the person referred to in paragraph 1 of this Article request it in writing, the hearing before the Commission shall be open to public.
- (6) The complaint to the Supreme Court may contain new facts and new evidence if the person specified in paragraph 1 of this Article proves it plausible that he/she became aware of such facts subsequent to the hearing before the Commission, or that evidence was obtained or occurred only after the hearing before the Commission.

Application of Rules of Procedure

Article 22

In proceeding in individual legal cases, the Commission Panels and the Commission apply the rules of the Criminal Procedure code, unless otherwise specified by this Law.

IV BODIES INVESTIGATING ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS

The Commission

Article 22

- (1) The Commission for investigating accountability for human rights violations is hereby established.
- (2) The Commission is an autonomous and independent body conducting lustration proceedings against persons defined under this Law, establishes violations of human rights in the manner set out under this Law and pronounces measures stipulated by this Law.
- (3) The seat of the Commission is in Belgrade.
- (4) Funds for the work of the Commission are provided in the Republic Budget.

Composition and Election of the Commission

Article 23

- (1) The Commission has nine members. Three members are judges of the Supreme Court of Serbia (hereinafter: the Supreme Court), three members are prominent legal experts, one member is a deputy public prosecutor of the Republic of Serbia and two members are deputies of the National Assembly holding a degree in law, elected from different electoral lists.
- (2) The president of the National Assembly proposes candidates for Commission members in such way that minimum two candidates are nominated for each position from every group specified in paragraph 1 of this Article.
- (3) The National Assembly of the Republic of Serbia (hereinafter “the National Assembly”) elects Commission members by secret ballot. A separate vote is taken for lists of candidates from the Supreme Court, prominent legal experts, deputy public prosecutors of the Republic of Serbia and deputies to the National Assembly holding a law degree.
- (4) A candidate receiving the majority vote of the present deputies is elected member of the Commission. In the event several candidates receive the same number of votes, the voting is repeated.
- (5) If the repeat voting fails to result in a majority vote specified in paragraph 4 of this Article, the candidates receiving majority votes within their group specified in paragraph 1 of this Article shall be elected members of the Commission.

Internal organisation of the Commission

Article 24

- (1) Commission members elect the president of the Commission.
- (2) The Commission has three panels.
- (3) The president of the Commission shall be a judge of the Supreme Court.
- (4) The Commission conducts lustration proceedings.
- (5) A session of the Commission shall be convened to determine legal reasoning in principle, harmonise case law, deliberate on objection, hold hearings or to perform other tasks set out by this law.
- (6) The Commission shall be convened by the president at his/her initiative or following a written motion of minimum three Commission members.
- (7) Internal organisation of work of the Commission, composition of panels, system of case allocation and work of the session are regulated by Rules of Procedure of the Commission, passed by the Commission.
- (8) Internal work organisation, the composition of the panels, the method of allocation of cases and the method of work of the Commission shall be changed in the same manner as the Commission Rules of Procedure.
- (9) The Commission shall have a Registrar appointed by the National Assembly.

Term of Office of Commission Members

Article 25

A Commission member shall be appointed for the period of six years and may be re-appointed once more, and a Commission member from the ranks of deputies shall be appointed for the period of his/her term of office as deputy.

Early Termination of Office

Article 27

- (1) The office of Commission member shall cease before the expiry of his/her term of office:
 1. as of the date the National Assembly accepted his/her resignation;
 2. as of the date the capacity based on which he/she was appointed ceased;
 3. as of the date the National Assembly passed a decision on his/her dismissal;

4. as of the date the national Assembly has issued a decision on his/her permanent loss of working ability in respect of the duties of Commission member;
 5. due to his/her death.
- (2) The office of a Commission member shall not cease once he/she has met mandatory retirement conditions.
 - (3) A Commission member whose office terminated before the expiry of his/her term of office shall be replaced by a new member whose term of office shall last until the expiry of the term of office of the replaced member.
 - (4) The president of the National Assembly shall put before the Assembly the appointment of a new member within 30 days of termination of office of the outgoing Commission member, and propose candidates within 15 days of the termination of office of the outgoing Commission member.

