SpringerWienNewYork

Gabriele Kucsko-Stadlmayer (ed.)

European Ombudsman-Institutions

A comparative legal analysis regarding the multifaceted realisation of an idea

SpringerWienNewYork

Univ.-Prof. Dr. Gabriele Kucsko-Stadlmayer
Department of Constitutional and Administrative Law University of Vienna,
Juridicum, Wien, Austria

Financial support was given by
Bundesministerium für Bildung, Wissenschaft und Kultur, Wien, Austria

SpringerWienNewYork is part of
Springer Science+Business Media
springer.at

Typesetting: Karson Grafik- und Verlagsservice, 1020 Wien, Austria
Printing: Ferdinand Berger & Söhne Gesellschaft m.b.H.,
3580 Horn, Austria

Library of Congress Control Number: 2008929563

Printed on acid-free and chlorine-free bleached paper
SPIN: 12017737

ISBN 978-3-211-72880-2 SpringerWienNewYork

Preface from the Editor

The present survey comprises the results of a research project carried out at the University of Vienna between September 2005 and October 2007 under the direction of the editor and supported by the Austrian National Bank, the *Volksanwaltschaft* of the Austrian Republic and the International Ombudsman Institute. This project aimed to comprehensively demonstrate the legal basis of parliamentary ombudsman institutions throughout Europe, analysing them in a comparative way and thereby revealing their organisational and functional diversity. It was also intended to provide an incentive for the discussion of the legal political enhancement of such institutions.

This book starts with the comparative legal analysis, followed by forty-nine reports on the ombudsmen of the different European States as well as the European Ombudsman. The reports pursue a uniform scheme of structure to ensure the comparability of information on the various institutions. They were each based on the relevant constitution or statutory act, the responses to the questionnaires which were sent out in the course of the project, as well as the information resulting from the activity reports. This research had to contend with limitations of differences in style and technique of the various legal frameworks and the extensive reliance on translations (into English or French); furthermore, not all the questionnaires were fully completed. Some problems, though by no means all, were resolved by directly contacting employees of the particular institution.

Sincere thanks are given to all persons who contributed to the success of this research project and its publication. Particular thanks are due to Dr. Peter Kostelka, Ombudsman of the Austrian Republic and European Chairman of the International Ombudsman Institute, who initiated and facilitated this project as an essential contribution to the dialogue between institutions and enriched it by his contacts. Dr. Michael Mauerer, Secretary of the IOI Europe, provided useful functional and organisational assistance. Important information has also been obtained thanks to the incumbent ombudsmen, particularly the participants of the European Ombudsman conference, which took place in the Parliament in Vienna between the 11th and 13th of June 2006. Special thanks also go to the Austrian National Bank for the financing of this project and the Austrian Federal Ministry of Science and Research for the financial contribution to this publication.

In addition, I would like to thank Mag. Denise Pflug and Stefanie Kucsko BSc, who translated the comparative legal analysis into English.

Gabriele Kucsko-Stadlmayer

Table of Contents

List of Abbreviations

A	Austria
A-Tir	Austria-Tirol
A-Vor	Austria-Vorarlberg
AL	Albania
AM	Armenia
AND	Andorra
Appl	Application (of the European Convention of Human Rights) [Year/Number]
Art	Article
AZ	Azerbaijan
B	Belgium
B-Gent	Belgium-Ghent
B-Wal	Belgium-Wallonia
B-Fla	Belgium-Flanders
BIH	Bosnia and Herzegovina
BIH-Srp	Bosnia and Herzegovina Republic of Srpska
BG	Bulgaria
Cf	confer
CH	Switzerland
CH-StZ	Switzerland-City of Zurich
CH-KaZ	Switzerland-Canton of Zurich
CH-BaLa	Switzerland-Basel Landscape
CH-BaSt	Switzerland-Basel City
Const	Constitution
CY	Cyprus
CZ	Czech Republic
D	Germany
D-Rhe	Germany-Rhineland Palatinate
DK	Denmark
Doc	document
ed	editor
E	Spain
E-Kat	Spain-Catalonia
E-And	Spain-Andalusia
ECHR	European Court of Human Rights
ECHR	European Convention of Human Rights
e.g.	for example (lat.: '*exempli gratia*')
esp.	especially
et al.	et altera
EST	Estonia
EU	European Union
EUGRZ	Europäische Grundrechte Zeitschrift

f/ff	and the following
F	France
FIN	Finland
FL	Liechtenstein
FN	footnote
GB	United Kingdom of Great Britain and Northern Ireland
GB-Gib	United Kingdom-Gibraltar
GB-Sch	United Kingdom-Scotland
GB-W	United Kingdom-Wales
GE	Georgia
GP	Gesetzgebungsperiode/Period of Legislation of the Austrian National Assembly
GR	Greece
H	Hungary
HR	Croatia
I	Italy
I-Aos	Italy-Aosta Valley
I-Bas	Italy-Basilicata
I-Lom	Italy-Lombardy
I-Süd	Italy-South Tyrol
IBA	International Bar Association
IL	Israel
IRL	Ireland
IS	Iceland
IOI	International Ombudsman Institute
JORF	Journal Officiel de la République Française 'Lois et Décrets'
KS	Kyrgyzstan
KZ	Kazakhstan
L	Luxembourg
LT	Lithuania
LV	Latvia
M	Malta
MD	Republic of Moldova
MK	Former Yugoslavian Republic of Macedonia (FYR Macedonia)
MNE	Montenegro
N	Norway
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institutions
NL	Netherlands
NL-Ams	Netherlands-Amsterdam
No	Number
OA	Ombudsman Act

OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE	Organisation for Security and Cooperation in Europe (until 1992 CSCE)
p.	page
P	Portugal
PL	Poland
Q I	Questionnaire 1
Q II	Questionnaire 2
Q III	Questionnaire 3
RO	Romania
RUS	Russian Federation
rc	recital
S	Sweden
Ser.	Series
SK	Slovakia
SLO	Slovenia
SRB	Serbia
SRB-Kos	Serbia-Kosovo
SRB-Voj	Serbia-Vojvodina
Tab.	Table
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
UA	Ukraine
UN	United Nations
UZ	Uzbekistan

List of Authors

Univ.-Prof. Dr. Gabriele Kucsko-Stadlmayer
Department of Constitutional and Administrative Law
University of Vienna, Juridicum
Schottenbastei 10–16
1010 Vienna, Austria

Dr. Brigitte Kofler
Pokornygasse 2a/3
1190 Vienna, Austria

Mag. Joachim Stern, Maî.
Department of Constitutional and Administrative Law
University of Vienna, Juridicum
Schottenbastei 10–16
1010 Vienna, Austria

Part One: The Legal Structures of Ombudsman-Institutions in Europe – Legal Comparative Analysis

Gabriele Kucsko-Stadlmayer

Chapter 1: Introduction

1. The Significance of the "Ombudsman" Concept

The notion of "ombudsman" spread continuously throughout the world in the course of the 20th century.[1] The constitutional concept of independent, easily accessible and "soft" control of public administration through highly reputable persons is nowadays inextricably linked to the principles of democracy and the rule of law, as it is an essential contribution to the efficiency of those principles.[2] Its increasing significance for the protection of human rights and the liability of administration is recognised worldwide.[3] Ombudsman-institutions are nowadays inherent in all kinds of legal orders.[4]

In Europe, the concept developed with immense dynamism within the last century. The first independent ombudsman-institution was established in Sweden in 1809.[5] It was to remain the only one for a long time. In 1919, Finland adopted the ombudsman idea in a republican constitution for the first time. Nevertheless it was Denmark which initiated its increasing popularity and, by creating a new legal structure, became a role model for its further development. In 1963, this legal structure was adopted by Norway and in 1967 by the United Kingdom.[6] Soon the idea spread rapidly throughout

---

1 The International Ombudsman Institute of the University of Alberta, Edmonton, Canada, today represents ombudsmen in 125 different national legal systems. In 1976 there were only 38.

2 Cf *Mauerer*, Die parlamentarischen Ombudsmann-Einrichtungen in den Mitgliedstaaten des Europarates, in Matscher (Hrsg), Ombudsmann in Europa. Institutioneller Vergleich, 1994, 123.

3 Cf *Reif*, The Ombudsman, Good Governance and the International Human Rights System, 2004, 55, 81; *Robertson*, National Government and the Ombudsman, in Reif (ed), The Ombudsman Concept, 1995, 105.

4 Cf the comprehensive illustration of *Hossain/Besselink* (ed), Human Rights Commissions and Ombudsman Offices. National Experiences throughout the World, 2000.

5 Cf with respect to the appointment of an "ombudsman" by the Swedish King Karl XII in 1713 *Gellhorn*, Ombudsmen and Others. Citizens´ Protectors in Nine Countries, 1966, 194 ff. This institution later on was renamed to Chancellor of Justice.

6 The first state of the British Commonwealth to appoint an ombudsman was New Zealand in 1962.

Europe. The collapse of totalitarianism in Portugal, Spain, Greece, as well as Central and Eastern Europe and the resulting process of democratisation provided new incentives for the idea of the ombudsman. By combining the basic concepts of both the rule of law and human rights the figure of the ombudsman was lifted up to a new level. As a reaction to the entry of new states into the Council of Europe many new institutions were brought to life. Three major climaxes concerning the dispersion of this concept can be documented throughout the process (Tab. 3).[7]

Currently, 25 out of the 27 EU member states have established national ombudsman-institutions.[8] The remaining two states[9] have such institutions in the regional domain. Even the European Union has established such an institution: the European Ombudsman.[10] At the level of the Council of Europe, 45 out of a total of 47 member states have installed national or at least regional ombudsmen.[11] Even on an international scale this represents a high percentage: 40.62% of the states represented in the International Ombudsman Institute are members of the Council of Europe.

This impressive dispersion throughout Europe has prompted great eagerness to compare the different legal structures across countries. Throughout its development the idea of the ombudsman has not only shown a large distribution, but also a significant typological diversity: Swedish and Finnish ombudsman-institutions aim to control the entire executive branch, even the jurisdiction, and they are empowered to impeach judges and public servants. Danish and Norwegian institutions have limited authority and can therefore only control administration through "soft" sanctions such as recommendations and reports. These so-called "soft sanctions" aim primarily to provide quick, flexible and economical action, in order to minimise the individual's feeling of "paralysation" vis-à-vis overpowering bureaucratic organisations within the state.[12] Thus there is no autonomous "Scandinavian system" as such. In Southern, Central and Eastern European states, however, the ombudsmen have been empowered with new authority, as they were installed for the purpose of promoting democratisation and the effective implementation of the European Convention of Human Rights (ECHR). According to their authorisation, these ombudsmen were officially designated as "human

---

7 In a worldwide context *Gregory/Giddings*, Righting Wrongs, refer to two cycles which they set in relation to the older and the newer democracies.

8 Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, Spain, Czech Republic, Hungary, United Kingdom, Cyprus. In half of these states ombudsman-institutions were only established after the European Ombudsman in 1992.

9 Germany and Italy.

10 This happened in 1993 by introduction of Art 195 TEC; to its origins cf The European Ombudsman. Origins, Establishment, Evolution, Office for Official Publications of the European Communities, 2005.

11 No such institutions are inherent in Monaco and San Marino.

12 Cf *Oosting*, Essential Elements of Ombudsmanship, in Reif (ed), Ombudsmen Concept, 14.

rights ombudsman" or "hybrid ombudsman" – contrary to the "classical ombudsman".[13] To what extent these systems differ cannot be clarified at this point in time; however, the current study will show that in many cases even "classic" institutions are authorised to protect human rights.

2. Research Project

The purpose of the present study is the **legal comparison** of the various European ombudsman-institutions. The main focus is on presenting these institutions and their special characteristics in standardised state reports (Part II) and analysing them legally (Part I). Such an analysis requires a standardised supply of information. For this purpose the compared institutions were asked to indicate their legal bases and to interpret them by completing three successive questionnaires. These are attached in the appendix of this study. Unfortunately, not all three questionnaires were returned by all of the institutions and some had to deal with linguistic, technical or other difficulties. Furthermore, although the legal bases of all institutions were available in either English or French, the translations differed significantly with regard to the terminology used. As a consequence they showed a variety of legal concepts and were thus not a sufficient basis for a comparison. Therefore, websites were used in addition, shortened versions of which were often available in English, as well as published reports on the ombudsman's field of activity.

Moreover, it needs to be emphasised that this study forms a **strict legal analysis**. It intends to compare the legal bases of the different institutions, but it does not illustrate their socio-scientific scope or conditions of functioning. The concomitant circumstances of the political, economical and cultural context could not be examined for methodological reasons. Comments on the interpretations of the legal provisions in practice were made wherever they could be deduced from the questionnaires and are of special interest for this particular context.

Since the judicial examination showed the heterogeneousness of the various institutions, the research had to be restricted to the **basic lines** of the legal construction. Consequently many interesting details had to be left out of the enquiry; however, they can easily be reproduced by referring to the cited legal bases. The illustrated issues concern the organisation of the institution (chapter 2), the initiation of procedures (chapter 3), the subject and criteria of control (chapter 4 and 5) and its powers (chapter 6). Finally, based on the results of the previous chapters, the various institutions are classified by means of typical characteristics (chapter 7).

3. Scope of the Object of Investigation

Firstly, the subject matter of the present research needs to be defined. Too many of the diverse institutions which deal with complaints are nowadays

---

[13] With respect to this distinction cf *Reif*, Governance, 2ff.

denoted as "ombudsman".[14] The premise of this investigation had to consider both the geographical aspect as well as the contextual classification. This has been approached as follows:

a. Geographical Scope

In order to make this study as informative as possible, geographical boundaries were drawn on a large scale: First and foremost they encompass all member states of the Council of Europe[15] as well as the European Union being a supranational organisation. Furthermore, Kazakhstan, Kyrgyzstan and Uzbekistan are included, thus comprising the entire "OSCE-Europe".[16] Due to its cultural roots in Europe, Israel was examined as well. Altogether 49 legal orders are subject to this research (Tab. 1).

b. Contextual Classification

For the contextual classification of the subject of this study it was at first necessary to decrease the vast number of institutions denoted as "ombudsman"[17] and to define a uniform set of standards for an ombudsman-institution. These standards would then serve as the basis for the present research project and should be examined with respect to their relevance for European Constitutional Law. The starting point was the definition of the ombudsman-institution formulated by the International Bar Association in 1974, as this is still significant for international development. It reads as follows:

> "An office provided by the constitution or by action of the legislature or Parliament and headed by an independent high level public official who is responsible to the legislature or Parliament, who receives complaints from aggrieved persons against government agencies, officials and employers or who acts on his own motion, and has power to investigate, recommend corrective actions and issue reports."[18]

---

[14] Cf for instance the definition at wikipedia, according to which an ombudsman is an official, usually (but not always) appointed by the government or by parliament, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens (http://de.wikipedia.org/wiki/ombudsmann 04.02.2008). In some states the ombudsman act explicitly prohibits other institutions to bear the name "ombudsman" (e.g. Greece: Art 6).

[15] Of these only Monaco, San Marino and Turkey do not have any such institution.

[16] The Holy See, Turkmenistan, Tadzhikistan and Belarus so far have not established such institutions.

[17] Due to the overabundance of private sector institutions New Zealand enacted a law in 1991, which provides for the protection of the name "ombudsman" by introducing a state licence system for institutions which want to carry the name "ombudsman" (cf *Reif*, Governance, 53).

[18] Cited in *Caiden*, International Handbook of the Ombudsman. Evolution and Present Function, 1983, 44.

Even from today's point of view the above definition sums up all relevant elements of the constitutional concept of the "ombudsman". The most significant one is the independence of the institution.[19] Over the course of time, the parliamentary election of the ombudsman has become the primary decisive element for this independence.[20] Therefore, the present study predominantly incorporates those institutions which are **elected by parliament**. Moreover, for the purpose of better manageability, the comparison focuses on those institutions which are provided with a general mandate, and hence have comprehensive authority to control a certain level of administration ("General Purpose Ombudsmen") and are not restricted to a defined division ("Single Purpose Ombudsmen"). The study examines: 1. national institutions with a general mandate,[21] 2. regional institutions with a general mandate and 3. national institutions with a special mandate.[22] The diagrams only cover institutions of the first group to allow for better comparability.

Furthermore, the purpose of this research is to illustrate the legal situation in Europe in the most representative way. In states without a national parliamentary ombudsman with a general mandate further institutions were examined, provided that they met **other criteria of independence** and were therefore comparable (in particular the ombudsmen of the United Kingdom and France). As an exception Germany and Liechtenstein were incorporated into the study, despite the **German Petitions Committee** and the **Office of Advice and Complaints in Liechtenstein** not corresponding with the cited definition in several ways.[23] However, both institutions are active in the international network of ombudsmen and were therefore of interest for the comparative survey. The study emphasises the peculiarities of these institutions in relation to the "real" ombudsmen. Due to his special constitutional position, the Finnish **Chancellor of Justice** has been included as well. Altogether 83 institutions were subject to this research (Tab. 2).

This study excludes institutions which differ too much from the concept of the "ombudsman" illustrated in this context, although they may at first seem to be rather alike: Most notably, the study does not examine petitions committees (which are integrated into the organisation of parliament), human rights commissions (which do not have the authority to examine indi-

---

19 Cf the by-law of IOI.

20 Cf also Recommendation of the Parliamentary Assembly of the Council of Europe 1615 (2003) 1, No 7.iii.

21 They are competent to control administration as a whole.

22 These are ombudsmen, who are only competent to control certain fields of administration – such as the military or prisons – or who may only apply specific control criteria: For instance, certain ombudsmen are only competent to examine issues of (gender) equality, minorities, children or data protection.

23 Petitions Committees, even if they are competent to investigate individual complaints, like in Germany, lack organisational and functional autonomy from their respective parliaments. Hence their activity is closely linked to political work. On the other hand, internal complaints mechanisms within administration – such as in Liechtenstein – lack independence vis à vis administration and hence cannot exercise a substantial control activity.

vidual appeals), mediators of court (who are not empowered to control the administration) and internal administrative arbitration boards and institutions of appeal (which are not independent from administration and thus denoted as "quasi-ombudsmen", "in-house ombudsmen", "executive ombudsmen" or "in-house complaint mechanisms"). Furthermore, the criteria of independence are not met by the institutions of socialistic "Prokuratura", which in the Central and Eastern European states of reform still function as institutions of appeal but fulfill the task of a public prosecution service at the same time.[24] Irrespective of a possible denotation as "ombudsman" the institutions of appeal of private bodies (e.g. banking institutions, insurance companies, media enterprises) are irrelevant for the present study due to their lack of statutory establishment and significance for the control of administration ("Private Sector Ombudsmen").[25]

4. Name of the Institution

Firstly, it has to be noted that not all of the institutions examined in the study are officially named as "**Ombudsman**", despite their common structural characteristics.[26] Despite these different designations, the duties and responsibilities of those institutions are directly comparable to those of the "ombudsman". This applies to the institutions of Sweden, Finland, Denmark, Norway, the United Kingdom, the Netherlands, Ireland, Malta, Belgium, Israel, as well as the European Ombudsman in certain translations.[27]

Other institutions, in their original language or in English translation, are qualified as Peoples Advocate (AL, HR; similar: Public Attorney – MK; Parliamentary Advocate – MD; Public Defender of Rights – CZ, SK; Volksanwalt – A; El Defensor del Pueblo – E; Difensore Civico – I), Médiateur (B, F, L),[28] Provedor de Justiça (P), Raonador del Ciutadà (AND), Chancellor of Justice (EST, FIN), Parliamentary Commissioner (H, UA; similar: Commissioner for Civil Rights Protection – PL, Commissioner for Human Rights – AK, RUS, KZ), Human Rights Defender (AM), or even simply as "an official authorised by parliament" (Authorized Person of the Oliy Majlis for Human Rights – UZ).

The different denotations of the various institutions sometimes highlight specific tasks. Those institutions with names containing the term of "human rights" are usually empowered with special competences in the field of human rights protection; however, this argument cannot be inversed, as the

---

[24] Cf *Sládecek*, Parliamentary Commissioners for Civil Rights in the Republic of Hungary, in Gregory/Giddings (eds), Righting Wrongs, 229 f.

[25] With respect to these models and categories cf *Gregory/Giddings* (eds), Righting Wrongs, 1 ff; *Caiden* (ed), International Handbook of the Ombudsman. Evolution and Present Function, 1983, 13 ff; *Reif*, Governance, 2 ff, 25 ff.

[26] The original name is based on the nordic word "ombud" = power of attorney and in 1713 meant the attorney in fact of the king (cf *Gellhorn*, Ombudsmen and Others, 194).

[27] This applies to the Bulgarian, Danish, Estonian, English, Gaelic, Latvian, Lithuanian, Hungarian, Maltese, Dutch, Romanian, Slovakian, Finish and Swedish translation.

[28] With respect to the name "Médiateur" cf infra p. 62, FN 146.

Spanish and Portuguese institutions show. In general, different denotations of institutions do not imply substantial judicial differentiation, but usually emanate from the traditions of the particular legal terminology of a state. Even the European Ombudsman is denoted differently in the official languages of the European Union (French: Médiateur européen, Spanish: Defensor del Pueblo Europeo, Portuguese: Provedor de Justiça Europeu, Italian: Mediatore europeo). Some states expressly provide a notation for female incumbents ("Ombudswoman", "Ombudsfrau", "Médiatrice"). For reasons of clarity the research uses "ombudsman", "ombudsman-institution", or plural "ombudsmen" (regardless of gender) as synonymous terms for all of the examined institutions.

5. Legal Basis

a. Constitutional Embodiment

On a national and regional level, most ombudsman-institutions are constitutionally enshrined (Tab. 4). The Ombudsman of the United Kingdom is considered to be "part of the unwritten constitution".[29] The European Ombudsman is regulated by EC primary legislation (Art 195 TEC) and the right to apply to him is even enacted in the Charter of Fundamental Rights (Art 43) that will have legal validity with the Treaty of Lisbon (signed 13 December 2007). Constitutional provisions primarily ensure the independence of the institutions from public administration as well as their stability and continuity within the framework of state institutions. Raising these provisions to a higher normative level protects them from being modified by changing majorities of parliament.[30] Constitutionally embodied ombudsman-institutions are hence not assigned to any of the three state powers – not even to the legislation, to which they are usually functionally assigned (Tab. 5). Only five of the examined institutions consider themselves part of the state power of administration (AL, EST, FL, M, MK).

b. Simple Act of Parliament

Two states, which have enacted the ombudsman-institution on a constitutional level, provide for a more detailed elaboration of the concept by organic law (E, GE). Due to their complicated legislative process (e.g.: approval of the absolute majority of members of parliament) organic laws are a stronger guarantee for the continued existence of the ombudsman's legal basis than simple acts of parliament.

Moreover, in states where the ombudsman is constitutionally embodied (Tab. 4) implementing statutes have been enacted, which regulate the organisation, functions and procedures of the particular institution.

---

[29] Cf p. 434.

[30] Also the most recent recommendation of the Parliamentary Assembly of the Council of Europe recommends the constitutional embodiment of the ombudsman-institution: Recommendation 1615 (2003) 1, No 7.i.

The remaining of the examined institutions are only enacted by simple acts of parliament (exceptions: KZ, FL[31]). The relevant legal bases are mentioned in the corresponding state reports.

c. International Scope

In addition, legal acts of international origin refer to ombudsman-institutions, which is closely linked to a growing awareness of their significance for the international protection of human rights.[32]

On the level of the Council of Europe, Recommendation 757 (1975) of the Parliamentary Assembly advises the Committee of Ministers to invite the governments of member states to appoint ombudsmen. Thereupon a series of recommendations and resolutions by the Committee of Ministers of the Council of Europe ensued.[33] This resulted from the requirement to amend the judicial protection of human rights by extrajudicial, more informal and expeditious means, such as those primarily adopted by ombudsmen. The report of the "Steering Committee for Human Rights" from 1998 on non-judicial means for human rights protection at a national level refers to the significance of national, regional and local ombudsmen, who are extensively authorised in the field of human rights protection. Their authorisation often covers the right to advise the legislature, to inform the citizens and to support educational measures.[34] The relevance of these functions is emphasised in various OSCE documents.[35] The recent Resolution 1615 (2003) of the Parliamentary Assembly of the Council of Europe under the title "The Institution of Ombudsman" emphatically underlines the relevance of independent ombudsmen for the protection of human rights and for the propagation of the principle of the rule of law: "*Ombudsmen have a valuable role to play at all levels of public administration, and they report on their activities to the political bodies to whom they are accountable.*" Subsequently, several "essential characteristics" of the effective operating of the institution are listed. Nevertheless, the ombudsman's task is only considered to complement the

---

31 Cf infra p. 258 and p. 278.

32 Cf in detail *Reif*, Governance, 81 ff, 125 ff.

33 Recommendation No. R (85) 13 of the Committee of Ministers to member states on the institution of the Ombudsman; Resolution (85) 8 on co-operation between the ombudsmen of member states and between them and the Council of Europe; Recommendation No. R (97) 14 of the Committee of Ministers to member states on the establishment of independent National Human Rights Institutions. Cf also Resolution 80 (1999) of the congress of local and regional authorities of Europe on the role of local and regional mediators/ombudsmen in defending citizens´ rights and Recommendation 61 (1999) of the congress of local and regional authorities of Europe on the role of local and regional mediators/ombudsmen in defending citizens´rights.

34 www.coe.int/t/e/human_rights/h-inf(98)3eng.pdf .

35 Cf the summary in the OSCE/ODIHR Background Paper 1 for the OSCE Human Dimension Implementation Meeting of October 1998 « Ombudsman and Human Rights Protection Institutions in OSCE Participating States » , www.osce.org/documents/odihr/1998/10/1492_en.pdf.

function of the courts. Due to the ombudsman's limited powers the jurisdiction of the European Court of Human Rights (ECHR) does not recognise complaints brought to him as "effective remedy" in the sense of Article 13 ECHR.[36]

In the context of last year's discussion about **relieving the ECHR from certain duties** the ombudsman has been provided with the additional function of supporting the Commissioner for Human Rights of the Council of Europe in exercising his rights arising from the Additional Protocol No 14 to the ECHR (in particular the unrestricted right to make statements on all legal matters pending at a chamber and the right to participate in hearings according to Art 13 of Additional Protocol No 14). On the one hand they are supposed to help identifying and resolving structural problems in national legal orders with regard to human rights; on the other hand they are to inform the public about the requirements for admissibility of appeal to the ECHR in Strasbourg and hence contribute to keeping the disproportionately high quantity of inadmissible appeals within a limit.[37] Their comparatively extensive sphere of authority, their wide standard of control, and their informal, expeditious and flexible approach, make ombudsmen particularly suitable for this task.

In connection with the present research project, which is restricted to European institutions, the activities of the **United Nations** are only marginally of interest. The resolution of the General Assembly from 1993[38] and the resolution to establish "National Human Rights Institutions" (NHRI) which are consistent which the "Paris Principles" have become relevant lately.[39] Ombudsmen can be accredited as National Human Rights Institutions, provided that they meet certain criteria (independence, competence to check the compatibility of the law in force and future law with human rights, right to advise and control public agencies with regard to human rights, duty of enhancing human rights and cooperating with national and international organisations).[40] The ombudsmen of Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Poland, Portugal and Spain have been accredited accord-

---

36 ECHR 25.3.1983 Silver, Ser. A no. 61, EuGRZ 1984, 147; 10.5.2001 T.P. and K.M., Appl. 28954/95; 26.11.2002 E. et al., Appl. 33218/96; an exception was the complaint before the Swedish Ombudsman in the case "Leander" (26.3.1987, Ser. A no. 116). Hence, a complaint before the ombudsman is no "domestic legal remedy" which must be exhausted prior to the appeal before the European Court of Human Rights in Strasbourg: ECHR 14.10.1999 Lethinen, Appl. 39076/97. *Reif*, Governance, 127 ff.

37 Report of the Group of Wise Persons to the Committee of Ministers, CM(2006)203, 979bis Meeting, November 2006, No 20, 111-113, 142.

38 Resolution of the UN General Assembly 48/134 of 20 December 1993.

39 They were drafted at a conference meeting in 1991 in Paris; they are – as well as the mentioned recommendations and resolutions – not legally binding; (www.nhri.net/pdf/ar48134.pdf).

40 Cf in this context *Aichele*, Nationale Menschenrechtsinstitutionen, 2002, 103 ff, 120 ff. Cf infra p. 65.

ingly.[41] *Linda Reif* points out *"a growing relationship between ombudsmen and international human rights mechanisms"* within the human rights system of the United Nations worldwide.[42]

Chapter 2: Organisation

1. Independence

As the focus of the present study is on "parliamentary" rather than "executive" ombudsmen,[43] the most basic idea of such organisations is their independence from the executive power.[44] Consequently, none of the examined institutions is bound to orders of administrative bodies or other public agencies. One exception is Liechtenstein, where the Office of Advice and Complaints only forms part of the Chamber of Government, the legal basis of which merely consisted of an administrative regulation by the government itself and has recently been rescinded. Even by its own account the Office of Advice and Complaints cannot substantially "control" the administrative branch. The situation is similar in Kazakhstan, where organisation and function of the institution are regulated in detail by a presidential decree.

The principle of independence is the leading thought for the effectiveness of ombudsman-institutions. Therefore, their independence is generally protected by auxiliary regulations and implies more than the mere freedom from taking instructions. This is to be analysed in the following:

2. Close Relation to Parliament

To ensure independence from the executive branch in particular, ombudsmen are regularly granted more or less close **organisational relations** to parliament, even in states which are not pronounced parliamentary democracies. As will be demonstrated, this is primarily indicated by the mode of appointment and removal of incumbents (Tab. 14, 19). In many cases these procedures require a higher quorum in order to keep political influence within a limit. Moreover, an additional regulation may stipulate that the ombudsman's term of office is independent from the term of office of parliament (Tab. 9). This enables the institution to attain a certain degree of independence from parliament. Despite their close relation to parliament, in most cases the jurisprudential doctrine does not assign the ombudsmen to any of the three state powers. This even holds true for the ombudsmen of France and the United Kingdom, who are only empowered to examine complaints brought to members of parliament and are insofar functionally closely linked

---

41 Cf *Reif*, Governance, 95; cf also *Aichele*, Nationale Menschenrechtsinstitutionen in Europa, hrsg vom Deutschen Institut für Menschenrechte, 2004.

42 *Reif*, Governance, 394.

43 Cf supra p. 4 f.

44 Cf also the Recommendation of the Parliamentary Assembly of the Council of Europe 1615 (2003) 1, No 7.ii.

to parliament or one of its chambers. In addition to the German Petitions Committee only eight national institutions consider themselves as bodies of the legislative branch (Tab. 5).

In methodological coherence with the illustrated organisational relation, a **functional connection** is likewise provided between ombudsmen and parliament, as all ombudsmen report their activities to parliament. At least in this regard, they are in many cases entitled to participate in plenary sessions and committee meetings or may be invited to do so (Tab. 10). Many ombudsmen may then even rise to speak in the debate (e.g. the national institutions of A, AM, EST, FIN, H, KZ, MD, P, RO). Reporting to parliament also allows the ombudsman to influence the legislature by suggesting the alteration of laws.[45] In parliamentary democracies where the supreme administrative organs controlled by the ombudsmen are liable to parliament, reports by ombudsmen are furthermore intended to allow the parliament to exercise rights of control. In some states, the parliament is entitled to submit complaints and petitions to the ombudsman for further examination.[46]

3. Requirements for Qualification

The regulations concerning the requirements for qualification of ombudsmen differ greatly across the various states (Tab. 11). Several legal orders, such as Sweden, do not request any preconditions for qualification. This is based on the idea that candidates for the position of ombudsman cannot be evaluated using criteria with regard to professional qualifications or prior career experience. After all, qualified candidates should not be excluded unnecessarily due to a mere lack of formal preconditions, when qualities such as personality and charisma are highly important. Nevertheless many legal orders, including certain Scandinavian legal systems, request a law degree, which seems appropriate considering the legal control exercised by the ombudsman (Tab. 32). The most important requirements include being of a minimum age, having a high social standing, or working knowledge and experience in human rights protection (Tab. 11).[47]

4. Number of Incumbents, Deputies

The predominant majority of institutions are **monocratically organised**, that is to say only one incumbent is appointed (Tab. 12). This corresponds to the idea that the ombudsman should be effective on account of the incumbent's personal authority.

Of course, **cooperative** solutions are also possible. Thus sometimes two, three, four or even five incumbents are appointed. Even in Sweden, the state of origin of the ombudsman-institution, four incumbents are appointed

---

45 Cf in detail p. 48.

46 Cf in detail infra p. 18 f.

47 Recommendation 1615 (2003) 1, No 7.iii by the Parliamentary Assembly of the Council of Europe also mentions in addition to qualification and experience "high moral standing" and "political independence".

("Riksdagens Justitieombudsmän") (Tab. 12). In such legal orders, however, each incumbent has a particular field of competence, which is regulated by law (e.g. LT) or internal act (e.g. A). Cooperative decisions are only necessary in exceptional cases, such as the assignment of duties to the incumbents. Furthermore, the institution is usually directed by one of the incumbents, who is granted preference in officiating. Sweden has established the position of the "Chefsjustitieombudsman", who is entitled to decide about employment matters and to take on desirable cases. This shows that even in the examples above there is no real cooperative system and that the personality of the incumbent is of overriding relevance, especially in contact with citizens. This also demonstrates a significant difference compared to petitions committees.

Conversely, in many institutions where only one incumbent is appointed there may also be a **cooperative element** involved. This is the case when two, three, four, five or even more **deputies** are provided (Tab. 13). In Macedonia, the number of deputies is decided by Parliament, which acts upon the Ombudsman's recommendation and currently appoints ten incumbents. In some states the deputies are even assigned sole responsibility for certain tasks (e.g. CZ, E, SLO). However, half of all national, monocratically organised ombudsmen, including the European Ombudsman, do not appoint deputies at all.

It is impossible to ascertain what are the decisive factors for the establishment of monocratic, cooperative, or deputy systems. Generally, the choice will most likely be based on political or practical considerations. On the one hand, the cooperative and deputy systems allow for a division of the workload. On the other hand, the appointment of incumbents must always take into consideration the representation of certain political or ethnic groups.

5. Appointment

According to the chosen scope[48] of this research, the ombudsmen are generally appointed by **parliament** or one of its chambers (Tab. 8). Sometimes the appointment requires a qualified majority (Tab. 14). Several countries provide for a right to proposals. In the Netherlands, for instance, an independent committee (composed of the Vice President of the State Council, the Chief Justice, and the Comptroller General of Finances) is entitled to nominate three candidates for election.[49] In Greece, the conference of presidents of Parliament, rather than Parliament itself, is concerned with the appointment of Ombudsmen (with a majority of 4/5). The variety of types of appointment on the one hand expresses the independence of ombudsman-institutions from the administrative branch, while on the other hand paying regard to its functional proximity to the legislative branch.

In the United Kingdom the Queen as **head of state** is responsible for the appointment of Ombudsmen; the British Ombudsman considers himself as

---

48 Cf supra p. 3 ff.

49 Cf infra p. 325.

well as the regional Ombudsmen as completely independent from the administrative branch in their tenure of office. In France, the Médiateur is appointed by the **council of ministers**; moreover, only by simple act of parliament is he exempted from the duty to comply with instructions. However, his position meets other characteristics of independence. Removal from office, for example, is only possible upon decision by a specific board of three judges. In Kazakhstan, the Parliament only performs an advisory function in the appointment of Ombudsmen and the State President is concerned with the actual appointment. Liechtenstein does not provide for a specific mode of appointment of the head of the Office of Advice and Complaints at all, as this institution forms part of the Chamber of Government.

6. Removal from Office

Nearly all ombudsmen can be **dismissed** before completion of their period of office. Only the Austrian Volksanwaltschaft and the regional Ombudsman of Vorarlberg are exempt from this rule.[50]

The same **body** that is assigned with the appointment of the ombudsmen is generally also responsible for their removal from office. As a general rule, this body is the national parliament. In order to protect the legal status of the ombudsman and to depoliticise the dismissal, a higher quorum may be required for dismissal than for appointment (Tab. 19).[51] In the United Kingdom the Queen is responsible for the dismissal but unlike the mode of appointment she can only act at the request of both Chambers of Parliament. Some jurisdictions render the removal from office more difficult by assigning it to certain judicial bodies (EU: European Court of Justice; EST: State Court; F: specific board of three judges;[52] CY: the disciplinary organ for judges). Conversely, sometimes provision is made for easily verifiable reasons for removal from office (esp. criminal conviction) to allow for simple modes of termination of office (e.g. loss of office by force of law – GE, LT, LV, SK; declaration by the president of parliament – AND, AZ, BG, BIH, CZ). In Moldova, dismissal on account of a general motion of no confidence requires a majority of 2/3. When the motion of no confidence is based on a specific reason a simple majority suffices. On the whole, the ombudsmen are only responsible to parliament, with the exception of a few cases where they are only responsible to courts.

---

[50] However, the incumbent loses the office if he is convicted to more than one year of imprisonment. Furthermore, literature assumes that the office ends if he is unable to perform his functions; cf *Adamovich/Funk/Holzinger*, Österreichisches Staatsrecht, Band 2, 1998, rc 40.004.

[51] The German Petitions Committee and the Office of Advice and Complaints in Liechtenstein were not included in this table since they are not comparable to the other institutions.

[52] Cf the Décret n°73-253 du 9 mars 1973, pris pour l´application de l´article 2 de la loi n°73-6 du 3 janvier 1973 instituant un médiateur, Publication au JORF du 10 mars 1973.

Regulations regarding the **reasons** for removal from office differ. 11 out of the 45 legal orders do **not indicate any specific reasons** for dismissal at all (Tab. 20). They only phrase abstractly that the ombudsman may be dismissed for "loss of confidence" (DK, LT, MD, S), "serious reasons" (B) or "extremely weighty reasons" (FIN). In these cases the removal from office may additionally require a qualified majority in parliament (IS, MD, N). Otherwise a simple majority is sufficient (B, DK, GB, HR, LT, NL, S). The fact that many older institutions (esp. DK, GB, S) only require a simple majority for the removal from office indicates that the legal restriction on the dismissal of ombudsmen is a relatively new tendency.[53] The aim is to counteract the danger of politicisation of the institution by providing legal coverage and releasing it from the confidence of the simple majority of parliament.

However, in most legal orders the **reasons** for dismissal of ombudsmen are **specified**. Mostly they refer to inaptitude for the exercise of office, a legally binding criminal conviction (which may be restricted to specific offences),[54] reasons of incompatibility with the office[55] and different types of misconduct in office (Tab. 20).

What classifies as the kind of "**misconduct**" that may be a precondition for the dismissal of ombudsmen is formulated quite differently in the various states. In the majority of cases it is defined as conduct which infringes upon legal norms, is inconsistent with the dignity inherent to the position or affects the public confidence in the impartiality and objectiveness of his exercise of office. Three general clauses are used consistently, which grant the organ responsible for the dismissal an extensive scope of discretion. Special protection against abuse is provided in those legal orders where the competence of removing the ombudsman from office is assigned to parliament with a qualified majority (E, IL, KS, PL; Tab. 18, 19) or to a judicial body (CY, EU).[56]

7. Term of Office

In nearly all jurisdictions the ombudsman is appointed for a specific term of office (Tab. 15). The United Kingdom is the most important exception, as the Parliamentary Commissioner and the regional ombudsmen of England and Northern Ireland are appointed without time limit and retire at the age of 65. The same applies to the Finnish Chancellor of Justice.

The **period** of office is regulated quite differently. In most cases, the incumbent is appointed for a period of four, five or six, sometimes even seven or eight years (Tab. 15). It needs to be emphasised that in the vast majority of cases the term of office does not depend on the period of office of parliament

---

53 Recommendation of the Parliamentary Assembly of the Council of Europe 1615 (2003) 1, No 7.v. only states "incapacity" and "serious ethical misconduct".

54 In many cases this is only possible after removal of immunity by parliament.

55 Cf infra p. 15.

56 Cf Tab. 18.

(Tab. 9). This underlines the distance between the ombudsman and the political powers represented in parliament.[57]

The issue of **reappointment** is regulated rather heterogeneously too. The provisions range from inadmissibility of reappointment (restriction to one period of office) to unlimited admissibility (Tab. 16). The political convenience of these various solutions can be argued. On the one hand, the possibility of reelection takes into account the incumbent's experience and the fact that his prestige could be of advantage to the new term of office. On the other hand, a possible reappointment may lead to the exertion of political pressure on the candidate.

8. Incompatibility

Almost all ombudsman acts contain provisions of incompatibility (Tab. 17).[58] The only exceptions are Sweden and the United Kingdom, where no statutory preconditions of qualification are required for the function of the ombudsman (Tab. 11).

The **positions** incompatible with the function of the ombudsman are diverse; first and foremost, they aim to ensure the economical and political independence of the ombudsman. The most important incompatibilities refer to state positions, as well as membership and functions in a political party or trade union. Often, the ombudsman is prohibited from exercising any other professional function or salaried employment (Tab. 17). Sometimes, the ombudsman is furthermore forbidden any occupation suitable to affect the confidence in the impartiality of his exercise of office (e.g. FIN, SK).

9. Immunity

A high, probably the predominant, percentage of ombudsmen is immune against criminal prosecution during their tenure of office. However, in most cases this protection is only of relative effectiveness, insofar as an **authorisation by parliament** can render criminal prosecution possible (AL, AM, AZ, BIH, BG, CZ, EST, GE, H, KS, LV, MD, P, PL, RUS, S, SLO, SRB, UA, UZ). In some of these states an additional regulation stipulates that this authorisation may not be given if the prosecution refers to the expression of opinion within the ombudsman's exercise of office (AM, GE, P, SLO), or if a specific statutory degree of penalty is not exceeded (BIH). In some states such criteria can be applied directly by the bodies responsible for criminal prosecution and without authorisation by parliament (AND, CY, E, EU, F, GR, M, MK, MNE). Sometimes the ombudsman is only immune against arrest and house search (RO). If the incumbent is caught in the act, he is in principle not protected by the scope of immunity (AM, AZ, BIH, MD, P,

---

[57] Interestingly one of these exceptions is Denmark, where a new ombudsman is appointed after every election of Parliament. In this point Denmark did not serve as a role model for other institutions.

[58] Cf also Recommendation of the Parliamentary Assembly of the Council of Europe 1615 (2003) 1, No 7.iv.

PL, RUS). Partly the immunity applies to civil law claims only (IS), partly in addition to them (KS, P, S, SRB). Many legal orders do not provide for immunity at all (A, CH, D-Rhe, DK, HR, FIN, FL, I, IS, KZ, L, LT, N, NL, SK).

Immunity provisions aim to protect the ombudsmen, similarly to members of parliament, against the arbitrariness of the executive branch and to ensure their freedom to publicly denounce maladministration in the administrative branch.

10. Remuneration

In order to ensure the efficiency of ombudsman-institutions and the independence of incumbents, the remuneration of ombudsmen is mostly determined **by law**. The salary of 29 out of the 44 examined national institutions is thus regulated in the ombudsman act or in other statutes. However, they do not explicitly mention specific amounts. Often, the calculation of the amount is based on the remuneration of other high-ranking state officials, primarily of high court judges, members of parliament or ministers (Tab. 21). Accordingly, a percentage rate can be specified, by which the salary of the ombudsman should be higher (A) or lower (LT). However, in most states the remuneration of the ombudsman will correspond to the salary of these state officials (e.g. high court judges: AL, AM, M, MD; ministers: H, P, RO; Counsellor of the Court of Auditors: B). In Bulgaria and Estonia the remuneration of the ombudsman is fixed as a multiple of the average income of the population.

Alternatively, in some states the ombudsman's salary is determined by other state bodies. Authorised to this end are either parliament (DK, GB, IL, IS, MK) or certain ministers (F, GR).

11. Budget of the Institution

The budget of ombudsman-institutions is of central significance for their effective functioning and independence.[59] They are generally **funded by the state**, but the modalities differ greatly throughout the various legal orders. In most cases, taking the institution's independence into account, it is provided that the ombudsman himself can make a proposal of budget, which can be directly submitted to parliament (e.g. DK, SLO, IL, KS, UA), the state president (e.g. BIH) or the minister of finance (e.g. A, LV). It is often explicitly provided that the institutions receive their own share of the state's total budget, separate from the finances of parliament or government (e.g. AM, B, CZ, E, GE, H, IRL, L, LT, RO, RUS, SK). In Macedonia, the Parliament even has to vote separately on the budget of the Ombudsman.