Obstacles to Appointment as Member of the Commission

Article 27

- (1) A Commission member may not be a person who is a member of a political party body, except for a deputy, or a person who has served minimum six-month non-suspended sentence or a sentence for other criminal offence rendering him/her unworthy of the trust of the public.
- (2) A procedure to investigate obstacles that were discovered after appointment shall be initiated by the Commission, within 30 days of the day of discovering them.
- (3) Three members of the Commission appointed by the president shall make a report stating whether there are obstacles specified in paragraph 1 of this Article.
- (4) Based on the report, the Commission shall propose to the National Assembly to dismiss the member of the Commission in respect of whom obstacles specified in paragraph 1 of this Article have been discovered.

Dismissal

Article 28

- (1) The reasons leading to the dismissal of a Commission member are the same as those pertaining to judges.
- (2) The reasons leading to the dismissal of the president of the Commission are the same as those pertaining to presidents of courts.
- (3) The procedure to dismiss a Commission member and president of the Commission shall be governed by rules for dismissing a judge.
- (4) Dismissal procedure shall be initiated by the president of the Commission, the Commission or the National Assembly speaker.
- (5) The procedure is carried out by the Commission who shall prepare a reasoned motion. The member of the Commission to be dismissed does not take part in decision-making.
- (6) The National Assembly shall decide on the motion for dismissal.

Appellate Bodies

Article 29

A complaint against the decision made by the Commission Panel may be submitted to the Commission, and an appeal against the decision of the Commission on the complaint may be lodged to the Supreme Court.

Competence

Article 30

(1) The Commission Panel shall:

1. *ex officio* initiate procedures;
2. investigate whether human rights have been violated by an individual undertaking or an act of persons defined by this Law;
3. produce evidence substantiating the violations;
4. pass first-instance decisions on human rights violations and decisions on measures against such violations.

(2) The Commission shall:

1. Determine fundamental legal opinions regarding the concept and types of human rights of relevance for this Law, individual accountability of persons defined by this Law and measures to be taken against violations of human rights;
2. Take positions necessary to ensure consistency of practice of its panels;
3. Decide on complaints against decisions taken by the Commission's panels, without or following a hearing, in accordance with this Law, and
4. Perform other tasks defined by this Law.

Exemption of Commission Member

Article 31

The exemption of a Commission member shall be governed by the provisions of the Criminal Procedure Code.

V Measures against Violations of Human Rights

Commission's Press Release

Article 32

The Commission shall issue a press release to the media of its own choice and shall always publish in the Official Gazette information about the violation of human rights committed by a person referred to in Article 10 hereof if:

1. such person fails to resign from office or withdraw his/her candidature within 7 days of the deadline set for the right to inspection of the documents specified under Articles 16 and 19 hereof, should the Commission, after conducting an investigation, be of the opinion that such person violated human rights in accordance with this Law;
2. such person fails to lodge a complaint in accordance with this Law;
3. such person fails to resign from office or withdraw his/her candidature within 7 days of the receipt of the Commission's decision on refusing or rejecting his/her complaint;
4. such person fails to lodge an appeal in accordance with this Law;
5. such person fails to resign from office or withdraw his/her candidature within 7 days of the receipt of the Constitutional Court's decision on refusing or rejecting his/her appeal.

Measures Restricting Appointment to Office

Article 33

- (1) A person who has by a decision of the Commission or Constitutional Court been found to have violated human rights and failed to resign from a position or withdraw his/her candidacy for a position listed under Article 10, paragraphs 6 to 21 hereof, within 30 days of the date of the Commission's press release specified in Article 32 hereof, may not take the positions set out in Article 10 hereof for five years following the date of the press release.
- (2) The Constitutional Court shall *ex officio* establish the occurrence of conditions leading to restrictions on appointment to offices determined under Article 10 hereof, specified in paragraph 1 of this Article, and publish the decision establishing such conditions together with the legal restriction referred to in paragraph 1 of this Article in the Official Gazette of the Republic of Serbia.
- (3) The person referred to in paragraph 1 of this Article may not lawfully retain his/her current position after the decision of the Constitutional Court specified in paragraph 2 of this Article has been published.
- (4) The person who is pronounced a measure restricting appointment to office is entitled to, within 15 days of publishing the measure, return to the employer for whom he/she worked before taking office, and if that employment was terminated

or he/she did not work before taking office, this person is entitled to rights pertaining to redundant employees.

VI TRANSITIONAL AND FINAL PROVISIONS

Entering into Force and Application

Article 34

- (1) This Law shall come into force on the eighth day after its publication in the Official Gazette of the Republic of Serbia and shall apply three months after entering into force.
- (2) Lustration bodies shall be set up within 60 days of entering into force of this Law.
- (3) This Law shall be applied for 10 years after entering into force.