In France, the Ombudsman's funds are taken from the budget of the Prime Minister (notably bound to objective criteria: amount of concerns

[59] Cf also Recommendation of the Parliamentary Assembly of the Council of Europe 1615 (2003) 1, No 7.vii.

which are examined in a period of 130 days). In Liechtenstein, the Office of Advice and Complaints forms part of the Chamber of Government and is therefore also financed by it.

12. Staff

Within the limits of their budget the ombudsmen can employ and govern their own staff. The number of staff members at the ombudsmen's disposal differs greatly, according to their own statements. This makes the dimensions of the institutions in comparison to each other transparent (Tab. 22).

13. Regional and Municipal Institutions

a. Regional and Municipal Ombudsmen

A number of the examined states have established **parliamentary ombudsmen at a regional level**. Partly these regional ombudsmen exist in addition to national institutions (A, B, BIH, DK, E, GB, SRB); partly national ombudsmen have not yet been established (CH, D, I; Tab. 2). Sometimes special institutions may even exist at a municipal level (e.g. B-Gent, NL-Ams; CH-StZ). To some extent, these institutions have acted as role models for the establishment of national ombudsman-institutions in the particular state.

As it was impossible to obtain exhaustive information on all of these institutions, they were not incorporated into the tables attached to the research, but illustrations can be found in the particular state reports. The most noteworthy characteristic of the regional and municipal institutions regards the fact that their scope of responsibility covers regional and municipal administration agencies as well as administrative tasks within the field of responsibility of the particular region or municipality.

b. Regional and Local Branch Offices

In certain states that have not established regional ombudsmen, the respective national ombudsman has installed **regional branch offices**, also known as "regional representatives", "local representatives" or "delegates" (AZ: four, F: 292, GE: three, IL: one, KS: seven, MK: six, MD: three, PL: two, P: two, RO: fifteen, UZ: thirteen). Partly these offices are placed to cover the whole national territory (e.g. F, KS, RO, UZ), partly they are only found in remote areas (e.g. P: the Azores and Madeira).

On the one hand, branch offices aim at enabling direct contact and communication with the individual, providing information on the possibility of submitting complaints to the ombudsman, and thereby facilitating access to him. On the other hand, they intend to enable quick and unbureaucratic problem solving on site. In many cases, the national ombudsman holds consultation days at those decentralised offices.

c. Regional Consultation Days

Many national ombudsmen indicated that they hold **consultation days in different parts of the country** for the purpose of enforcing their profile in the regions, irrespectively of the existence of regional ombudsmen (A, AL, AM, AZ, D, EST, GE, GR, H, IRL, KZ, LT, M, MD, SK, SLO, UZ). Sometimes these consultation days are held by the ombudsmen themselves, sometimes by their assistants. The information given by the institutions with respect to the frequency of these consultation days differs greatly. Some ombudsmen hold meetings "very often" (AZ), others only visit the different regions once a month (SLO) or "at least once a year" (AL). Only some states indicate a definite frequency of consultation days (e.g. SK).

The ombudsmen often announce the dates of the regional consultation days on their homepage. This allows for coordination between national and regional/municipal ombudsmen in order to avoid conflicts of competence in advance and to share the use of infrastructure.

Chapter 3: Initiation of Proceedings

1. Complaints

Regularly, complaints are submitted to the ombudsman. The requirements for such complaints are partly regulated by law or internal provisions.

a. Legitimisation of Complaints

The classification of possible **complainants** can be interpreted rather widely. Generally, it is provided that any natural or legal person may raise a complaint. Notably, this also includes members of minorities, aliens, children, patients of mental institutions or prison inmates. Contrary to this, complainants before the European Ombudsman have to be either citizens of the Union or at least registered residents in a member state. Moldova requires that the complainant is at least temporarily resident in the national territory.

In France and the United Kingdom, a complaint cannot be directly filed to the Médiateur or the Ombudsman; it has to be submitted to **parliament** and referred to the ombudsman by a representative (of the British House of Commons, or the French National Assembly or Senate). Hence, albeit the necessary consent of the complainant, the representatives of parliament have the power to decide upon the submission of a complaint to the ombudsman. This modality considerably impedes the citizen's access to the ombudsman.[60]

---

[60] The situation is similar with respect to Northern Ireland. By contrast in England, Scotland and Wales, a direct complaint is possible. However, in Scotland the complainant must have tried to directly solve the problem with the relevant authority prior to the complaint.

Spain and Portugal allow for a **combined alternative**. Individuals can make direct complaints to the ombudsman, but representatives and parliamentary committees may also make appeals in order to elucidate or enquire about a specific administrative conduct. Similarly, representatives can submit complaints to the European Ombudsman or the ombudsmen of the Czech Republic and Ukraine. Thereby the access to the ombudsmen is facilitated. In Austria, the Parliamentary Committee on Petitions and Citizen's Initiative can refer certain requests to the Ombudsman Board for further examination. In all of these cases the ombudsmen exercise a special auxiliary function within the parliamentary control of administration.

b. Requirements for Complaints

aa. Formal Requirements

Formal regulations for the lodging of a complaint are provided very rarely. This corresponds to the basic idea of the ombudsman as an easily accessible institution. All of the examined states provide for complaints free of charge. Even in states where this is not explicitly stipulated it is taken for granted. Sometimes it is required that the complaint is submitted in written form (Tab. 23); however, mostly the complaint can be made in person and submitted to the ombudsman's office for transcript. The office hours are usually citizen-friendly or free hotlines are installed for complaints by telephone. In the majority of cases it is provided that the complainant has to file his complaint within a **specified period of time**. If this time limit has expired the ombudsman is not obliged to deal with the complaint (Tab. 24). The period generally covers only one or two years (rarely longer: e.g. five years – FIN; rarely shorter: e.g. six months – GR). It starts either with cognition of the incident or with the incident itself, which provoked the complaint; as an exception, in Norway the time limit is only calculated once a decision by a final authority has been reached. Nearly all legal orders explicitly provide that the complainant has to indicate his name as well as the criticised occurrence. **Anonymous** complaints do not have to be examined. However, in principle investigations ex officio are possible, even in cases of anonymous complaints.[61]

bb. Legitimate "Interest" of the Complainant

Many laws stipulate that the complainant needs to be directly **concerned** or have a **legitimate interest** in the criticised occurrence (e.g. A, AL, B, E, F, GB, GR, H, IRL, IS, L, M, N). In other words, the sphere of the individual has to be touched in a disadvantageous way, legally or effectively. Therefore complaints are excluded that concern a certain way of conduct that is directed at a third party or has no addressee at all. Furthermore, complaints that concern behaviour observed or perceived from the distance are inadmissible. Many Eastern European states have limited the standard of examina-

[61] Cf Tab. 25.

tion to such an extent that only complaints about breaches of human rights or fundamental freedoms are accepted.[62] Only few ombudsman acts provide that complaints can be filed for third persons (e.g. AZ, EST, NL, UA). This for instance enables non-governmental organisations to proceed against infringements upon human rights. In Poland, even local governments can address complaints to the Ombudsman.

cc. Subsidiarity

Prevalently it is provided that complaints to the ombudsman must be subsidiary. As a consequence, a complaint is only admissible if there is no legal remedy available to proceed against the incriminated conduct and no appeal procedure is pending. Partly the **exhaustion of all legal remedies** (e.g. A, A-Vor, DK, GE, H, IS, KS, N, NL, P, RUS, SRB) or at least of all **judicial remedies** is required (GB, IRL). In some states the ombudsman may possibly refrain from these requirements (e.g. N, SLO). Generally, the concept of subsidiarity merely aims at avoiding collisions of procedures; it does not matter whether the complainant has culpably missed a legal remedy (e.g. A, A-Vor, DK, HR, IS, KS). As a consequence, in some legal orders the ombudsman is only prohibited from intervening if there is another proceeding pending (administrative proceeding: GR; judicial proceeding: AL, AZ, B, D-Rhe, E, EST, EU, IL, KS, LT, M, MK, SK, UA; administrative or judicial proceeding: CY, HR) or if a court has already decided on the matter. The last mentioned regulations again highlight the exclusion of jurisdiction from the control through the ombudsman.

Some legal orders have developed a stricter concept of subsidiarity. Even if the administrative act is not voidable the complainant has to try to solve the problem in direct contact with the administrative authority concerned before lodging a complaint (e.g. B, CZ, EU, F, GB-Sch, IRL, L, RO). In these cases a complaint to the ombudsman is supposed to be the last remedy. Sometimes the restriction on subsidiarity is provided in case of default of administrative bodies (e.g. KS, NL).

Subsidiarity is not always explicitly regulated in the ombudsman act; nevertheless, the ombudsmen are provided with **discretion** to await possible pending appeal proceedings (e.g. AND, CH-BaSt, IL, KZ, MNE).

Complaints to the ombudsmen of Bulgaria, Finland, Sweden, as well as the regional institutions of Italy and Switzerland do not have to meet the criterion of subsidiarity.

In general, it should be noted that a lack of preconditions for a complaint does not necessarily prevent the ombudsman from investigating the issue ex officio in certain cases.

---

[62] Cf with respect to the standard of control p. 31 ff.

2. Proceedings ex Officio

It is remarkable that in almost all legal orders the ombudsmen are not restricted to the examination of particular complaints but have authority to initiate proceedings ex officio. Important exceptions are Belgium, Luxembourg and all ombudsman-institutions of the United Kingdom (Tab. 25). By this means the ombudsmen can also examine cases of misconduct brought to their knowledge through the mass media or third parties. Most importantly, by doing so they can also investigate systemic deficiencies concerning bigger groups of people rather than just individual cases ("systemic approach"). Furthermore, it permits the ombudsmen to intervene even in cases that lack the formal legitimisation for a complaint: for instance if a complaint is filed anonymously, the time limit has expired, or an appeal procedure is pending before an administrative authority. This enables the ombudsmen to conciliate in pending proceedings and to intervene with a stronger preventative effect. This implies of course that the examined administrative conduct falls within the ombudsman's sphere of authority.

Regulations rather differ concerning the question whether an action ex officio requires further **preconditions**, such as suspicion or assumption of maladministration or a breach of law. Most frequently, the required preconditions include cognition or assumption of maladministration (e.g. A, H, HR, KZ, LT, MK) and in some cases – albeit with exceptions – even the consent of the interested party (e.g. AL, MK, SLO). Only Moldova and the Russian Federation require the particular case to have certain relevance: gross violations of human rights, cases of special public significance, or necessary defence of the interests of persons unable to use legal means of defence. As a rule, the ombudsman is provided with a wide scope of discretion to conduct investigations ex officio. In Denmark, for instance, completed administrative proceedings are checked at random.

Some states explicitly empower the ombudsman to inspect **public institutions** ex officio at any time, even without specific motive (e.g. AL, CZ, DK, E, HR, IS, LV, SLO).[63] Numerous ombudsmen indicated that they regularly investigate – in exercise of this competence – primarily those institutions which are sensitive to human rights, such as prisons, children's homes, approved schools, psychiatric hospitals and refugee camps (Tab. 26).[64] In some states this regular investigation is obligatory in order to implement the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)[65] or the European Prisons Charter[66]. Several states consider ombudsman-

---

[63] Cf infra p. 41 f.

[64] Cf with respect to the conditions of such visits infra p. 24 f.

[65] Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, www.ohchr.org/english/bodies/cat/opcat/index.htm.

[66] Recommendation 1747 (2006) of the Council of Europe (European Prisons Charter), http://assembly.coe.int/Documents/AdoptedText/ta06/Erec1747.htm.

institutions particularly suitable for this, especially due to their independence from the administrative branch.[67]

Chapter 4: Object of Control

1. Administration

Generally, the **administrative branch** is the ombudsmen's prime object of control. This is demonstrated by the definition of competences of all the examined institutions. Naturally, the extent and manner of investigation of state administration are regulated differently.

Firstly, the **definition** of "administration" varies in the different legal orders. In most cases the definition is primarily based upon an organisational approach. Accordingly, the competence of the ombudsmen refers to "organs/bodies of public administration" (e.g. AL, LV, KS, P), "state organs/officials" (e.g. AM, D, L, LT, MK, RUS, SK, SLO, UA, UZ), "public/state authorities" (e.g. BG, CZ, E, EST, H, HR, MNE, NL, RO, S) or "government offices" (e.g. IL). Similarly the European Ombudsman is entrusted with the control of the activities of "Community institutions". By contrast, a rather functional approach is taken by submitting "public" or "state" administration as a whole to the ombudsman's control (e.g. AND, DK, IS, MD,N, similar A). The ombudsman's sphere of competence can thus additionally encompass bodies outside the administrative organisation, as far as they perform certain – mostly sovereign – administrative tasks („beliehene Rechtsträger"). Regardless of the chosen approach it is often provided that the activities of officials and other employees are subject to the ombudsman's control (e.g. AM, AZ, CY, E, FIN, GE, HR, KS, KZ, LT, LV, MD, N, RUS, S, UA, UZ).[68] If this is the case the ombudsman may also investigate non-official activities, especially private services as well as activities with mere supporting character. A third theory of control is based upon a kind of "schedule-system": those institutions subject to the ombudsmen's control are listed explicitly in the appendix of the particular ombudsman act (GB, IRL).

In those states that have established **regional ombudsmen** the scope of control is even further differentiated (A, B, CH, D, DK, E, GB, I, SRB). Regional ombudsmen are only entitled to observe administrative institutions at a regional administrative level. Where national ombudsmen exist in addition to regional institutions (A, B, BIH, DK, GB), they are restricted to the control of those administrative institutions that are not already checked by re-

---

[67] Cf APT, Establishment and Designation of National Prevention Mechanisms, 2006, 83.

[68] As a role model might serve the legal situation in Sweden where the Ombudsman originally was some sort of a special prosecutor for officials and judges, who should assert their individual legal responsibility (cf *Gellhorn*, Ombudsmen and Others, 1966, 194 ff).

gional ombudsmen. Only in Spain is the national Ombudsman, rather than just the regional institutions, assigned to observe regional administration.

There are particular regulations for the administration of **municipals**. Throughout the examined states, municipals are assigned with the competence of autonomous administration. However, national ombudsmen are often explicitly empowered to control offices of municipal administration (AM, AZ, BG, DK, EST, F, GE, GR, H, HR, IS, IL, KS, L, LT, M, MK, MNE, N, NL, P, RUS, S, SK, SLO, UA). In the Czech Republic, the Ombudsman's sphere of authority only encompasses the field of activity delegated to the municipal by the state. Legal orders that are based on a functional definition of "administration" partly extend the ombudsman's field of competence to the municipals´s self-governed administration without explicit regulation (e.g. A). In the Netherlands and in Belgium, the national ombudsman only possesses power to control municipals as long as no appropriate institutions of appeal have been established by regional legislation (similar A).

In states with regional ombudsman-institutions, the authority to control municipal administration is sometimes assigned to the ombudsmen of the particular region. The comprehensiveness of their competence depends on whether affairs of regional administration are concerned (e.g. A-Tir and A-Vor; E-Kat). In Italy, the authority to control municipals needs to be stipulated in an agreement with the regional Ombudsmen.

England has developed a special system by establishing a "Local Government Ombudsman" as a cooperative organ at a regional level, who is responsible for the control of all municipal institutions within England. Ombudsmen were installed in certain cities (e.g. B: Ghent; NL: Amsterdam; CH: Zurich, Winterthur). However, no country provides for the establishment of municipal ombudsmen throughout the entire national territory, that is to say in every single municipal. As a consequence, "gaps" of control can arise where the national ombudsmen lack competence with regard to the administration of municipals.

2. Non-state Legal Entities

Focussing the authority of the ombudsman on the control of public administration does not necessarily imply that investigations are restricted to public entities. In fact, the majority of states have empowered their ombudsmen to also examine activities of non-public legal entities under certain conditions. Four different approaches can be observed (Tab. 27):

In some states the ombudsman is entitled to control **private legal entities** as far as they have public authority. This is in part stated expressly in the respective laws. Partly it results from the functional understanding of the concept of "administration", which includes acts of state authority, irrespective of the responsible legal entity (e.g. A, HR, IS, MK, S, SK, SLO).

According to a second approach, it depends on whether or not the particular legal entity performs "**public tasks**" or "**public services**", that is to say functions of public concern (e.g. AL, BG, D, E, EST, F, FIN, H, LT).

This material definition not only encompasses administrative acts but also private sector services: for instance services of public interest (e.g. water supply, hospitals, social welfare) and public infrastructure (e.g. post, telecommunication, railways, electricity), irrespective of whether the provision comes from a state dominated legal entity (public enterprise) or – as a result of procedures of privatisation – a private legal entity. It is a controversial issue in the various states to what extent the coverage of controlled legal entities corresponds to the understanding of public enterprises according to Art 86 TEC in the various states.[69] The regulations specifying which particular institutions are subject to the ombudsman's control are internationally inconsistent. Only in the United Kingdom and Ireland, where the ombudsman's sphere of authority is regulated according to the schedule-system, the examined institutions are explicitly listed.[70] The questionnaires concerning the authorisation of control with regard to water supply, electricity supply, telecommunication and railways show that in many cases these enterprises are submitted to the ombudsman's sphere of competence despite privatisation and possible shareholding by the state (Tab. 28).

According to a third approach, only those private legal entities are subject to the ombudsman's control, which are to a certain extent **dominated by the state** – for instance on account of shareholding or explicit organisational regulations (e.g. GR, IL, M, P, S). In Greece, this depends on whether the corporate management is appointed by the state; in Malta, the relevant precondition for submission is governmental control of the institution. In Sweden, those activities are supervised where the Government exercises "decisive influence" through the agency of the enterprise; in Portugal, the relevant criterion is capital majority of the state. In Israel, all institutions that administer state property or in which the state holds shares are within the ombudsman's sphere of competence. This wide-ranging authority (n.b. governmental "predominance" is not the only criterion) is linked to the special role of the Israeli Ombudsman, who concurrently performs the function of the "State Comptroller", i.e. the highest auditor.

In rare cases the ombudsmen are authorised to control private legal entities that do **not show any close relation to the state** at all. However, such regulations only apply to those ombudsmen who are particularly assigned with the protection of human rights. In Portugal, for instance, the Ombudsman is entitled to investigate relations of exceptional subordination between private persons, taking into consideration human rights and fundamental freedoms. The Greek Ombudsman can control private legal entities whenever a suspicion of infringing upon children's rights is raised. Following the implementation of the equal treatment legislation of the European Union in Estonia, Latvia and Cyprus, ombudsman-institutions were charged with the additional function of "antidiscrimination-" and "equal treatment institu-

---

69 Cf the annual report of the Finnish Chancellor of Justice 2004, p. 44.

70 According to *Gregory/Giddings*, The Ombudsman and the New Public Management, in Gregory/Giddings (eds) Righting Wrongs, 425 ff, many institutions and enterprises were submitted to the ombudsman's control after their privatisation.

tions" with regard to the sphere of working life and the access to goods and services.

Altogether 20 of all the national ombudsman-institutions are not authorised to control non-public institutions. This applies in particular to the European Ombudsman due to his character as supranational organ.

3. Exceptions from the Control

In some states specific **domains of the administrative branch** are excluded from the ombudsman's control. These domains primarily include the head of state and the government, the intelligence service, armed forces and the police (Tab. 29). Furthermore, some states stipulate specific exceptions from the control by the ombudsman (e.g. IRL: enforcement of law relating to aliens and naturalisation).

It appears that **the exclusion of "government"** from the ombudsman's control only refers to the cooperative body represented by all the ministers, which has only limited administrative functions ("government", "cabinet", "council of ministers") at its disposal; in some constitutional systems the legal acts of these bodies are considered as "political decisions", which tend to be exempt from the ombudsman's control. In these states, the particular ministers – as heads of their administrative departments – are indeed subject to the ombudsman's investigation. Sweden is the sole exception since according to the Swedish constitutional system the administration is exercised by independent agencies, in relation to which no ministerial right to give instructions exists. Hence, in this system the ombudsman's control of administration is considered as correlative to the parliamentary liability of the ministers.

In the majority of states there are no exceptions to the ombudsman's authority of control; consequently, he is entitled to inspect all the mentioned domains of administration.

4. Judiciary

a. General Information

The majority of the examined ombudsman-institutions are **not authorised** to control the judiciary. This exemption is comprehensive as it covers all courts, including administrative and constitutional courts, which are scrutinising administrative decisions (Tab. 30). Therefore, the ombudsman is neither entitled to intervene in pending court proceedings nor to check on judicial decisions. The possibility of influencing the judiciary is thus eliminated. Judicial action can only be examined if it is qualified as "administration of the judiciary" and can consequently be understood as "administration" in a functional way.[71]

This legal situation originates from the constitutionally enshrined principles of **separation of powers** and **independence of the judiciary**: submitting

[71] Cf infra p. 28 ff.

justice to the control exercised by organs appointed by parliament would lead to an infringement of these principles. Even international legal acts highlight this independence as an important issue. As regards jurisdiction, the ombudsman's competence is supposed to be "most strictly limited".[72] This view was also held by all the institutions interviewed in the survey. Historically, this limitation of authority is not a general policy in line with the original Swedish-Finish concept but rather evolved from the developments since the first ombudsman-institution in Denmark set the focus on state administration.[73]

b. Extensive Control of the Judiciary

The legal situation in Sweden, Finland and Poland differs completely from the aforementioned model of control. These legal orders provide for an extensive control of the judiciary – even of the substance of jurisprudence – by ombudsmen: in other words, the judiciary is submitted to the ombudsman's authority to the same degree as the administrative branch.

When a complaint lacks subsidiarity[74], ombudsmen in **Sweden** and **Finland** are even empowered to intervene in pending court proceedings and to influence the tenor of court decisions and resolutions. In the course of the investigation the ombudsman is entitled to personally contact the judges, to gather information on the substance and process of proceedings, to impose penalties on them in case of lacking cooperation and to make recommendations concerning the tenors of their decisions. In comparison with other European states, this is without any doubt the most intensive control of the judiciary exercised by ombudsmen. The concept is based on the idea of an extensive accountability of the executive branch to the ombudsmen. It originates from a period, where the independence of the courts was not fully developed, their value for the rule of law was not recognised to the same extent as today and furthermore, where there was no administrative control exercised by administrative courts.[75] Today, the ombudsmen indicate that in practice they exceedingly respect the independence of the judges. The Swedish Ombudsman voluntarily restricts his control to procedural questions. The Finnish Chancellor of Justice only pays attention to procedural defaults and distinct errors in the calculation of prison sentences. The most extensive control is exercised by the Finnish Parliamentary Ombudsman, who even examines the substance of jurisprudence. He certainly grants the judges an extensive scope of discretion and only observes distinct failures in the exercise of discretionary power. However, it needs to be kept in mind that the Finnish Ombudsmen have to be lawyers and the Swedish Ombudsmen are usually lawyers or even judges in practice.

---

72 Recommendation 1615 (2003) of the Parliamentary Assembly of the Council of Europe, No 6.

73 Cf supra p. 1.

74 Cf supra p. 20.

75 Cf the annual reports on p. 179 ff and p. 409 ff.

Similarly, in **Poland** the Constitution does not limit the Ombudsman's authorised control to the administrative branch. As a result, the judiciary is in principle also subject to his control. The law only provides that the ombudsman must not infringe upon the independence of the courts in the course of exercising his function. In practice, however, the Ombudsman restricts his control to the procedural dimension, as is the case in Sweden, and does not examine the jurisprudence as regards tenor. Contrary to Sweden and Finland, the Polish Ombudsman does not have the authority to oblige the judges to respond to his questions.

c. Partial Control of the Judiciary

In some of the other legal orders the ombudsmen have less but still partial power to control the judiciary. This power also comprises the substance of the jurisprudence, at least to a certain extent. This applies to those states where the ombudsman does not focus his exercise of control on the abolishment of maladministration but on the protection of human rights. Hence, the ombudsmen are provided with enhanced competence in this domain. In general, such regulations aim at counteracting violations of human rights by courts as well, while taking judicial independence into consideration.[76] Some models of regulation have to be mentioned here:

In **Slovenia**, for instance, the Ombudsman is expressly empowered to intervene in court proceedings in cases of "undue delay" and "evident abuse of authority". This intervention also encompasses – lege non distinguente – recommendations with respect to the substance of the jurisprudence. The law in **Bosnia and Herzegovina** provides for relatively comprehensive powers, as the Ombudsman is empowered to intervene in pending court proceedings if he considers the action necessary for the performance of his function. Yet in practice, according to his own statement, the Ombudsman restricts his control to the procedural domain.

The legal situation in **Montenegro** is clearly more detained. The Ombudsman should intervene in ongoing judicial proceedings only in case of "delay", when an "obvious abuse of procedural powers" has occurred, or when court decisions have not been executed. In **Georgia**, the Ombudsman can only examine court decisions which have already entered into force and thereupon address a recommendation to resume the proceeding to the relevant judicial bodies (similar partially unclear competences with regard to legally binding decisions exist in Albania, Kazakhstan, Kyrgyzstan and the Russian Federation). The legal provision in **Slovakia** is unique, as the Ombudsman's scope of authority does not imply the control of the judiciary as such, although it does encompass "disciplinary misdemeanour of the judge". It is unclear to what extent this regulation enables the Ombudsman to influence the substance of the jurisprudence. According to its intention, this competence has to be regarded as explicit empowerment to the control of a

[76] Regarding the participation of these institutions in the legislative process cf p. 56 ff.

specific domain, which is designated as "administration of justice" in other states and is therefore functionally assigned to the administrative branch.[77]

d. Power to Intervene in Court

A series of authorisations need to be pointed out here, which enable the ombudsmen to **intervene in court** or even to **contest court decisions**.[78] These powers virtually effect certain mechanisms of control; however, only such mechanisms that already exist within the judiciary. In this context, the ombudsman's powers resemble those of an attorney and are tantamount to legal aid. Although this implies the safeguarding of the principle of the rule of law in the judicial branch it does not constitute an actual control of the judiciary by the ombudsmen.[79]

5. Administration of Justice

As already mentioned above, in many states the exclusion of courts from the control exercised by ombudsmen does not apply to all judicial functions but only the jurisprudence. Only the jurisprudence of the courts is counted among the state function of the "judiciary", the independence of which shall also be observed by the ombudsmen. By contrast, in several legal orders the "administration of justice" is submitted to the ombudsman's control as a materially confined administrative domain (Tab. 31).[80]

Which specific **activities** are part of the administration of justice in each case is a difficult issue of classification and not uniformly regulated in all legal orders. For the most part, it refers to the administrative conduct of court proceedings, thus to certain procedural acts (e.g. the setting down of a hearing date, the obtaining of expert opinions, executed copies and service of judgments), the execution of judgments, as well as the initiation of disciplinary measures against judges (supervision). In some states the definition of administration of justice is exclusively of substantive nature. Hence the administration of justice is subject to the ombudsman's control not only when performed by administrative bodies (judicial officers), but also when exercised by judges (e.g. A). In several jurisdictions the perception of the administration of justice only implies the conduct of non-judicial employees of the courts (e.g. GB). Thematically, the control exercised by the ombudsman encompasses in a comparatively uniform manner inter alia delays in court proceedings, but also impolite conduct of officials, defaults in executing judgments, deficiencies in the equipment of courts with resources and staff, as well as judicial supervision. Due to the independence of judges, the judicial supervision only provides limited possibilities to influence maladministration

---

77 Cf infra 5.

78 Cf infra p. 52 f.

79 Cf supra p. 25 ff.

80 In Sweden and Finland, where even the jurisdiction is subject to the ombudsman's control, there is no need for a separate definition of the "administration of justice".

in the judicative branch. However, the ombudsman can at least call attention to the grievance and initiate adequate measures, such as the obtaining of periodical reports, register of delays or disciplinary procedures. According to the answers in the questionnaires – primarily those given by the younger democratic systems of Europe – the submission of complaints is particularly prevalent in the field of administration of justice.

The **scope** of the authority of control with regard to the administration of justice is regulated differently. In most legal orders, the ombudsman is provided with the general competence of controlling the administration of justice (Tab. 31). This competence can be regulated explicitly (e.g. AL, CH-BaST, CH-KaZ and CH-BaLA, CZ, E, EU, P, SK) or implicitly, for instance by including the administration of justice into the field of "administration" that is the functionally defined object of control (e.g. A). In some cases the power to intercept delays in proceedings derives from the function of the ombudsman to protect human rights (compare in particular the guarantee of a fair and public hearing within reasonable time according to Article 6 ECHR) (e.g. BIH, PL, UA, UZ).[81]

Other ombudsmen are expressly authorised only to observe specific deficiencies of the administration of justice, including delays in proceedings in general (e.g. MK, MNE, SLO), administrative misconduct of judges (e.g. AZ, SK) or judicial officers (e.g. MK), delayed service of documents (e.g. AZ) and delays in executing judgments (e.g. AZ, L, MNE; Tab. 31).

The ombudsman's **powers** with regard to the administration of justice are regulated differently as well. If they are not expressly stipulated, the ombudsmen are arguably assigned with the same competences as in other domains of administration, such as the authorisation to investigation, recommendation and reporting.[82] According to the statements in the questionnaires, the recommendations are submitted directly to the judges in some cases (e.g. CH-KaZ, FIN, PL, S, SLO); alternatively – primarily in cases of recommendations of supervisory measures or disciplinary sanctions – they are submitted to the president of court (e.g. AL, CZ, EU, FIN, MK, PL, S, SK, SLO, UZ), the council of the judiciary (e.g. AL, AZ, L, P, PL) or the minister of justice (e.g. A, FIN, PL).

In some cases, the ombudsman is entitled to accept and investigate complaints concerning the administration of justice; however, he has to **forward** these complaints to another office, which is assigned with the supervision of court, in order to take appropriate measures (e.g. E: public prosecutor or the general council of the judiciary). In some states the ombudsman investigates complaints in practice, although it is not legally provided (e.g. EST, MD). Any appearance of intervention in the judicial independency should thereby be avoided. The procedure of forwarding complaints concerning the administration of justice is also provided in states, which have assigned other organs with its control (e.g. AND: Superior Court or Council of the Judiciary;

---

81 Cf the annual report of the Ukrainian Ombudsman, www.Ombudsman.kiev.ua/de1_zm.htm.

82 Cf in more detail infra p. 39 ff.

M: Commission for the Administration of Justice; RO: Minister of Justice, Minister of Foreign Affairs or President of Court).

Some ombudsmen stated that they are **impeded** from controlling the administration of justice for the mere reason that they are not empowered to intervene in pending court proceedings according to the concept of subsidiarity of the ombudsman's control. According to some institutions, however, this subsidiarity only implies that pending court proceedings impede the lodging of complaints. Nevertheless, these institutions can make use of a possible power to investigate cases ex officio.

6. Public Prosecution Services

Incorporating the observation of the prosecution into the ombudsman's sphere of competence is self-evident in states, where both the administration and the judiciary are already submitted to his control (in particular FIN, PL, S). Furthermore, whether an institution is entrusted with the control of the prosecution depends upon the extent to which the latter is qualified as an administrative body or its activities represent administration in a functional sense. In the various legal orders, this is regulated very differently, often indistinctly or only enacted by ordinary legislation. Many states expressly said that the prosecutions are classified as part of the administration and were hence subject to full investigation by the ombudsman (A, AL, AZ, DK, GE, MK, N, NL, PL, SLO, SRB-Kos, UZ). Some institutions pointed out that they only have this competence with regard to the "administrative functions" of the public prosecution service (CZ, M, P), are not enabled to intervene in trials (E, EST, LT), not empowered to examine decisions about suspensions of executions (IS), or not have any competence with respect to the "General Prosecutor" as head of the hierarchy of prosecution (KZ).

However, in various states the question concerning the ombudsman's competence of control with regard to public prosecution was generally negated (AM, AND, CY, D, F, FL, GB, GR, H, HR, IRL, MD, SK). In some states the prosecution is constitutionally part of the state function of the judiciary (in particular E, F, GR) or expressly declared as independent (CY, H).[83] In such cases the ombudsman can at best initiate the control of a public prosecutor by a minister of justice who is provided with supervisory powers (as the explicit indications of the French Médiateur illustrate).

7. Legislation

As aforementioned, the control of administration is considered as the ombudsman's principal duty. Only the European Ombudsman is explicitly empowered to observe all activities carried out by Community institutions, including the legislation. Yet also in the remaining legal orders, the legislation may be covered by the ombudsman's scope of control to different extents:

---

[83] Concerning the position of the public prosecution services in the particular legal orders cf the homepage of the European Network of Prosecution www.eurojustice.org.

In practice numerous grievances in the control of administration result from legal regulations. These regulations need to be executed by administrative organs and are binding on the ombudsman too.[84] The ombudsman is only entitled to recommend their amendment pro futuro. Many ombudsmen are expressly authorised to submit **legislative proposals** to parliament. Other institutions incorporate such recommendations into their activity reports or possible special reports – even in the absence of explicit authorisation.[85]

In some states with constitutional jurisdiction (Tab. 7, 43), the ombudsman is entitled to appeal against **laws before the constitutional court**.[86] The purpose of such empowerments is the constitutional control of laws and, thereby, a distinct extension of the ombudsman's sphere of authority compared to the „classical" model.[87]

Chapter 5: Standard of Control

1. Preface

In the examined legal orders, the standard of the ombudsmen's control is formulated very differently. Partly it is defined positively (e.g. checking observation of the "law", "good administration", "all obligations" or "human rights"), partly negatively (e.g. checking to discover "rights violations", "deficiencies", or "maladministration"). Prevalently, such formulations are applied in an accumulative way. The interpretations of these regulations by the various ombudsmen show a similar structure: Demonstrated in a simplified manner, the standard of control amounts to 1. legal rules, 2. principles of "good administration" or "équité" and – as a separate category – 3. human rights.

2. Legal Rules

In almost all states, it is beyond dispute that the ombudsman is responsible for the observation of the **legality of administrative conduct**, irrespective of the legal formulation of the standard of control. This also applies to states where the ombudsman is generally tasked with the discovery of "maladministration" and "negligence" (e.g. A, EU, GB, N) or, according to the constitution, only with the protection of human rights (e.g. E, H, RO, RUS). Throughout Europe, even in the United Kingdom, it is accepted that the

---

84 With respect to the principle of "équité" when applying laws in the individual cases cf infra p. 34 ff.

85 Cf in more detail infra p. 48 f.

86 Cf in more detail infra p. 51 f.

87 Cf in more detail infra p. 61 f.

British term of "maladministration" encompasses all types of infringements of law.[88]

Almost all ombudsmen indicated that they are entitled to inspect the examined executive action according to the standard of the **entire legal order** (Tab. 32). Depending on the particular legal tradition, this standard can be written law (in the form of acts of parliament, regulations or statutes), or unwritten law ("common law"). In civil law systems, where the positive administrative law is highly developed, the main focus of the ombudsman's action is the observation of legality. Furthermore, in those systems the principles of "good administration" are often formulated in laws. Hence, there are only a few domains where the ombudsman cannot resort to codified legal rules when exercising his control. Even European Community law can be a criterion for investigation by national ombudsmen, as far as it is directly binding on the administrative bodies of the member states. Such binding regulations can even result from judgments of the European Court of Justice.

Authorisation to an extensive control of the lawfulness of administration persists irrespectively of whether, and to what extent, the **administration** in a particular state is subject to **judicial control** (Tab. 6). The danger of a possible conflict of these two control mechanisms is commonly averted by regulations of subsidiarity.[89] By this means, proceedings before the administrative court are generally provided with priority over proceedings before the ombudsman. Hence, as a rule, the final decision of the administrative court is not submitted to observation by the ombudsman.[90] In this context, it has to be kept in mind, that the upgrading of independent administrative bodies to proper courts can cause a deficit of control by the ombudsman.

Only five of the examined institutions indicated that their standard of control is confined to checking the observation of **human rights** and that they are not authorised to scrutinise executive conduct according to the standards of ordinary legislation (AZ, GE, KZ, UA, UZ; Tab. 32).[91]

3. "Good Administration", "Équité" or "Billigkeit"

It is virtually characteristic of ombudsmen to apply non-judicial standards, in addition to the legal order, in their investigation. This comprehensive competence is considered as correlative to their authorisation to create "soft" law that is not intended to be legally binding. Hence, almost all examined institutions are provided with the competence to employ non-judicial standards (Tab. 32). Although in the various legal orders the criteria are formulated very differently, even vaguely in many cases, the analysis shows a main focus on two types of standards: 1. the principles of **good administration**

---

88 Concerning the principle of the rule of law as an essential element of the concept of "good governance" cf *Reif*, Governance, 67, 72.

89 In this context cf supra p. 20 f.

90 In more detail cf supra p. 25 ff.

91 In Hungary, the legal situation is not totally evident; according to the interpretation by the institution itself, it is even empowered to a general control of grievances (cf the state report p. 221 ff.).

and 2. the principle of "**équité**" or "Billigkeit". Sometimes these principles are not clearly distinguished from each other and are summarised by general formulations (e.g. "errors" and "derelictions" – DK). However, their origin is different: whereas the notion of "good administration" ("good governance") derives from the Common Law, the idea of "équité" is of French origin and the notion of "Billigkeit" stems from Continental European tradition.

a. "Good Administration"

The criterion of "good administration" emanates from British law. It is either formulated positively as "good administration" (CZ, IS, LV, SLO), "fair administration" (GR) or "sound administration" (EST, IRL), or negatively as "maladministration" (GB, EU), or "bureaucracy" (LT). The substance of this criterion is rather indistinct.[92] Sometimes particular aspects are expressly highlighted in the law (e.g. attitude of the administrative organs, which is too inflexible – IL, incorrect behaviour towards the administered – CY, irrational, unfair, repressive or discriminating behaviour – M). Ireland has the most extensive listing of aspects relevant for good administration, encompassing actions that are taken without proper authority, on irrelevant grounds, as a result of negligence or carelessness, based on erroneous or incomplete information, based on an undesirable administrative practice, or that are discriminatory or otherwise contrary to sound administration.

In many Continental European legal orders, such norms of good administration – or at least some of their aspects – are dispersed in the positive administrative law (e.g. A, AND, CH-KaZ, FIN, FL, L, MK, NL, PL, S, SK). In other states, they derive from **constitutional norms** (e.g. E, FIN, I, PL) or **general principles of law** developed by the jurisprudence (e.g. B-Wal, EST, GR, H, P). Some ombudsmen indicated in the questionnaires, that they have in practice summarised and differentiated the criteria of quality for good administration. Some have even typified them in internal comprehensive bodies of regulation (e.g. NL). Most notably, this was recently the case in the United Kingdom where the Ombudsman publicised her "Principles of Good Administration" on her website.[93]

The principles of good administration have recently also been codified by **Article 41 of the Charter of Fundamental Rights of the European Union**[94]. The article explicitly provides for a "right to good administration" and expressly articulates the main aspects of this right (the right of every person

---

92 Concerning this topic cf *Söderman*, The Early Years of the European Ombudsman, in The European Ombudsman, 2005, 86 ff.

93 Cf the "Principles of Good Administration" of the Parliamentary Commissioner from 27th March 2007, www.ombudsman.org.uk/improving_services/good_administration/index.html. Cf also the „Crossman catalogue" drafted in the United Kingdom by *Richard Crossmann*, cited in *Gregory*, The Ombudsman Observed, in Reif (ed), The International Ombudsman Yearbook, 1997, 87.

94 Proclaimed on 7. 12. 2000 in Nice, 2000/C 364/01.

to have his or her affairs handled impartially, fairly and within a reasonable amount of time; the right to be heard, the right to have access to his or her file; the obligation of the administration to give reasons for its decisions).[95] The European Ombudsman applies this provision – irrespective of its non-binding character – within the scope of his area of discretion and classifies the rejected behaviour as "maladministration".[96] For the purpose of precision, he has devised a "European Code of Good Administrative Behaviour", which was adopted by the European Parliament in 2001.[97] In addition to the above mentioned rules of proceedings, the code proclaims on the one hand general principles of law (e.g. absence of discrimination, proportionality, objectivity, fairness), on the other hand standards of friendliness towards citizens (e.g. courtesy, replying to letters in the language of the citizen, acknowledgement of receipt and indication of the competent official). Some ombudsmen explicitly indicated that they apply these standards, despite their lack of binding character, to their national practice (e.g. RO).

The principles of good administration are also applicable in cases where an agency has **not violated the law**. They concern any kind of adverse administrative behaviour, even if it is not legally defined or if a scope of discretion is provided (e.g. impolite behaviour towards parties, unnecessary delays of procedural steps, lack of cooperativeness). However, if the problem lies within the legal regulation itself, which explicitly instructs the administrative organ to show a specific conduct, the law has to be prioritised. This complies with the idea of the state founded on the rule of law, according to which the administration is bound by law, even if this may lead to unjust results. In such cases, the ombudsman can only suggest the amendment of a law by appealing to parliament itself.

b. „Équité" or "Billigkeit"

The concept of "**équité**" is rather different from the definition of "good administration", although ombudsmen often use these notions synonymously. The idea of "equity" (Greek: "Epikie", Latin: "Aequitas") has emanated from Aristotelian ethics, according to which a law can be disregarded in a specific case, when it could not have provided for a singular aspect of a cer-

---

95 On the level of the Council of Europe the member states are advised by Recommendation 1615 (2003) to establish a fundamental right to good administration as well as a separate code for good administration. Cf in this context already Recommendation No. R (2000) 10 of the Committee of Ministers of member states on codes of conduct for public officials, the attachments to Recommendation No. R (80) 2 and Resolution (77) 31.

96 Cf *Diamandouros*, The Role of the Ombudsman, in The European Ombudsman, 2005, 227.

97 www.europarl.europa.eu/ombudsman/code/de/default.htm (in this context *Söderman*, The Early Years of the European Ombudsman, in The European Ombudsman, 2005, 90). However, some of the European administrative units have even produced their own codices (e.g. Council of the European Union/Secretary-General – OJ 5.7.2001, C 189/1; European Investment Bank – OJ 19.1.2001, C 17/26).

tain situation at the date of formulation, if its application to this situation would produce immoral results. In this respect it is part of individual ethics and in particular cases it serves as a correction of the codified law.[98] The concept of equity was adopted by the Roman legal doctrine and later penetrated into the Continental European legal mindset, partly through the medium of ecclesiastic and natural judicial sources.[99] The development of the rule of law and the constitutional state in the 19th century has lead to this idea largely being expelled from the doctrine of legal methodology to such an extent that it does not play a significant role in contemporary administrative law anymore.[100] However, the notion of equity has been readopted, primarily by the French legal system, as a **standard of control exercised by the ombudsman**. "Équité" is explicitly provided as a standard of control for the Médiateurs in France, Luxembourg and Belgium.[101] Correspondingly, in translation, "equity" applies to the ombudsmen of Macedonia, Slovenia and Montenegro and "Billigkeit" to the Swiss Ombudsmen of the Cantons of Zurich and Basel City. The Polish Ombudsman is authorised to apply the concept of "social justice".

However, it is unclear what **implications** are attached to the notion of equity in practice. It seems that its importance lies primarily in the control of administrative conduct within legal scope, that is to say within the scope of discretion and the interpretation of legal general clauses. Several ombudsmen indicated that the standard of "equity" ("équité") is even more important to them than the standard of the law (AND, CZ, DK, EU, GB, GR, IS, LT, M, SK; in the regional domaine B – Flanders, I – Basilicata, Lombardy, Aosta Valley, E – Andalusia, Catalonia, GB – Wales). Others considered both equally important (A, AL, CY, E, GB-Gib, GB-Sch, GE, HR, IRL, L, M, PL, SRB-Kos, SRB-Voj). Concerning this general perception of the term "equity", there may certainly be indistinct overlaps with the concept of "good administration". The Ombudsman of the Czech Republic explicitly indicated his understanding of the concept of "equity" in terms of "good administration" and "fairness". The Charter of Fundamental Rights of the European Union provides a right to have one's affairs handled fairly (in French: "équitable") as one aspect of the right to good administration (Article 41 paragraph 1). On the basis of this perception, the term „équité" is used synonymously with various other legal concepts. However, the specific characteristics of this ethic concept are not comprised by this.

---

98 Cf *Aristoteles*, Nikomachische Ethik, translated by *Eugen Rolfes*, 1981, Fifth Book, Chapter 14, 1137b.

99 Cf in this context *Bussani Mauro/Fiorentini Francesca*, The Many Faces of Equity. A Comparative Survey of the European Civil Law Tradition, in Carpi Daniela (ed), The Concept of Equity, Heidelberg, 2007, S 101ff, with further verifications.

100 Cf in this context as decisive work *Kelsen*, Die Reine Rechtslehre, 1934.

101 Certainly, for the national Belgian Ombudsman no standard of control is stipulated by law at all; the principle of équité, however, is provided for in the regulations of implementation. Cf in this context in more detail *Monette*, The Parliamentary Ombudsman in Belgium: Strengthening Democracy, in Hossain/Besselink et al (ed), Human Rights Commissions and Ombudsman Offices, 275 f.

In a more specific sense, the concept of „equity" is still regarded as a non-legal **corrective to laws**, which in particular cases would lead to unsupportable results when applied. In practice, as can be inferred from the questionnaires and relevant literature, only the ombudsmen of the French legal system hold this special perception of "equity".[102] With regard to the principle of "équité", they indicated that they only apply this principle exceptionally and cautiously in cases of evident discrepancy from a legal regulation (B-Fla and B-Wal, E-Kat, F).[103] In the Common Law Systems, this problem does not exist in the same way: The rules and principles developed by the courts under the title of "equity law", which aim at the adjustment of undue hardships of case law, are themselves already regarded as part of the legal system.[104]

4. Human Rights

A special characteristic of the laws on ombudsmen from the past years is that, in many cases, they expressly charge the ombudsman with the protection of human rights, sometimes jointly with specific, typical authorisations.[105] On the level of the standard of control, this does not necessarily indicate a specific feature of the particular institution. The following illustrations show that human rights can be part of the ombudsman's standard of control in various ways.

a. Human Rights as Part of the Legal Order

As already illustrated, almost all ombudsmen can examine the administration according to the standard of **the entire legal order** (Tab. 32).[106] It is beyond question that human rights are a part of this standard, provided that they are legally binding on the administrative organs. This applies primarily to those human rights and fundamental rights, which are codified in the particular state constitution and in the European Convention on Human Rights.[107] In the survey, all ombudsmen of those states which are members of the Council

---

[102] Cf for instance *Lombard*, Médiateur actualités 3/2005: „*L´équité va bien au-delà de la simple égalité formelle devant la loi. D´ailleurs si elle se réduisait à cette dernière notion, l´intervention des juges aurait suffi et il n´aurait pas été nécessaire de faire vivre une institution telle le Médiateur. Cela fait plus de trente ans qu´un consensus s´est créé sur l´idée qu´il faut aller plus loin que l´égalité formelle, au nom d´une égalité réelle des citoyens dans leur diversité …*" Regarding the Belgian Médiateurs fédéraux cf *Monette*, Du contrôle de la légalité au contrôle de l´équité : une analyse du contrôle exercé par l´ombudsman parlementaire sur l´action de l´administration, Revue belge de droit constitutionnel, Bruxelles, 1/2001, 3ff .

[103] In this sense also *Monette* (FN 101), 276.

[104] *Carpi (ed)*, The Concept of Equity. An Interdisciplinary Assessment, 2007, p. 8.

[105] Cf in more detail infra p. 56 ff.

[106] Cf in this context supra p. 32.

[107] As treaty the ECHR might have gained domestic binding effect already through ratification or a special act of transformation. The latter is the case in British law and those constitutional systems, which follow it: cf *Reif*, Governance, 104.

of Europe indicated that these rights are part of their standard of control.[108] This also applies to those states, where the protection of human rights is not an explicit task of the ombudsman (Tab. 33).

The obligation of the administrative organs to observe human rights is primarily of **significance** where they have to apply these directly (in particular Article 6 ECHR). For instance, this obligation is binding for the interpretation of laws: Mostly, the interpretation of law has to be in conformity with human rights in each individual case, especially within the scope of discretion. Consequently, human rights are at least of indirect relevance to numerous actions taken by the executive. In this respect, the control of the administration according to the standard of human rights can be seen as an autonomous function of the ombudsmen, which needs to be considered in their examination of every single administrative act (Tab. 33). To draw attention to this fact, even institutions where the protection of human rights does not constitute their main function, dedicate a particular part of their annual activity report to it (Tab. 34).

b. Human Rights as Part of "Good Administration"

Human rights can be of importance to ombudsmen, even if they are not legally binding: The ombudsman can incorporate them into the criterion of "good administration" or "equity" as non-legal standards, even if they are not obligatory for administrative organs. This applies, for instance, to treaties without self-executing character, which have not been transformed into national law, as well as to the Charter of Fundamental Rights of the European Union or to fundamental rights in the social domain, which imply no direct obligations on the executive branch. Numerous ombudsman-institutions indicated in the questionnaires, that they consider as part of their standard of control even those human rights, which have been ratified but insufficiently transformed on the national level. Among these institutions were also some which are not explicitly assigned with the observation of human rights (A, A-Vor, CH-StZ, DK, D-Rhe, FL, I-Aos, IS). This may also have especial relevance for regional ombudsmen in practice. Accordingly, the Belgian Médiateur of the region Wallonia indicated that, within the scope of his competence, he emphatically urges the observance of economic and social rights of the "second generation" of fundamental rights (health protection, environmental protection, right to habitation).

c. Human Rights as Explicit Standards of Control

The legal situation is exceptional in those legal orders which have declared the protection of human rights to be an **explicit task** of the ombudsman (Tab. 33). Such regulations were first instituted in Portugal (1976), in Spain

[108] This applies also to the European Union: In fact, it is not member of the Council of Europe, but has to observe the fundamental rights of the ECHR according to Art 6 paragraph 2 TEU.

(1981) and in Poland (1987). To the institutions that have since been established in Central and Eastern Europe, these regulations are virtually the rule: 28 of the 33 national institutions (including the EU), which have been created since 1987, are expressly entrusted with the protection of human rights (exceptions: B, EU, IS, M). In those states, the establishment of ombudsmen was intended to support the transition to democracy after a period of totalitarian regime. At this time, however, relevant regulations were also inserted into the legal bases of older institutions (FIN, N, S) and were even provided for new Western European ombudsmen (AND, CY, L). The assignment of the function of human rights protection to the ombudsman pays tribute to the enhanced significance of human rights within the European Council and the United Nations.[109]

Those areas **of human rights which are to be protected** differ throughout the various institutions. Thus, ombudsmen are often explicitly entrusted with the protection of "human rights and fundamental freedoms" (AL, AM, AZ, CY, GE, LT, SLO, SRB-Voj) or "fundamental rights and freedoms" (EST, LV, SK) – partly only with "civil rights" or "citizens´ rights" (BG, HR, KS, P, PL, RUS, UA), but without a restriction of the protection to nationals. In other cases only "constitutional rights and freedoms" are referred to (GR, KZ, MD, MK, MNE). Although the charter of fundamental rights of the particular national constitution is thereby referred to, all mentioned states which are members of the Council of Europe indicated that the ECHR is part of their standard of control at any rate. Sometimes the ombudsman acts define the field of human rights which are to be protected in an even broader sense, referring to the human rights of "international law" (AM, AZ, HR, KS, KZ, LV, MK, SLO, SRB-Kos and SRB-Voj, UA, UZ). On this account, ratified but not yet transformed treaties can also serve as a standard of control, which is particularly underlined by some institutions (AM, AZ, SLO, SRB-Kos). Moreover, such human rights can be relevant to the determination of quality criteria of "good administration".[110]

It is questionable, what exactly represents the explicit obligation of the ombudsmen to observe human rights within the system of a particular regulation. Without doubt, human rights are to be considered as a standard of control for the examination undertaken by the ombudsman (Tab. 33). For the most part, however, the standard of control is not restricted to these rights. As a rule, the formulation of the ombudsman's functions leaves room for interpretation, which allows him to extend his control to the observance of the entire legal order and the principles of good administration and equity (Tab. 32).[111] Only seven institutions consider their responsibility constricted as regards the inspection of the observance of human rights, due to the distinct legal foundation concerning this matter. With respect to the control of

---

[109] Cf supra p. 8 f.

[110] Cf in this context supra p. 33 f.

[111] Concerning the Spanish Ombudsman cf for instance also *Castells*, The Ombudsman and the Parliamentary Commitees on Human Rights in Spain, in Hossain/Besselink et al (ed), Human Rights Commissions and Ombudsman Offices, 404.

administration, the majority of those ombudsmen who are expressly assigned the function of human rights protection have a standard of control as broad as that of almost all other ombudsmen. Conversely, the explicit accentuation of human rights cannot extend the ombudsman's standard of control. As already pointed out above, human rights are either 1. considered as part of the legal order, or 2. comprised within the concept of "good administration".[112] Explicit reference to them, however, can be of clarifying character.

As a **result**, in the majority of cases, the standard of control of those ombudsmen, who are explicitly entrusted with the protection of human rights, does not differ from those institutions that are not. The emphasis placed on human rights protection may have a certain publicity effect; but it does not imply an extended standard of control. Specific authorisations can be linked to the function of protecting human rights,[113] but it is not necessarily the case. This reasoning is particularly exemplified by those (Western European) states, which have only subsequently adopted the reference to human rights into the legal foundations of their ombudsman-institutions (FIN, N, S).

Chapter 6: Powers

1. Preface

The competences of the ombudsmen can be classified in two groups: on the one hand, there are powers which are typical for almost all institutions and – albeit in different forms – are implemented throughout; on the other hand, there are powers, which are only inherent in some institutions. Hence, in the following paragraphs these authorities will be illustrated under the title of "Quintessential Powers" (1) and "Specific Powers" (2).

2. Quintessential Powers

According to the 1974 definition by the International Bar Association, there are three characteristic types of empowerment for the ombudsman: investigation, recommendation and reporting. It is due to these powers and their combination with one another, that the ombudsman-institutions differ most distinctively from all other state institutions. First of all, these authorities in their various legal forms will be illustrated below. Within the context of the activity reports, legislation proposals are relevant as well and will be examined in a separate chapter.

---

[112] Cf supra p. 36 f.

[113] Cf in more detail infra p. 56 ff.

a. Investigation

Most commonly, the ombudsman is assigned with a **quite comprehensive power** for the investigation of a case.[114] As a rule, the ombudsman is not empowered to conduct procedures of taking evidence in the formal sense. Yet he can gather information in various ways, and all administrative agencies examined by the ombudsman are obliged to assist him (exception: FL). In detail, the following is provided:

aa. Duty to Give Information

The administrative bodies, which are under the ombudsman's examination, are bound to the **duty of disclosure**, which implies the transmission of documents to the ombudsman. Providing information allows them to comment on an issue, expounding their point of view and thereby enabling the ombudsman to proceed impartially. Often, the ombudsman can set a **time limit** for the information required (B, CZ, EST, IL, L, N, PL, SLO), sometimes the time limit is determined by law (MK: 8 days; AND, MD: 10 days; GE, H, RUS: 15 days; AM: 30 days). If the information is not provided on time, sanctions can be initiated.[115]

As regards content, the duty to provide information is not always comprehensive, as it may grant **exceptions** (Tab. 35): Thus, the duty to give information is sometimes exempt with regard to sensible domains like foreign affairs, security and national defence (B-Wal, CY, F, GR, L, P, SK). Sometimes, "state secrets" may be withheld from the ombudsman (PL) or a particular organ can classify an issue as secret (e.g. M: Prime Minister). Some states refer to a general duty of secrecy in office, which also needs to be observed by the ombudsman (e.g. AND, D, PL). In contrast, many legal orders explicitly provide that no official duty to observe secrecy may be held against the ombudsman (A, AL, B and B-Fla, BIH, DK, GB, GE, HR, KZ, LT, MNE, RO, SK). In Finland and Sweden, the access to information is comprehensive as well.[116] Naturally, in all of these cases the ombudsman himself is assigned with a specific duty of secrecy in office with regard to third parties.

In many cases the ombudsman's power to **interrogate public servants** of the examined institution is highlighted explicitly (D, E, EU, H, IL, IRL, IS, KS, MK, NL, RO, RUS, SK, UZ). For the most part, however, the extensively formulated duties of disclosure imply this empowerment anyway. In some states it is also explicitly provided in this regard that the information can be refused for reasons of secrecy (H, IRL, N, NL). Sometimes, the regulations even emphasise that the ombudsman is entitled to demand written statements from the controlled agencies (e.g. CZ, DK, H, IS).

---

[114] Regarding the significance of the ombudsmen's strong powers of investigation for the efficiency of their action cf *Reif*, Governance, 403.

[115] Cf infra p. 42 f.

[116] In both states the right to access to information is also constitutionally embodied (Sweden: Chapter 2 Freedom of the Press Act; Finland: Section 12 of the Constitution).

bb. Contact with Specific Incumbents

Some laws additionally provide that, upon demand, the ombudsman has to be received at any time by certain incumbents (KZ: all responsible public servants; MD: head of administrative bodies; RUS: incumbents, who are superior to the examined agencies; UA: supreme state organs). In Macedonia, the President, the Prime Minister, as well as the Speaker of the Parliament (that is to say an organ of legislation) are obliged to see the Ombudsman upon request "without any delay".

In Montenegro, this applies to the President, the Prime Minister and other members of the Government, municipal mayors as well as the President of the Assembly. In Slovenia, the Prime Minister must meet the Ombudsman within 48 hours.

Moreover, some ombudsmen have the power to **participate in oral debates** of cooperative organs (e.g. BG) or to attend oral hearings of the agency (e.g. CZ). In Sweden, the Ombudsmen are entitled to participate in hearings of the agencies; however, they are explicitly prohibited from voicing their opinion. In Lithuania, the Ombudsman can attend Government meetings when the issues under consideration are related to his activities, or concern a matter under his investigation. In Ukraine, the Ombudsman has a general authority to participate in Government meetings. In the majority of the mentioned states, the lodging of a complaint before the ombudsman is not subordinate to other legal remedies. Consequently, the ombudsman is entitled to intervene even in pending proceedings (BG, LT, MD, MK, S, UA).

cc. Access to Buildings and Rooms

In most states, the ombudsman is expressly granted access to **official buildings** in order to facilitate his investigations on the spot (e.g. B, DK, GR, NL). Sometimes no advance notice is required for access (e.g. CZ, PL), partly prior notification is requested (e.g. M). In the Netherlands, the ministers can deny the Ombudsman's entry to certain places if it would be detrimental to the security of the state.

In many cases there are explicit regulations concerning access to **prisons** and other institutions restricting the personal freedom of individuals (e.g. AL, AM, GE, H, HR, KS, KZ, LT, LV, MD, MNE, P, UA, UZ). Such visits are intended to facilitate spot-checks on the observance of human rights in such institutions ex officio, hence they are generally not linked to a complaint.[117] Albania, for example, has provided in detail that the Ombudsman and any official authorised by him are entitled to unlimited access at any time and upon simple notification to the head of the institution to all public institutions, prisons, detention centres, military units or state institutions, psychiatric hospitals, asylums, orphanages and any other place where there is evidence of infringement of human rights and fundamental freedoms. In addition, the Ombudsman is entitled to meet and talk to inhabitants and in-

[117] Cf supra p. 21 f.

mates, even without the presence of the head of the particular institution. Moreover, any correspondence between the Ombudsman and these individuals must neither be prohibited nor kept under surveillance. In practice, those ombudsmen, who are given such powers, generally make use of them at regular intervals (Tab. 26). The ombudsman's task of surveillance is considerably hindered, if the use of photography and video cameras is prohibited during such a visit (e.g. GE).

dd. Sanctions

In order to guarantee the cooperation of administrative bodies it is of decisive importance which sanctions are at the ombudsman's disposal in case of insufficient or delayed compliance. Many institutions consider this as one of their biggest problems in practice (A-Tir, AL, B-Gent, BIH-Srp, CH-StZ, CY, CZ, D-Rhe, E-And, E-Kat, F, GB, GE, GR, HR, I-Lom, IL, IRL, LT, MD, MK, NL, P, PL, SK, SLO, SRB-Kos, UZ).

In only few states, certain elements of the duty of assistance can be directly ordered by the **courts**, e.g. by subpoena and interrogation of public servants (Tab. 36: DK including Greenland, CH-KaZ, D, IS, N, NL). The threat of a sanction alone has such a strong preventive effect, that in practice the ombudsmen do not make use of such empowerments. In Finland and Lithuania, the ombudsmen can enlist the assistance of the police in order to enforce their right to require documents.

A strong preventive character is also ascribed to regulations, which emphasise that violations of the duty of assistance involve specific **(administrative) criminal sanctions** (AL, BG, CY, E, FIN, GE, LT, LV, M, MD, P, RUS, S, SLO, SRB-Voj, UA, UZ), for instance declaring a neglect of the ombudsman's order equal to contempt of court (AM, GB including GB-Gib[118], IL, IRL). In some cases, the ombudsman can impose the sanctions himself (e.g. GE, MD, S). Some ombudsmen indicated in the questionnaires, that although specific penal regulations are lacking, in case of a qualified breach of the duty of assistance general penal regulations regarding offence of official duties may still be effected (e.g. A).

In France, the Médiateur can render his investigations more effective, by involving other **bodies of control**. In this manner, the French Médiateur can authorise internal institutions of control to conduct investigations and re-examinations; even the Vice President of the Conseil d´État and the First President of the Cour des Comptes have to conduct all kinds of enquiries for him.

Where no such sanctions are applied, compliance with the duty of assistance can only be enforced by means of **official supervision** (Tab. 36). Several acts on the installation of the ombudsman explicitly provide that failure

---

[118] In Ireland and the United Kingdom, the disregard of an instruction of the ombudsman fulfils the delict of "contempt of court". In the procedure of hearing of evidence the Israeli Ombudsman is assigned with the same position as the commissions of inquiry according to the "Commissions of Inquiry Act" 1968.

to comply with the duty of cooperation can lead to a **report** to the superior agency (AND, CZ, MNE, RO, SK, SLO); in some other states this approach is taken in practice (e.g. B-Gent, D-Rhe). Some ombudsmen indicated that in such cases disciplinary offences have been committed (AL, EST, F, GR, I-Süd, LV, P, S). The ombudsmen are partly integrated into the execution of disciplinary law, as some of them are empowered to initiate a disciplinary proceeding themselves (EST, LT, PL, S); in Bosnia and Herzegovina, France and Greece, the ombudsmen have such powers if the disciplinary agency does not act upon their request (Tab. 38). In South Tyrol, the disciplinary agency is commissioned to report to the Ombudsman on the further course of disciplinary proceedings. Even where such powers are not regulated, the ombudsman is in many cases entitled to react to the violation of the duty of assistance with disciplinary complaints or recommendations to the agency responsible for disciplinary prosecution (Tab. 38).

Moreover, primarily in cases of constant infringements of the duty of assistance, the ombudsman can decide whether or not to record such behaviour in his **annual report**. For some ombudsmen this is explicitly provided (B, E, EU, F, KS, KZ, MK, SK, SLO). Others indicated that they act like this in practice (e.g. CZ, L, RUS). In cases of assistance not being provided, the ombudsmen of Spain and Catalonia (E) can even include the names of the responsible incumbents and competent administration units in their annual report.[119] By doing so, the lack of cooperation is made public and the parliament can then exercise its own powers of controlling the administration. In some states, **special reports** are provided as a sanction for a lack of cooperation with the ombudsman (E, MK, MNE).

Incidentally, most ombudsmen can decide whether or not to qualify a lack of assistance by administrative agencies as infringements or violations of the principles of "good administration" and to react to them with **recommendations** to the agency responsible for supervision.

ee. Witnesses and Expert Witnesses

In some states, the ombudsman may invite and examine private persons as **witnesses** (AL, D, EST, IL, IRL, IS, M, MNE, NL, P, SLO). Sometimes, witnesses have to be summoned by court (e.g. DK, N). In case where the refusal to give evidence is liable to prosecution, rights to denial of evidence are provided (IRL, M, NL, P). In the Netherlands, the summoning of witnesses by the Ombudsman can lead to compulsory arraignment by the police; however, according to the statement of the Dutch Ombudsman, this power has never been made use of. In Latvia, the Ombudsman can only "invite" private persons to submit documents.

In some states, the ombudsman is explicitly empowered to obtain **expert witness opinions** (AL, AZ, B, D, EST, GE, GR, IS, KS, LV, MK, MNE, PL, UZ). In Norway, this is restricted to "special grounds".

---

[119] On the contrary, in some states this is explicitly prohibited.

The Dutch Ombudsman can also bring in external **translators**, and the agency to which the complaint relates has to bear the costs of this.

b. Recommendation

aa. General Remarks

From the beginning of his investigation, as well as during its course, the ombudsman can come to the conclusion that there is no reason for further action. For instance, complaints could be unsubstantiated or the problems under consideration could be resolved by informal **means** (e.g. legal advice, explanation of a specific administrative conduct, advice about alternatives of action) or by the **establishment of good understanding** with the criticised administrative unit (mediation, friendly solution, règlement à l´amiable). These powers are significant for the function of every ombudsman and form an important part of his daily practice; of course, other state agencies often have the same powers at their disposal.

More typical for the ombudsman-institutions is their authority to give **recommendations**. These are acts, which do not give rise to a directly enforceable duty of observance but are not completely ineffective either. Rather, they produce certain duties of reaction of administration.[120] In the doctrine of legal sources, recommendations are regularly considered as legal acts with "soft-law character": they are supposed to achieve effect not through typical state enforcement, but through the ombudsman's special authority, his arguments and his presence in public. The instrument of recommendation expresses the particular character of the ombudsman's function: he is effective neither because of his official authority, nor through confrontation or threats, but due to his power of persuasion and public denunciation. Although from a purely legal perspective this may seem to be a weakness of the ombudsman's powers, from a legal policy point of view it has to be considered as the reason of the ombudsman's practical effectiveness and therefore as his outstanding force.[121] The lack of legally binding character of recommendations legitimates their exclusion from the control by other state organs, even high courts.[122]

All legal orders considered in the study – except Liechtenstein – provide for recommendations as characteristic instrument of the ombudsman. However, the legal denotation and the design of recommendations are quite different throughout the various states.

---

120 Cf in more detail infra p. 45 f.

121 *Owen,* The Ombudsman: Essential Elements and Common Challenges, in Reif (ed), The International Ombudsman Anthology, 1999, 52.

122 *Gottehrer/Hostina*, The Classical Ombudsman Model, in Gregory/Giddings (eds), Righting Wrongs, 410. The United Kingdom is an exception, where recommendations of the Parliamentary Commissioner are subject to "judicial review".

bb. Adressees

In nearly all legal orders, it is provided that recommendations can be directly submitted to the **controlled administrative unit**. Only in Germany and Austria is this not the case, as recommendations have to be submitted to the highest organ responsible. This practice gives a stronger character of sanction. Certainly, a recommendation may be preceded by informal attempts at conciliation brought directly before the agency responsible.

In some cases, it is provided that the recommendation can be addressed to the **superior agency** rather than just to the controlled unit; the ombudsman can choose whichever alternative promises to be most efficient (AL, CH, IL, LT, N, PL). The Hungarian Ombudsman can alternatively turn to the controlled unit or the supervisory body. In other states, by contrast, it is mandatory to notify a superior body (e.g. B, GR, M: minister concerned in the matter under investigation).

The regulation in Moldova in this regard is geared to show a rather stronger preventive effect for future cases. Accordingly, the Ombudsman is allowed to inform **all administrative levels** of maladministration and to give them general recommendations concerning the observance of the constitution and improvements of the administration. In Denmark the Ombudsman can report "errors or derelictions of major importance" to the Legal Affairs Committee of Parliament, as well as to the responsible minister or local authority. In the Canton of Zurich in Switzerland, it is at the Ombudsman's discretion to transmit the recommendation to other cantonal agencies that are "interested".

The legal situation in the United Kingdom is unique, due to the indirect access to the Ombudsman. After each investigation, the Ombudsman has to submit a **report to the particular member** of Parliament, who has forwarded the complaint to him. Such a report should also be addressed to the head of the agency and possibly other responsible incumbents, and may also contain recommendations, according to the indications of the Ombudsman. Not until it has become evident that an act of maladministration cannot be eliminated, a corresponding special report has to be made to Parliament.

A specific regulation is to be found in Luxembourg. If a complaint seems justified to the Médiateur, he can, after a hearing of both the complainant and the administrative unit, submit recommendations to **both sides** that appear suitable to effect an amicable settlement ("règlement à l´amiable") or to improve the service of the agencies. This specific construction of recommendation particularly demonstrates the intermediary function of the Luxembourgian Ombudsman and his duty of impartiality. In other states, such an approach will only be possible on an informal level and rather prior to recommendations.

cc. Duties of Reaction

The duties arising as a result of recommendations to the administrative agencies are regulated very differently. Nine states do **not provide for duties of**

reaction at all (B, CH, DK, FIN, GB, I, IS, LV, N, S). The Danish Ombudsman does, however, point out that, in line with his competences, he is entitled to demand written comments from the administrative units within their scope of responsibility, which constitutes a form of reaction to his recommendations. In general, recommendations are mostly complied with, according to his statement. Similarly, the Finnish Ombudsman points out that the particular administrative unit has to announce their measures taken as a response to a recommendation. Also, the Ombudsman of Norway indicates that the administrative units to which recommendations are addressed are not obliged to implement them but nevertheless have to show some kind of reaction. This demonstrates that duties of reaction are regularly deduced from the general instructions of cooperation. The Ombudsman of the United Kingdom notes that, as a rule, reactions are effected despite the lack of an explicit obligation.

The remaining legal orders provide different shades of duties of reaction. For the most part, the mode of reaction is not described precisely, but it is only demanded that a response is given within a certain **time frame**. The time limit is either determined by the ombudsman at his own discretion (EST, F, GR, M, MNE) or it is stipulated by law (AZ: 10 day; BG: 14 days; E, GE, KZ, MD, RUS, UA, UZ: 1 month; AL, H, HR, MK, PL, RO: 30 days; D: 6 weeks; A: 8 weeks; P: 60 days; EU: 3 months). In the Netherlands, the reaction has to occur within a "reasonable period of time". In Lithuania, no time limit is provided.

In some states the recommendation generates a duty of **observance** and **reporting to the ombudsman** (BG, H, MNE, RUS). In Ukraine and Kyrgyzstan, "relevant steps" must be taken, which is equivalent to a duty of observance (similar RO). In other legal orders, an **explanatory statement of non-compliance** is possible as an alternative to compliance with the recommendation (A, AND, KZ, NL, P). Frequently, the administrative agency can rely on the legal force of a decision or on a legal opinion dissenting from the recommendation. The latter is regarded by the ombudsmen of South Tyrol (I) and Vorarlberg (A) as one of their biggest problems in practice.

As a special consequence of recommendations, Albania provides for a kind of **suspensive effect**: the particular official measure, against which a complaint has been lodged, is deferred until the Ombudsman's recommendation has been observed ("reviewing and responding to the People's Advocate").

dd. Sanctions

In case of lacking or insufficient reaction to a recommendation, different sanctions are prescribed in general – either alternatively or cumulatively. Notifications to a superior agency, reports to parliament and publication of the recommendation are the sanctions most commonly provided.

In those states, where recommendations are to be directly submitted to the controlled unit, a **report** has to be submitted initially to the **superior agency** (AZ, CZ, EST, H, MK, MNE, P, PL, RO, SK, SLO) or the **highest**

responsible agency (AND, E, IL, M). Sometimes even these agencies have duties of response and time limits (SK: 20 days; H: 30 days). In some states, in addition, the **government** can always be informed about insufficient reaction to a recommendation (CY, CZ, EST, RO, SLO).

In some legal orders, it is alternatively or simultaneously provided that the ombudsman may report deficient reactions to his recommendations to **parliament** (EU, HR, IRL, M, P, SLO). Sometimes this possibility only exists if the superior organ has not taken any relevant steps or failed to effect them through supervision (MK, RO, SK). At any rate, in most legal orders, such information can be provided in the **annual report** (e.g. GE, GR, H), sometimes also in a **special report** (e.g. AND, CY). In Hungary, such a report can be connected with a request to the Parliament to carry out a parliamentary investigation on the matter. This example illustrates in particular the function of the ombudsman as an auxiliary organ of parliament and as an enforcer of the responsibility of the highest administrative organs towards parliament.

For the most part, the **publication** of recommendations is also possible outside of official reports. Thereby, the ombudsmen most commonly referred to their website, where they can make the entire activity report or particular recommendations accessible (AL, CY, DK, E, EU, GE, GR, H, HR, IS, LV, MD, P, S, SK). Further publications can be found in brochures and bulletins. In Malta, important recommendations are published in so-called "case notes", and in Germany, a "recapitulary presentation" is edited.

In many states the ombudsmen have, according to their responses, the possibility to make an affair public in the **media**. In some states this is explicitly provided for in such cases where the competent administrative unit fails to observe the submitted recommendation or does not satisfactorily justify its non-observance in the ombudsman's view (e.g. AM, CZ, EST, F, HR, L, MNE, SLO). Sometimes even names of officials may be announced (CZ, E, EST, MNE). In France, the agency is explicitly empowered to express its own view regarding the matter. Slovenia provides for not only the possibility of publication in the mass media, but also the absorption of costs by the concerned agency, if it fails to react to a recommendation despite repeated requests. In Croatia, the media are legally obliged to make such publications on the Ombudsman's demand. In practice, out of all types of sanctions, the possibility of publishing a case in the media should have the strongest preventive effect.

ee. Other Consequences

Additionally, every official conduct that is to be qualified as insufficient reaction to a recommendation can be evaluated as a rights violation and hence at least as a disciplinary offence, in severe cases even as judicially **actionable delict**. Some institutions can initiate relevant disciplinary or criminal procedures on their own, others can only recommend this (Tab. 37 and 38).

c. Reporting

aa. Annual Activity Reports

Almost all ombudsmen have to submit annual reports on their activities to parliament (Tab. 39). This applies even to those ombudsmen, who are not appointed by parliament, like the ombudsmen of France and the United Kingdom as well as the Finnish Chancellor of Justice. The reporting fulfils several, differing functions:

Firstly, the ombudsman renders account of his activities, which shall put his **accountability to parliament** into effect. Thus, most of the incumbents can be dismissed from office by parliament (Tab. 18), and only in few cases attain reappointment after the end of the term of office (Tab. 16).[123] Secondly, the reporting can render grievances transparent to parliament and hence enable it to employ its own various competences within the **democratic control of administration** (e.g. right to interpellation, appointment of investigation committees, impeachment of a minister).[124] In this respect, the ombudsman functions as an auxiliary organ of parliament and helps to render its own actions more effective, particularly in parliamentary democracies. The third, very important function of reporting is to impose a form of soft sanction in case of non-compliance with recommendations and lacking assistance in investigating and clearing up affairs. This is not only achieved by the report itself, but rather by its publication, whereby important individual cases come to public attention (particularly on the internet, in newsletters, or on CD-ROMS). This in itself may have a considerable preventive effect. Finally, the ombudsman's activity report can draw the attention of parliament to a possible necessity of legislation amendments (see infra d).

According to the indications of the ombudsmen, the **content** of the activity report is usually at their own discretion. Since reporting aims to illustrate the work of the ombudsman, the presentation of recommendations and proposals for parliamentary bills takes centre stage. The contents of these are mostly structured into several parts, according to the ombudsman's particular field of activity. The classification is most commonly standardised according to a scheme developed by the particular institution. Often the ombudsman dedicates a separate part to the protection of human rights, generally one of his most important tasks (Tab. 34). Throughout, the protection of personal data, in particular those of the complainant, is guaranteed. Hence the ombudsmen pointed out that, as a rule, the cases presented in their activity reports were made anonymous.

---

[123] Those ombudsmen, who are responsible to another organ, additionally also have to submit their reports to the relevant organ (e.g. France: State President).

[124] In Georgia and the Russian Federation, the ombudsman in extraordinary cases has the explicit authorisation to apply to parliament for the appointment of a committee of inquiry.

bb. Special Reports

In most legal orders, the ombudsman is explicitly empowered to submit special reports to parliament. Almost all ombudsmen at least consider the submission of such reports admissible (Tab. 40; exceptions: EST, FL, H[125]). Such a special report enables the ombudsman to point out exceptionally serious grievances in the administration and thus to arouse particular public attention. Consequently, many institutions emphasise that they only make use of theses reports in specific exceptional cases. In Latvia, it is provided that the Ombudsman can even transmit his special reports to international organisations, enabling him to operate beyond the scope of parliament.

The submission of special reports may be attached to certain **preconditions**: e.g. to particularly **severe or extensive problems** (e.g. CZ, DK, E, HR, MNE, RO, RUS, SK), a neglicence or a mistake of great significance (N) or a matter of outstandig relevance, particularly in cases of proceedings ex officio (GR). Other states are only entitled to make special reports at predetermined **points in time** (e.g. quarterly: B, LV, PL; three times per year: L). To a certain extent, they are designed as **sanctions** (e.g. E, MK, MNE: in case of a lack of cooperation with the ombudsman; CY: in case of non-compliance with recommendations; GB: in case no measures are taken against injustice). In France, the situation is regulated in a specific manner, as the Médiateur has to publish a special report in the official journal, if an agency does not comply with a judgment obliging it to undertake certain behaviour.

The **issues** of special reports are – according to the statements of the ombudsmen – manifold and can hardly be brought down to a common denominator. The institutions themselves mentioned primarily social problems (NL, P), the public health and retirement service system (RO), legal advice for migrants and violence at schools (E) as well as children's rights (FIN, KZ, RO).

cc. Publication and Public Relations

Reports to parliament are regularly connected with the publication of the ombudsman's work, whereby also his recommendations in specific cases are made public. Almost all ombudsmen make their entire report or parts of it accessible on their websites (A, AL, CY, DK, E, EU, GE, GR, H, HR, IS, LV, MD, P, S, SK). This should render the activities of the ombudsmen transparent to the general public and provides them with extensive discretionary power.

Irrespective of this, the ombudsmen attach great importance to active **public relations** for the efficiency of their institution.[126] This especially applies to their regular presence on the internet and in the mass media (news-

---

[125] In Austria, the admissibility is controversial; it is opposed by Parliament, which therefore refused to take into preceding a special report submitted by the Ombudsman in 2001.

[126] Concerning the holding of consultation days cf supra p. 18. Regarding the significance of the public relations for the ombudsman cf also *Serota*, The Evolution of the Role of the Ombudsman – Comparisons and Perspectives, in Caiden (ed), International Handbook of the Ombudsman. Evolution and Present Function, 1983, 37.

papers, radio, television), which fulfil an important democratic function of control ("fourth power"). The public denunciation and analysing of grievances, on the one hand, imposes pressure on the administration, which has both a repressive and a preventive effect. On the other hand, the ombudsman's activity is made public among all classes of population.[127] In Austria, the introduction of a regular television show for the Ombudsman in 2002 has lead to a 64% increase in the submission of complaints.[128] The Ombudsman's national political function within the structure of state institutions of control has thereby gained special importance.

d. Parliamentary Bills

Finally, the power to submit suggestions and proposals to the legislator is yet another authorisation that is of great significance for the ombudsman's effectiveness. It enables the ombudsman to reveal **system errors** observed at the level of complaints, which exceed the importance of an individual case to a great extent ("systemic approach"). Almost all surveyed ombudsmen indicated that they consider such proposals appropriate, if they believe the observed misconduct to derive from unsuitable or vaguely fomulated laws (Tab. 41).

Most ombudsmen are **explicitly empowered** to submit parliamentary bills (Tab. 41). Partly, this applies to ombudsman-institutions, which particularly serve the purpose of human rights protection and are therefore charged with the implementation of constitutional and international obligations in this field on the level of national legislation. Some of these institutions even consider the submission of parliamentary bills as their main purpose. In many such cases legislation proposals are submitted to parliament as separate issues (e.g. CH-StZ, E, LV, RO, S). However, the surveyed institutions predominantly stated that they only regard the improvement of law in general as one of their purposes. In practice, these institutions incorporate legislation proposals into their annual activity reports.

The institutions themselves regularly consider such proposals to be highly **effective** despite their lack of binding character (detailed statistics are not available). Some ombudsmen indicated that by means of recommendations for legislation amendments high political pressure could be exerted. Only few ombudsmen stated that they could not submit amendment proposals to parliament at all, due to the absence of specific regulations (Tab. 41).

Several ombudsmen who are explicitly empowered to submit parliamentary bills are thereby also assigned the function of recommending the **implementation of treaties** to the legislator (Tab. 42). However, this predominantly concerns those institutions, where human rights protection is the principal task (also with regard to the "Paris Principles" of the United Na-

---

[127] Regarding the significance of the "visibility" of the ombudsman cf *Gregory/Giddings*, in: Righting Wrongs, 5.

[128] Cf the activity report of 2002, 13, 24.

tions). These are provided with extensive powers to advise all state institutions even with respect to legislation and jurisdiction.[129]

The legally binding effect of parliamentary bills is for the most part irrelevant; at least, like the entire activity report they have to be considered in parliament (expressly e.g. SRB).[130] This applies irrespectively of whether the institution is explicitly assigned to launch initiatives for new laws. If an initiative is rejected, the institution has no further authorisations at its disposal. For some institutions, such as the Chancellor of Justice of Estonia, the right to appeal before the constitutional court against existing law arises only after such a rejection.[131] According to the experience of many ombudsmen, the factual efficiency of such initiatives is nevertheless, especially, if they avail themselves of this opportunity, only moderately. The Ombudsman of the Aosta Valley in Italy, for instance, points out that he is consistently asked to take such initiatives.

3. Specific Powers

a. General Remarks

The powers described above – investigation, recommendation and reporting – have become so typical for ombudsman-institutions that today they underlie the very definition of their function and nearly all of the examined institutions are assigned with these powers. Primarily in the past few years, ombudsmen have selectively been vested with additional authorities in order to strengthen the effect of their function. These new powers show a certain structure that will be illustrated in the following:

b. Right to File an Application before the Constitutional Court

Very frequently over the past years, ombudsmen were assigned powers to appeal against acts of state before the respective constitutional court. Altogether 24 ombudsmen are currently vested with such authorities. Predominately this concerns national institutions. Only in two cases this applies to regional institutions (A-Vor, SRB-Voj). However, it should be considered that constitutional courts are not established in all the examined states (Tab. 7).

aa. Contestation of Laws, Regulations and Treaties

Most frequently the power is provided to appeal against general provisions, that is to say to initiate administrative proceedings in order to examine the constitutionality of **laws** and **regulations** (Tab. 43). To a certain extent only laws (AZ, E, RUS, SK, SRB), to some extent only regulations can be ap-

---

[129] Cf in this context also 3.

[130] Insofar as there is a duty of consideration of parliament, a real "legislative initiative" of the ombudsman exists.

[131] Concerning the power of the ombudsman to contest laws cf 3.aa.

pealed against (A, A-Vor, CZ, SLO). Only institutions with the explicit purpose of human rights protection are authorised to contest laws (see Tab. 33 and 43). Latvia and Poland additionally provide for the power to request verification of the compatibility of **treaties**. All mentioned authorities to appeal are formulated abstractly. Thus, they do not require the applicability of a regulation in a concrete appeal procedure and are not bound to a time limit.[132]

Generally, the **standard for examination** consists of the rules of the next higher normative level in each case, i.e. the constitution with respect to laws, and the constitution and laws with respect to general provisions of administration (Tab. 44). In some states, "human rights" are provided as the only standard for all administrative proceedings examining the constitutionality of laws and regulations, rather than the entire constitution with respect to laws and laws with respect to regulations (AL, AM, AZ, GE, KS, RUS, SRB-Voj). This clearly highlights the connection between these powers of contestation and the task of human rights protection. An exceptional regulation exists in four states, where the standard for judicial review also encompasses international obligations (including human rights) which are not embodied in the constitution (H, MD, PL, SK).

bb. Contestation of Individual Administrative Acts and Court Decisions

A small number of ombudsmen can also appeal against individual administrative acts and judgments by courts of last resort before the constitutional court (constitutional complaint, "recurso de amparo"). This empowerment is aimed at enforcing human rights (AM) or constitutionally embodied rights on the level of individual cases (E, H, PL, RUS, SLO). In Poland, Slovenia, Spain and Hungary, this power is provided in addition to the power to contest general provisions. In states, where the protection of human rights is an explicit task of the ombudsman, the powers of intervention before the constitutional court are particularly pronounced, as they are even geared to resemble an attorney's power of representation. In Bosnia and Herzegovina, the Ombudsman is empowered to bring cases before the highest courts. Although this would presumably include the constitutional court, he indicated in the survey that he does not have "locus standi" before this court.

cc. Applications for Authentic Interpretation

In Ukraine, Hungary and Austria (as well as Austria – Vorarlberg), the ombudsman can also submit an application for an interpretation of constitutional provisions before the constitutional court. In Ukraine and Hungary, this most likely concerns those provisions, which form the ombudsman's standard of examination. In contrast, in Austria the right to file an applica-

[132] In Bulgaria and Lithuania, the ombudsman can only suggest the initiation of a proceeding to examine the constitutionality of laws; in Lithuania, such a suggestion has to be submitted to Parliament.

tion only refers to the interpretation of provisions of competence of the Ombudsman. In Kyrgyzstan, an application for authentic interpretation can only be submitted to Parliament.

dd. Miscellaneous

The remaining rights to appeal to the respective constitutional court are regulated rather heterogeneously:

According to the Polish Constitution, the Ombudsman is moreover empowered to apply before the constitutional court for a judgment on the **compatibility of the aims and functions of the political parties with the Constitution**.

The Georgian Ombudsman is entitled to file applications concerning the **inspection of elections** to the constitutional court.

The Romanian Ombudsman is provided with authority to submit concerns to the constitutional court regarding the **constitutionality of laws before they come into force**.

In Kyrgyzstan, the Ombudsman can participate in **hearings of the constitutional court** as well as in hearings of **other courts**; however, this does not imply any special powers.

c. Right to Intervention before Other Courts

In order to eliminate maladministration in concrete cases, some ombudsmen are not only empowered to lodge complaints to the constitutional court, but also to bring the matter before other courts, administrative courts in particular. These are not simple powers of representation. In general, they serve as a compensation for the complainant's lack of opportunity to become a proper plaintiff in certain cases, for possible expiration of time limits or other barriers of access to the competent courts, or to preserve the observance of the legal order and of human rights. These powers are similar to the functions of an attorney, enabling the ombudsman to act for the individual.

aa. Rights to Application and Legal Remedies

In eleven of the examined states, the ombudsman is entitled to **apply to a court** if, within the course of investigation, he detects a violation of law (see Tab. 45: AM, AZ, BIH, KS, KZ, LT, LV, MD, PL, RO and RUS). In Bosnia and Herzegovina, a further precondition is that the Ombudsman considers such an application necessary. In Kyrgyzstan, it is required that the person concerned by the administrative act is not able to lodge the application himself. This is an extraordinary legal remedy, which can be submitted even after a final decision has been taken on a specific administrative act.

The **court to which the ombudsman applies** can either be an administrative court (e.g. KZ, LV, MD, RO) or a civil court (e.g. BIH, E). In Poland, the Ombudsman is explicitly empowered not only to apply for the initiation of administrative proceedings but also to fight legal acts in administrative courts and to initiate civil and criminal proceedings. He is therewith assigned

extensive powers. The Spanish Ombudsman is not only empowered to lodge claims of public liability before courts of law, but also to initiate "habeas corpus proceedings" and thus to allege the violation of the right to personal liberty before a criminal court. The Ombudsman of Latvia can only take legal action before an administrative court if this seems necessary with regard to public interest. Moreover, he can initiate civil proceedings if the right to equal treatment has been infringed. In Finland, the Ombudsman can only fight criminal judgments with extraordinary legal remedies; according to his own indications, the Finish Chancellor of Justice is also assigned with the authority to apply for the rescission of judgments.[133]

The ombudsman's **position in a proceeding**, which has been initiated upon application, is only to some extent regulated explicitly. Thus in Kyrgyzstan and the Russian Federation, the ombudsman can himself "participate" or let himself be represented in the proceeding. The exact definition of this right is subject to statutory provisions. Kazakhstan allows for a right to participate in court hearings only. According to his own statement, the Ombudsman of Bosnia and Herzegovina is furthermore entitled to submit written pleadings. In Poland, the Ombudsman is empowered to participate in the proceedings initiated upon his application and to have the same powers as a public prosecutor at his disposal. In Romania, upon the Ombudsman's notification to the court, the aggrieved citizens themselves gain the status of applicants and the decision of the public authority is suspended. The Ombudsman of Moldova, according to his statement, can only participate in the proceedings as an observer.

It is noteworthy that almost all ombudsmen mentioned in this context are assigned the principal task of **human rights protection** (Tab. 33). In most cases, their preconditions of qualification require a law degree (KZ, LT, MD, RO), outstanding legal knowledge (PL), or specific knowledge in the field of human rights protection (AZ, RUS; exception: KS; Tab. 11). Conversely, the above described rights to appeal and resorting to legal remedies before courts are by no means granted to every institution with the primary task of protecting human rights (Tab. 33). Moreover, it needs to be pointed out that such instruments do not always merely serve the purpose of protecting human rights. In many cases, compliance with the entire legal order can be enforced (e.g. LT, PL, RO).

In Portugal and the Czech Republic, the ombudsman is not entitled to resort to legal remedies, but he is explicitly empowered to advise the complainant with regard to possible legal steps in his matter. Some ombudsmen indicated that they offer such advice in practice (AM, BIH, LV, MD, N, RO, SK). The Danish Ombudsman is expressly assigned with the power to make recommendations concerning the granting of **legal aid**. To some extent, such

[133] To some extent, there are also explicit powers to recommend the initiation of court proceedings to administrative organs, in particular in order to observe public interests. Thus, for instance the Ombudsman of the Czech Republic is empowered to recommend to the supreme public prosecutor the lodging of a claim before the administrative court in order to observe public interests.

a consultative function may be performed informally by other institutions as well.

bb. Participation in Pending Proceedings

The possibility to participate in a court proceeding is not necessarily only provided with respect to proceedings which the ombudsman himself has applied for. In Poland, it is explicitly regulated that after the investigation of a case the Ombudsman can also participate in pending proceedings with the powers of a public prosecutor at his disposal. This refers to both civil and administrative proceedings, as well as proceedings before the administrative court. In Kyrgyzstan and Ukraine, the ombudsman has the authority to attend sittings and sessions of consultation of courts; in Ukraine, this requires the consent of the concerned party. In Kyrgyzstan, it is unclear whether the Ombudsman can exercise his right to participation autonomously; this needs to be implemented in detail by statutory law. In Kazakhstan, a right to participate in court hearings is granted. In both cases it is unclear to what extent the ombudsman is provided with rights to application or with powers of observation only.

cc. Suspension of Execution

In Macedonia, the Ombudsman can apply for suspension of the execution of an administrative act, if he considers the act to be violating rights. The suspension will remain in force until the relevant administrative agency of the second instance or the competent court has decided on the matter. The Ombudsman has to be notified about such a decision. In Bosnia and Herzegovina, the Ombudsman can demand the suspension of the execution of administrative acts for a maximum time of ten days. In Albania, the official measure against which a complaint has been lodged is suspended until a response to the Ombudsman's recommendation is handed in.

d. Powers in Administrative Proceedings

In Poland, the Ombudsman is empowered without restriction to apply for the initiation of administrative proceedings, and moreover to lodge extraordinary legal remedies against legally binding administrative decisions. Thus as a result, combined with his rights to application to court (compare supra aa), he is provided with the strongest, most extensive powers of intervention in relation to administrative and court proceedings, compared to all other examined ombudsmen.

e. Criminal and Disciplinary Prosecution of Incumbents

Within the scope of their function, ombudsmen can detect violations of rights. These infringements can comprise insufficient compliance with the duty of assistance, non-compliance with recommendations, and particularly violations of rights within the performance of administration that the om-

budsman observes resulting the course of his investigation. In such cases, ombudsmen can generally either initiate criminal and disciplinary proceedings themselves or at least recommend the initiation of such (Tab. 37 and 38).

In this respect, the ombudsmen of Poland and Sweden are assigned with the strongest powers, as they can initiate both criminal and disciplinary proceedings without any restriction. In Bosnia and Herzegovina, this is the case if the agencies responsible for the prosecution fail to act. In Finland, the Ombudsman can only initiate criminal proceedings – his authority to this, however, is unlimited. Concerning the institutions of Finland and Sweden, the ombudsman's comparatively strong legal powers do not only refer to administrative organs but even to judges. This can be explained on the grounds of the historical function of the ombudsman-institution as an instrument of extensive legal control of the executive branch, including the jurisdiction.

f. Additional Powers in the Field of Human Rights

The powers mentioned in the following aim to assign the ombudsman a preventive and preferably extensive function in the field of human rights protection, which is not solely directed at the control of the administrative branch. These powers can be traced back to the fact that some states, primarily the younger democracies, have designed their ombudsman-institutions corresponding to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the "Paris Principles" of the United Nations.[134] This is also demonstrated in the various state reports. In other states, these functions are mostly assigned to other institutions (e.g. human rights commissions, institutions and committees).[135]

aa. Advice on the Implementation of Human Rights

Some of those ombudsmen who are explicitly appointed to the observation of human rights also fulfil the general task of advising the legislator and the government in this field (AL, AM, CZ, H, KS, KZ, LV, LT, MD, P, RO, RUS, UA, UZ). The aim of this is to guarantee the implementation of human rights on the level of legislation and corresponding provisions. In Moldova, the three Ombudsmen and their staff members are characterised as "Centre for Human Rights". In Uzbekistan, the "Commission for the Observance of Human Constitutional Rights and Liberties" serves this purpose. In Armenia and Latvia, the ombudsman can appoint official advisory boards of experts and working groups.

In order to implement the power of consultation, in some states the ombudsmen are granted the right to participate in parliamentary sessions and

---

[134] Cf also supra p. 9; *Kucsko-Stadlmayer*, Europäische Ombudmanneinrichtungen und Menschenrechtsschutz, in Bammer et al (Hrsg), Rechtsschutz gestern – heute – morgen, 2008, 271.

[135] In more detail *Aichele*, Nationale Menschenrechtsinstitutionen, 2002, 110 ff; as well as *Aichele*, Nationale Menschenrechtsinstitutionen in Europa, hrsg vom Deutschen Institut für Menschenrechte, 2004, 12.

meetings, where matters of human rights are discussed (AM, KS, LT, UA). If human rights are violated to a considerable extent, some ombudsmen are even empowered to notify the president of state directly (AZ, GE, KZ, LT).

As a rule, the responsible government agencies and parliaments can make direct use of the ombudsman's consultation – hence there is no need to initiate a concrete proceeding. In many respects, such powers can hardly be distinguished from the ombudsman's general authorisation to submit recommendations and legislation proposals to the competent organs.[136]

bb. Task of Education and Information

In Kazakhstan, the Ombudsman has the explicit duty to facilitate the legal education in the field of human rights protection, to collaborate on the development of corresponding curricula, and to extend the state of knowledge and awareness of public problems in this field. Other ombudsmen have to take measures to advance education and information in the field of human rights too (GE, LV, MD, P, RUS). In Uzbekistan, the Ombudsman has to facilitate the public appreciation and awareness of human rights. Kyrgyzstan only provides for a general duty to raise the level of information of the population in legal matters.

cc. Reporting on the General Situation in the Field of Human Rights

The ombudsmen of Azerbaijan, Bulgaria, Georgia and Poland have to incorporate a general survey of the situation in the field of human rights in their respective countries into the annual report, or even make a special report.

dd. Research and Analysis

The Ombudsman of Latvia has the explicit duty to conduct research and analysis on the situation of human rights and to express opinions on matters of human rights.

ee. Cooperation with NGOs and International Organisations

Some of the ombudsmen in charge of human rights protection are under explicit obligation to cooperate with non-governmental organisations, to regularly obtain their opinion on the situation of human rights, and to set national activities in cooperation with them in this field (AL, MD, MNE, SK, UZ). As a rule, this also implies an explicit or tacit authorisation to be in contact with international organisations, which fulfil functions in the field of human rights. The ombudsmen of Kazakhstan, Kyrgyzstan, the Russian Federation and Uzbekistan are explicitly instructed to international collaboration in the field of human rights; hence they can also make recommendations on this matter to the competent state organs. In Ukraine, the Ombudsman has the more specific duty of collaborating on human rights re-

---

[136] Cf in this context supra p. 44 f and p. 50 f.

ports, which other organs have to submit to international organisations in order to fulfil treaty obligations.

ff. Implementation of the Right to Information

In Albania, the Ombudsman has the additional task of implementing the general right to information of persons subject to the law, regulated in a specific statutory law (Law on the Right to Information over the Official Documents).[137] In Ireland, the Ombudsman was – in personal union – appointed "Information Commissioner" and in this function provided with the competence to control the execution of the "Freedom of Information Acts" 1997 and 2003. These laws do not stipulate the obligation but the explicit possibility of this assignment.

gg. Implementation of the Right to Data Protection

The Ombudsman of Albania, moreover, has the duty to function as an authority of complaint against the unauthorised use of personal data (Law on the Protection of Personal Data).[138]

g. Summary

As a result, the ombudsmen's "specific powers" described above show the following structure: On the one hand, there are those aimed at **compliance with the entire legal order** and therefore observance of the rule of law as a whole (e.g. contestation of laws and regulations before the constitutional court with regard to general conformity with the constitution and laws). To this end, in addition to the authorisation to submit recommendations, ombudsmen may be granted a right to criminal and disciplinary prosecution of administrative organs and judges. On the other hand, there are powers which specifically serve the **observance of human rights** (e.g. appeals to the constitutional courts due to violations of fundamental rights, educational and informational tasks in the field of human rights).

Assigning these additional powers to the ombudsman has the purpose of amending his key powers (investigation, recommendation and reporting) and rendering his controlling function more **effective**. The right to file applications and the right to information granted to the ombudsman before courts measure his sphere of influence. The further the scope of his legal competence is thereby extended, the more this particular institution diverges from the merely conciliating and impartial function of a mediator between the state and the citizens, based on the power of personal authority and strong reasoning. Additional powers may thus be in conflict with the ombudsman's core function. By contrast, this does not apply to the ombudsman's consultative functions in the field of human rights. These are established at an informal level and enforce the public effect of the ombudsman, but due to their

---

[137] Cf the state report on p. 75.
[138] Cf the state report on p. 75.

lacking binding legal effect they remain in line with the basic idea of the institution. Since these are merely advisory activities in support of their key powers, to some extent they are probably even permitted without explicit authorisation in this respect.

Chapter 7: Classification by "Models"

1. The Problem: Heterogeneity of the Institutions

As the comparative analysis has demonstrated so far, the legal bases of European ombudsman-institutions are designed very heterogeneously. Many legal orders have followed already established concepts; however, none of them has adopted such a concept without modifications. The reasons for these variations do not always derive from the particular constitutional system: Thus, even states with disparate legal cultures can exhibit great similarities in the legal structure of institutions.[139] The comparative observation conveys the impression that the legal discussion of the establishment of an ombudsman-institution in each case kept a kind of "basic model" in mind, which was then enhanced by ideas from different legal orders and adapted to concrete necessities. Thus, primarily the younger institutions seem to follow different models in the provision of the various regulations (e.g. requirements of qualification, appointment and dismissal of incumbents, competence of control, initiation of proceedings, powers), sometimes also choosing entirely unique solutions. Many legal bases were amended subsequently with regard to new models and necessities: the ombudsmen of Sweden and Finland, for instance, were additionally assigned the explicit task of human rights protection. The impression of a strong distance to specific models is confirmed by the responses of the institutions to the expressly posed question on a possible role model for their legal structure: Ten of the questioned national institutions indicated that they do not follow any specific model, nine orientated themselves on several different models, nine (including the EU) modelled themselves on Denmark, five on Sweden, one on Spain and one on New Zealand, five did not give any indications at all and one institution considered their structure unique.

Despite this strong heterogeneity the question arises whether under closer examination these different legal structures are at least consistent with one another in certain significant characteristics, so that a classification by "**types**" is possible. Even if none of the institutions fully complied with such a type, some essential structural characteristics could be highlighted and facilitate the overall survey of institutions.

---

[139] Thus, for instance in France as well as the United Kingdom, the access to the ombudsman occurs by members of parliament and thereby both in a presidential and a distinct parliamentary system.

2. The "Classical" and the "Hybrid" Ombudsman

To begin with, it is questionable whether the current classification of worldwide institutions into "**classical ombudsmen**" and "**hybrid ombudsmen**" proposed by *Linda Reif* is also appropriate in the context of the present European study. According to *Reif*, the "classical ombudsman" is in accordance with the definition of the IBA[140], like the Danish Ombudsman for example. In contrast, the "hybrid ombudsman" by her definition is vested with additional authority; provided that this authority refers to human rights protection, he will be denoted as "human rights ombudsman", otherwise as "ombudsman with other mandates".

Even in Europe there is great diversity to be found. Thereby *Reif's* classification is above all suitable to point out the distinctive feature of those ombudsmen, who have been established – in Europe since the Portugese Provedor de Justiça – specifically to observe compliance with international obligations in the field of human rights and thereby to advance the process of democratisation.[141] However, with regard to the legal variety demonstrated by the present study, this classification requires further elaboration and differentiation: On the one hand, it needs to be kept in mind that the so-called "classical ombudsman" also has competence in the field of human rights;[142] even in the absence of an explicit assignment with the task of human rights protection this forms part of their standard of examination.[143] On the other hand, it has been observed that an explicit assignment in this respect does not necessarily give rise to any particular obligation on the part of the institution.[144] The ombudsman's legal obligation to observe the protection of human rights as such, therefore cannot be a suitable criterion to allow the clas-

---

140 Cf supra p. 4; *Reif*, Governance, 2 f.

141 Thereby they undertake at the same time the function of "commissions on human rights" within the meaning of the law of the United Nations: Cf United National Centre for Human Rights, National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4 (UN Doc. HR/P/PT/4, 1995); Protecting Human Rights: The Role of National Human Rights Institutions, Commonwealth Conference of National Human Rights Institutions, Cambridge Conference Communiqué, July 4–6, 2000 (Commonwealth Secretariat, 2000).

142 Thus, human rights are throughout a – significant – standard of control: cf in this context supra p. 36 ff.

143 This is shown by the comparison of Tab. 32 and 33 (institutions, whose legal basis does not explicitly refer to human rights).

144 For instance the synopsis of Tab. 33 with Tab. 11 shows, that only 12 of those 33 states, which expressly assign the ombudsman with the protection of human rights, require him to have particular knowledge and experience in the field of human rights protection (Albania, Armenia, Azerbaijan, Kazakhstan, Croatia, Macedonia, Moldova, Russian Federation, Serbia, Slovakia, Hungary, Ukraine). 6 of them do not provide any requirements of qualification at all (Andorra, Kyrgyzstan, Latvia, Sweden, Spain, Uzbekistan).

sification of the institution as "classical ombudsman" or "human rights ombudsman".[145]

However, *Reif's* functional approach to a classification can also be of value for the present study. Firstly, this is due to the fact that a classification of legal structures has to follow legal criteria, but that no relevant conclusions for a characterisation of ombudsmen can be drawn from legal organisational criteria. In this area, extensive similarities, often merely coincidental historical divergences and few national particularities can be found. Similarily, this applies to national, regional and local institutions, as well as institutions with general and special mandates. To a large extent, the mode of intitiating procedures (complaint, course of action ex officio) is also regulated homogenously throughout the institutions. Consequently, a useful classification of "ombudsman models" needs to follow functional criteria. In principle, this classification could be based on the object under the ombudsman's control (Chap 4), his standard of control (Chap 5) and his powers (Chap 6). As demonstrated above, the greatest variety and as a result the most significant differences occur on the level of powers. The powers are closely linked to the functions of the institutions, especially to the task of human rights protection. Therefore, they are suitable as a basis for classification.

3. Classification Based on the Type of Powers

The following sections will attempt to delineate various "types" of ombudsmen that are each characterised by similarities of their legal powers. According to their respective legal foundations, the individual ombudsmen often have various combinations of powers at their disposal, which makes it very difficult to allocate an institution to only one of these models. Hence, the classification will describe "ideal types" of ombudsmen, which are rarely found in pure form in practice.

a. "Basic Model" or "Classical Model"

To begin with, is it practicable to describe a "basic model" of the ombudsman: It comprises those powers, which are assigned to almost all of the examined institutions – quasi as minimum accounterment. Many ombudsmen consider exactly this combination and restriction to these powers as the typical criterion of their institution and as the reason for their special efficiency in the constitutional system. It can therefore also be described as „classical model".

The following powers are characteristic for the basic model of the ombudsman: For the investigation of a case submitted to him or taken on by him, the ombudsman is assigned with 1. extensive **powers of examination**. These encompass the rights to interrogation and information as well as an authorisation to access in situ. In the course of investigation, the ombudsman

[145] Regarding this qualification cf *Reif*, Governance, 7 ff.

can work towards the mediation of conflicts.[146] Provided that no solution can be achieved in this way, the ombudsman can address 2. **recommendations** to the controlled administrative unit or the superior authority. These recommendations do not have to be observed but mostly provoke a certain "duty of reaction" on the part of the agency. Moreover, the ombudsman submits 3. an annual **activity report** to parliament, where he can even bring unremedied grievances to the attention of the representative organ, which has democratically been elected by the people, and to bring them to the attention of the general public. Particularly characteristic for the basic model is the fact that the ombudsman has **no powers of coercion at all** for the elimination of maladministration: The specific effect of his activities relies merely on a kind of "soft" pressure based on the investigation itself, the special authority of the incumbent and the publicity of his function. The protection of the rule of law and human rights are also represented in this model and can count for its most important tasks in practice; however, this does not imply any specific powers.

Since the purpose of the basic model is the restriction of powers, it only makes sense to assign an ombudsman to this category if he has no (or almost no) further powers. This applies to the national ombudsmen of Andorra, Belgium, Bulgaria, Denmark, Ireland[147], Iceland, Israel, Luxembourg, Malta, the Netherlands, Norway, the United Kingdom, Cyprus, as well as the European Ombudsman.[148] Also the Petitions Committee of the German Bundestag is only provided with the powers intended by the basic model.[149] On a regional level nearly all of these institutions – those of Belgium, Germany – Rhineland-Palatinate, Italy, Austria – Tyrol, Switzerland, Serbia – Kosovo, Spain and the United Kingdom – comply with the basic model. It is noticeable that several institutions that lack the competence to intervention ex officio are also assigned to this model.

b. "Rule of Law Model"

Deviating from the basic model, a type can be outlined, according to which the ombudsman is provided with additional measures of control exceeding his soft legal powers and serving to protect the legality of the administration in general rather than human rights and fundamental freedoms only. In this

---

[146] In some states, this is terminologically emphasised by the denomination "Médiateur" (B, F, L) (cf also the French and Italian translation of the European Ombudsman: "Médiateur européen", "Mediatore europeo"). This does not imply, that the institutions, denominated in this manner, are solely empowered to mediate and may not investigate a complaint as regards content.

[147] However, it has to be pointed out, that the Irish Ombudsman currently also fulfils the function of an "Information Commissioner": cf p. 58 and p. 240.

[148] In Denmark, the Netherlands and Norway, there are only singular powers of coercion within the investigation of cases, in particular in connection with summons of witnesses.

[149] The Office of Advice and Complaints in Liechtenstein, on the other hand, is not assigned with such powers.

context it is described as "rule of law model". Accordingly, the national institutions with general mandate are vested with the following powers:

Contestation of laws and regulations before constitutional courts regarding general conformity with the constitution or laws	Croatia, Estonia, Latvia, FYR Macedonia, Moldova, Montenegro, Poland, Portugal, Romania
Contestation of laws and regulations with legal force before constitutional courts regarding general conformity with the constitution	Spain
Contestation of regulations before constitutional courts	Austria, Austria-Vorarlberg, Czech Republic, Moldova, Slovenia
Appeal to ordinary courts or administrative courts without restriction to human rights	Bosnia and Herzegovina, Finland, Latvia, Lithuania, Moldova, Poland, Romania
Participation in court proceedings without restriction to human rights	Bosnia and Herzegovina, Kazakhstan, Poland
Right to file applications in administrative proceedings	Czech Republic, Poland
Application for the suspension of execution	Bosnia and Herzegovina, FYR Macedonia
Criminal prosecution of incumbents	Bosnia and Herzegovina, Finland, Poland, Sweden
Disciplinary prosecution of incumbents	Bosnia and Herzegovina, Estonia, France, Lithuania, Poland, Sweden

Thus it appears that none of the examined institutions are provided with all of the mentioned competences[150]; they rather feature them sporadically (e.g. A, EST, F) or in typical combinations. In many cases, for instance, the powers to contest laws are linked to the contestation of regulations, the appeal to courts to the participation in proceedings or the criminal prosecution to the disciplinary prosecution. The number of legal orders, where ombudsmen are nowadays provided with such powers is remarkable. It involves institutions dating back to various historical stages of development. Thus institutions from the Scandinavian „early phase" of historical development are included (FIN, S), as well as those of the wave of democratisation in the 1970s in Southern Europe (E, GR, P), and of course in particular the institutions established in the last century in Central and Eastern Europe. In addition, many of these institutions have specific powers in the field of human rights (see infra c). This of course does not apply to all institutions: Six om-

[150] Cf in this context also Chap 6.3.

budsmen of various dates of establishment are not assigned such powers (A, EST, F, FIN, GB, S).

It is noticeable, that the vast majority of ombudsmen who have competence to control the jurisdiction can also be allocated to the model based on the state governed by the rule of law. This applies in particular to the ombudsmen of Sweden and Finland, but also for instance to those of Bosnia and Herzegovina, Montenegro, Poland and Slovenia.[151] Almost all ombudsmen allocated to this model are also empowered to control the administration of justice (Tab. 31). This is based on the idea that the ombudsman's function in accordance with the rule of law does not allow for a differentiation with respect to state functions.

c. "Human Rights Model"

Finally, a third model may be defined, according to which the ombudsman is assigned with specific measures of control, which exceed the soft power of the basic model and specifically serve the observance of human rights and fundamental freedoms. This category can be described as "human rights model". In this context, the following powers are found in the various legal orders:

Contestation of laws before constitutional courts regarding violations of human rights	Albania, Armenia, Croatia, Georgia, Hungary, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russian Federation, Slovakia, Serbia-Voj, Spain, Ukraine
Constitutional appeal regarding violations of human rights	Armenia, Bosnia and Herzegovina, Hungary, Poland, Russian Federation, Slovenia, Spain
Rights to file applications before courts due to violations of human rights	Azerbaijan, Georgia, Kyrgyzstan, Kazakhstan, Russian Federation, Ukraine
Application for authentic interpretation before constitutional courts regarding human rights	Hungary, Ukraine
Advising state organs concerning the implementation of human rights	Albania, Armenia, Azerbaijan, Czech Republic, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Portugal, Romania, Russian Federation, Ukraine, Uzbekistan
Tasks of education and information in the field of human rights	Georgia, Kazakhstan, Kyrgyzstan, Moldova, Latvia, Poland, Russian Federation, Uzbekistan

[151] Cf in this context supra p. 26 f.

Reporting on the general situation in the field of human rights	Azerbaijan, Bulgaria, Georgia, Poland, Ukraine, Uzbekistan
Research and analysis in the field of human rights	Latvia
Cooperation with NGOs and international organisations	Albania, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Russian Federation, Ukraine, Uzbekistan
Implementation of citizens' right to information on public administration	Albania, Ireland[152]
Implementation of the right to data protection	Albania

It appears that only about half of the ombudsmen with powers according to the human rights model are also assigned powers of the **rule of law model** (CZ, E, LT, LV, MD P, PL, RO, RUS, SLO). This connection especially becomes apparent with regard to the powers of appeal before the particular constitutional court. However, it is not always made: Numerous ombudsmen are assigned with powers in the field of human rights but have no specific power to observe the rule of law (AL, AZ, AM, GE, H, KS, KZ, SK, UA, UZ). In fact, the standard of control of some of these institutions is strictly limited to human rights, so that all powers are specific to human rights (AZ, GE, H, KS, KZ, UA, UZ).

In contrast, the survey shows that **not every institution**, whose functions include the protection of human rights according to **explicit regulation**, is assigned with the above mentioned specific powers in this field (Tab. 33). Thus, the ombudsmen of nine jurisdictions (AND, BG, CY, EST, FIN, GR, L, N, S) are explicitly entrusted with human rights protection according to their law. However, like almost all other institutions, they only have to account for human rights as part of their standard of control and do not have any specific powers in this area.[153] Five of these ombudsmen in fact fully comply with the basic model (AND, BG, CY, L, N). With regard to such institutions, however, it can be assumed that they are informally permitted to perform a supportive and consultative function in the field of human rights protection.

Seven ombudsmen, who correspond to the human rights model due to their independence as well as their specific tasks and powers, are also accredited **National Human Rights Institutions** (NHRI) in line with the **Paris Principles** (status A: AL, AM, AZ, BIH, E, P, PL).[154]

---

[152] However, Ireland can only be mentioned with reservation at this point, as the current incumbent of the ombudsman only fulfils the function of the "Information Commissioner" in personal union, but both offices exist separate from each other.

[153] Cf in this context supra p. 56 ff.

[154] www.nhri.net; cf in this context also supra p. 9.

Chapter 8: Summary and Outlook

The idea of independent ombudsmen controlling the administrative branch has undergone a development in the 20th century, tantamount to an institutional success story. The structure of the institutions differs throughout the various European legal orders. However, the comparative examination of these institutions shows that they have influenced, complemented and enriched one another in various ways. The suggested models of ombudsmen, classified according to powers – the classical model, the model based on the state governed by the rule of law, and the model centred on the protection of human rights – are only rarely found in pure form. In practice, most of the institutions are provided with different combinations of powers, showing characteristics of diverse models. Thus the conclusion can be drawn that the national-political role of ombudsmen nowadays often exceeds the "classical" idea of an informal control of administration by far.

To a large extent, the great significance of this type of organisation in Europe and the increasing variety of its legal embodiments have arisen from the exceptional position the ombudsman occupies within the constitutional structure. He almost acts independently of the classical powers of state and is authorised to exercise control on them; however, he is only assigned powers to such an extent that he is not considered as interference in the balance of powers. The foundations of his effectiveness are his independence as well as his informal course of action, which gain force through his personal authority and the involvement of the public. Based on these essentials, the institution of the ombudsman leaves room for enhancements and individual layouts of the relevant duties and powers. Most importantly, they can be designed in such a way as to enable them to compensate for gaps in the particular system of legal protection of individual citizens.[155] In the past years the institution of the ombudsman has proved to be especially capable of development in the field of human rights protection. In some of those states, where the ombudsman was installed to establish a constitutional and democratic political culture after the breakdown of a totalitarian system, his powers were strongly extended into this direction.[156]

In no country has the development of the institution of the ombudsman been completed, not even in Europe. The worldwide approach of "good governance" and "good administration" leads to an increasing differentiation of international standards for citizen-oriented administration. Art 41 of the European Charter of Fundamental Rights already provides for a fundamental right to "good administration" and defines more detailed criteria in this context; according to the Treaty of Lisbon 2007[157] (Art 6 TEU new), the Charter is to become legally binding. On the level of the Council of Europe,

---

[155] Concerning the idea of an "attorney of public law" cf already *Kelsen*, Wesen und Entwicklung der Staatsgerichtsbarkeit, VVdStRL 5, 1929, 30.

[156] Cf supra p. 1 f.

[157] Draft Treaty amending the Treaty on European Union and the Treaty establishing the European Community, CIG 1/1/07 Rev 1.

Recommendation 1615 (2003) advises the Member States to establish a fundamental right to good administration as well as a particular code of good administrative behaviour.[158] It is predictable, that in many states the legal embodiment of such standards will make new demands on the control by ombudsmen.

[158] Cf in this context already the Recommendation No. R (2000) 10 of the Committee of Ministers of member states on codes of conduct for public officials, the attachments to Recommendation No. R (80) 2 and Resolution (77) 31.

Part Two: The Different Jurisdictions

Albania

Joachim Stern

A. Constitutional Background

The 1998 Constitution declares Albania a parliamentary and unitary republic, adhering to the separation of powers (Constitution of the Republic of Albania of 22/11/1998, hereafter Const). The unicameral parliament (*Kuvend* – Assembly) consists of 140 members, elected for a term of four years. 100 members get elected directly, the other 40 members by proportional representation on party lists (Art 64f Const). The President of the Republic is the Head of State. He is elected by parliament by a majority of three-fifths, for a term of five-years. Re-election is possible once. The Government is headed by the Prime Minister who is nominated by the President upon proposal of the parliamentarian majority. The Prime Minister then designates the other members of the Council of Ministers who then have to be approved by parliament.

Laws are proposed by the Council of Ministers, by a single deputy or by 20,000 voters. A majority of three fifths is required for a significant number of laws (Art 81 (2) Const). A remarkable speciality of the legislative process is that 50,000 electors (~1/60 of the population) have the right to demand a referendum for the abrogation of a law (Art 150 Const).

The Albanian court-system consists of three levels, headed by the High Court (*Gjykata e Lartë*) which is divided in panels for criminal, civil, and administrative/commercial matters. In this regard it also acts as administrative court. Judges are independent; a High Council of Justice is instituted as their disciplinary organ (Art 147 Const).

The Constitutional Court (*Gjykata Kushtetuese*) consists of nine judges, nominated by the President with the consent of the Assembly (Art 124ff Const). Every three years one third of the bench is replaced. The Constitutional Court decides, among other issues, the compatibility of laws or of normative acts of central and local organs with the Constitution or with international agreements as well as the compatibility of international agreements with the Constitution prior to their ratification. It also decides individual complaints claiming a violation of an individual's constitutional rights, once all legal remedies have been exhausted. The President of the Republic, the Prime Minister, one fifth of the members of Parliament and the head of High State Control – the organ for economical and financial audit – can generally initiate proceedings. Other organs – such as the People's Advocate – can do so only for issues related to their interests (Art 134 Const, infra V.3.).

The Constitution contains a comprehensive charter of fundamental human rights and freedoms (Art 15–58 Const). It also obliges the Republic to protect Albanian citizens abroad (Art 8 Const).

International treaties ratified by law have priority over incompatible national laws (Art 122 (2) Const). This supremacy also concerns the ECHR which was ratified in 1996. Albania has been a member of the Council of Europe since 1995.

B. Overview of Existing Ombudsman-Institutions

Albania's national parliamentary ombudsman-institution, the *Avokati i Popullit – People's Advocate* – has comprehensive jurisdiction. On a regional or local level no comparable institutions exist.

C. Avokati i Popullit – People's Advocate

I. History and Legal Basis

The 1998 Constitution introduced the People's Advocate institution into the Albanian legal and political system. The institution's legal basis can be found in Art 60–63 of the **Constitution**, embedded in the Chapter "Fundamental Human Rights and Freedoms". Art 134 Const gives the People's Advocate the right to apply to the Constitutional Court (infra V.3.).

In 1999, the Assembly passed a **Law** specifying the constitutional provisions. Subsequently, the Law was amended twice (Law 8454-04/02/1999, ultimately amended by Law 9398-12/05/2005, hereafter OA). Parliament elected the first incumbent in February 2000. He took office in June the same year and was re-elected for a second term in office in 2005.

The Council of Europe and the OSCE supported the institution during its period of establishment. The Danish Ombudsman and the Danish Government helped with administrative concerns.[159]

II. Organisation

The People's Advocate is a **monocratically organised** institution. The incumbent has no deputies. If he deems it reasonable he can appoint a **local representative** for a specific matter and definite time. Local authorities shall then provide for the representative's necessary working requirements (Art 32 OA).

The institution is divided into three sections, covering 1) central and local administration bodies and third parties acting on their behalf, 2) police, secret services, prisons, armed forces and the judiciary and 3) cases not covered by the other sections, cooperation with NGOs and research in the field of the implementation of human rights and freedoms. Each section is headed by

---

[159] *Olsen/Knudsen/Dobjani /Møller*, Some Experiences in the Field of Assistance and Cooperation between Ombudsmen in *Gammeltoft-Hansen/Olsen (eds.)*, The Danish Ombudsman 2005 (2005), 251.

a **Commissioner**, who is elected by parliament by a simple majority upon the proposal of the Ombudsman "from among the most outstanding lawyers" for a three-year term (Art 31, 33 OA). The Commissioners' dismissal is possible under the same conditions as their appointment, their re-election is not limited. Their salary equals two-thirds of the ombudsman's salary.

The institution of the People's Advocate currently employs 45 people. In 2005 it started to hold so called *Open Days* throughout the country. The Ombudsman considers the creation of regional offices as very important. Lack of financial funding has prevented the realisation of this project to date (AR 2005, 9).

The Institution's **budget** should be planned by the institution itself and submitted directly to Parliament (Art 60 (3) Const, Art 36 OA). However, the relevant legal provisions are only considered as a proposal to the Ministry of Finances, which then has a major influence in deciding the actual funding. Donations from third parties may not include conditions that could affect the independence or impartiality of the institution and must be registered (Art 37 OA). The proper spending of the budget is subject to financial audit by the High State Control (Art 36 OA).

III. Legal Status

The People's Advocate is elected by a majority of three-fifths of all members of Parliament. The right to nominate a candidate is not specified. The candidate has to meet the following **qualification requirements**: He must be an Albanian citizen, have "outstanding knowledge of, and activities in the area of human rights, freedoms and law" and "distinguished professional skills and moral ethical qualities". He furthermore must not have any criminal convictions and he cannot be a member of the Parliament that proposes or elects him (Art 61 (2) Const, Art 3 OA).

The **term in office** is five years with the explicit right to re-election, which is not limited by law (Art 5 OA). The office is incompatible with participation in political parties or organisations, other "political, state or professional activities" as well as "participation in the steering bodies of social, economic or commercial organisations". The Ombudsman has the explicit right to teach or to be an author (Art 10 OA). He is **independent** in the exercise of his duties (Art 60 (2) Const).

The office of the People's Advocate ends with resignation, the end of his term, his death, or his removal by the Assembly (Art 7 OA). In the first two cases the Ombudsman has the right to resume public duties or positions that he occupied preceding his election (Art 11 OA). A **removal** shall be carried out if he is convicted by means of a final court decision, becomes mentally or physically incapable of performing his duties, conducts activities that are incompatible with the office, or if he is absent for more than three months. A motion for removal must be presented by at least one third of the members of the Assembly and subsequently requires the votes of three-fifths of the members (Art 62 (2) Const, Art 8 OA). A new incumbent shall be elected

within one month. Until then, as is the case if the People's Advocate is unable to perform his duties, the longest-serving Commissioner shall carry out the Ombudsman's duties (Art 9 OA).

Concerning his **income** and **immunity**, the People's Advocate enjoys the same rights as the President of the High Court (Art 61 (3) Const, Art 6 OA). Criminal prosecution is thus impossible without the consent of the Assembly (Art 137 (1) Const). His income is about 20% higher than that of a minister (Q III).

IV. Scope of Control

It is the **mission** of the People's Advocate to safeguard the rights, freedoms and lawful interests of individuals from unlawful or improper acts or omissions on the part of organs of public administration or third parties acting on their behalf (Art 2 OA). The President of the Republic and the Prime Minister are outside his **jurisdiction,** as are military orders to the Armed Forces. The Ombudsman may exercise control over the administration of the judiciary, judicial procedures as well as irrevocable court decisions. The law provides that the control in this field shall not infringe the independence of the judiciary in deciding cases (Art 25 OA).

"Rights, freedoms and lawful interests of individuals" are defined as his **criteria of control**. This means that the Ombudsman can in general apply any existing norms in the legal system as well as principles of good administration. In regard to the judiciary the criteria are limited to human rights (Art 2, Art 25 OA, infra V.2.).

Any individual, group of individuals or any non-governmental organisation claiming that his or their rights, freedoms or lawful interests have been violated has the right to complain to the People's Advocate (Art 25 OA). Foreigners, whether they are residing lawfully in Albania or not, refugees, as well as stateless persons within the territory of the Republic are explicitly encompassed by this definition of persons with the right to **initiate a control** (Art 2 OA).[160] Correspondence between the People's Advocate and people who are restricted in their personal liberty cannot be prohibited or subjected to surveillance (Art 19 (1) OA).

The Ombudsman shall not accept anonymous complaints (Art 15 OA). He shall initiate an investigation **on his own motion** "upon finding or suspecting that a right has been violated" if the particular case is "in the public domain" and "provided the interested or injured party consents". This consent is not needed in the case of a child, a person with disabilities or in order to protect the rights of a large group of individuals (Art 13 (2) OA).

---

[160] Concerning the role that the Ombudsman plays in regard to the protection of Albanians living abroad see the Brochure "Legal Acts in Support of Prisoners outside of Albania" (2002) http://www.avokatipopullit.gov.al/English/Reports/Prisoners_Support.PDF as well as a letter to the Greek Ombudsman of 22/2/2006 http://www.avokatipopullit.gov.al/English/Corr%2022022006.htm (15/10/2007).

Before conducting an investigation, the People's Advocate has to decide upon the general **admissibility** of the case. Even if a case is considered admissible, it is up to the discretion of the Ombudsman whether or not he chooses to investigate the case. Additionally, the law provides that he can refuse to look into the case if the same case has been decided upon or is being reviewed by a public prosecutor or a court (Art 14 OA). The Ombudsman can also recommend that the High State Control exercise its powers in relation to the case, instead of him proceeding with an investigation (Art 18(c) OA).

In any case, the Ombudsman shall **notify** the interested person within 30 days regarding his decision on admissibility and further proceedings. He can also reply to the concerned person indicating his rights and other remedies or himself forward the case to a competent authority (Art 17 OA).

The People's Advocate shall maintain **confidentiality** if he deems it reasonable as well as when the concerned person requests him to do so (Art 12 (2) OA).

The complaint to the People's Advocate is **not subsidiary**. However, in practice the complainants are expected to have exhausted administrative rights of appeal. The right to complain to the Ombudsman is not subject to time-limits. **No special form** is required (Art 15 OA). All services rendered by the Ombudsman are expressly **free of charge** (Art 16 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

Once the People's Advocate decides to conduct an examination he can request explanations and all files or other material relevant to the investigation even if such information is classified as state secret (Art 20 OA). He can conduct on the spot investigations of all public institutions (Art 19(a) OA). This regulation was laid down in detail in 2005: Since then, the People's Advocate or any official authorised by him is expressly entitled to have access at any time to all public institutions, prisons, pre-detention centres, military units or state institutions, psychiatric hospitals, asylums, orphanages, or any other place when there is evidence of infringement of human rights and fundamental freedoms, but also for the purposes of inspection or studies. This right can be exercised "without limitation and initial authorisation, upon notification of the head of the institution" (Art 19 (1) OA). The Ombudsman is entitled to meet and talk with any person held in those institutions without the presence of the head of the institution.

Any person that – in his judgment – is involved in the matter under investigation can be interrogated by him as well as **subpoenaed** to his office (Art 19(c) OA). The Ombudsman can also request an expert's opinion (Art 19(d) OA).

If the People's Advocate reaches the conclusion that his investigation was justified, he can make a **recommendation** to the administrative organ on how to remedy the infringement. Such a recommendation can also be addressed to the authority supervising the administrative organ. If the Om-

budsman finds that a criminal offence has been committed he can recommend to the public prosecutor to start or reinitiate investigations. If violations are serious he can also propose that the relevant authorities dismiss officials under their jurisdiction (Art 21 OA).

Authorities have to respond to recommendations within 30 days and include reasoned explanations of the relevant acts. The acts concerned are by law suspended during this time period. If the recommendation is issued to the supervisory authority, the suspension will only take place after the 30 days have elapsed without an answer. The Ombudsman has to be notified about collegial meetings that concern his recommendation and has the right to participate therein (Art 22 OA).

To protect the interests of a broad community possibly affected by an administrative process, the People's Advocate is entitled to initiate administrative proceedings and be part of the process in accordance with the requirements of the Code of Administrative Procedures (Art 13 OA, Art 45 Code of Administrative Procedures[161]).

The People's Advocate has powers related to the creation and application of general administrative regulations (*subsidiary acts*; Art 24 OA) which parallel his powers in respect to laws (infra V.3.).

V.2. Powers in Relation to the Courts

Until 2005, in relation to the courts, only the administration of justice and compliance with procedural standards were subject to the Ombudsman's control. Since then, "irrevocable decisions" have also been brought under his control. However, the law does not specify which powers the People's Advocate has in relation to such irrevocable court decisions. An amendment to the rules of procedure which is currently in planning, will give the Ombudsman the right to apply to the High Court for a review of the concerned decision, providing for similar regulations as in Poland.[162]

In relation to courts the People's Advocate's criteria of control are limited to human rights. The "investigation and the request" of the People's Advocate shall not infringe the independence of the judiciary in deciding cases (Art 25 OA).

V.3. Powers in Relation to Legislative Organs

If the People's Advocate finds that it is the content of a statute or other legal act and not its application that leads to violation of human rights recognised by the Constitution or other laws, he has the right to "**propose amendments and improvement to the statute**" to the organs vested with legislative initiative (Art 24(a) OA). The concerned organ has to react to this recommendation as it does to any other. In the case of general administrative regulations (*subsidiary norms*) a non-consideration of the recommendation within 30 days causes its suspension (Art 24(b) OA). As a sanction or instead of a

---

[161] Law 8485, 12/5/1999.

[162] Le Médiateur – No. 1/2006, 2f Publication de l'institution du Médiateur.

recommendation the Ombudsman also has the right to **apply to the Constitutional Court** demanding an invalidation of the statute or other legal act concerned. This right is subject to the condition that the norm in question is related to the People's Advocate's interests (Art 134 (1)(dh), Art 134 (2) Const). The Constitutional Court decided that in this context "interests" was open to a broad interpretation. The condition will be fulfilled if the application is related to the general mandate of the institution. Therefore, the Constitutional Court decides, upon the Ombudsman's application, if a law or general administrative act is compatible with the Constitution or international obligations. International treaties can be examined for compliance with the Constitution before their ratification (Art 134 Const, Art 24(c) OA). The People's Advocate has successfully used his right to apply to the Constitutional Court several times.

The People's Advocate has to present an **annual report** to the Assembly, no later than April the following year (Art 63 Const, Art 6 OA). The report has to be discussed in a plenary session; a copy has to be submitted to the President of the Republic and the Prime Minister. It must also be made available to the public and be published by the Assembly no later than one month after the date of its discussion (Art 28 OA). **Special reports** can be submitted in the case of repeat violations or if the respective organ does not respond to the Ombudsman's recommendations. The report shall include proposals for specific measures to remedy the violations (Art 23 OA). Special reports also have to be elaborated upon the written request of a group of members or of the Speaker of the Assembly. It is up to the latter to decide whether such a report shall be discussed in a plenary session, in a standing committee or be merely distributed to the parliamentarians (Art 27 OA).

V.4. Special Functions and Powers in the Field of Human Rights

The People's Advocate has to "take care for carrying into effect" the Law on the **right to information on official documents** (Law 8503, 30/6/1999). The law gives every person the right to request information on official documents concerning the activity of the state organs and persons exercising state functions without being obliged to explain motives (Art 18 leg cit). In the area of data protection the Ombudsman is considered the responsible authority for complaints on unauthorised handling of data by public authorities (Law 8517, 22/7/1999 on personal data protection). It could not be established whether this is connected with further powers.

The People's Advocate may assist, give opinions and make recommendations in the **drafting of reports** and other documents by the Albanian State on human rights and freedoms in the Republic of Albania (Art 29 OA).

The institution of the People's Advocate is accredited with the International Coordination Committee as NHRI according to the Paris Principles since 2003 (Status A). Its designation as NPM according to the OPCAT is in discussion.

VI. Practice

The People's Advocate's practical focus lies within the area of human rights even though his control powers are extended to all kinds of maladministration. Out of 3,329 complaints which the institution received during the course of the year 2006, 774 could be answered immediately. The examination of 2,329 out of the residuary 2,555 complaints could be brought to an end within the same year. 45.4% of all cases were refused as being beyond the Ombudsman's jurisdiction. 27% turned out to be unfounded. 22% were concluded in favor of the applicants. In 37 cases the institutions concerned did not follow the Ombudsman's recommendations.

In 2006, the institution received 624 complaints less than the preceding year – a fact that the Ombudsman considers to be due to a relocation of the Ombudsman's premises. Complaints mainly concerned the Ministry of the Interior, the Ministry of Justice, courts, as well as the public prosecution. In 2006, the People's Advocate initiated 25 investigations *ex officio*. According to the Ombudsman, prisons, children's homes, psychiatric institutions, and refugee camps are regularly controlled on his own initiative. However, a lack of control in this sensitive area was reported by the UN Anti-Torture Committee.[163]

With financial support of the *Association de la Francophonie* the People's Advocate publishes a quarterly bulletin in Albanian and French, providing information on recent cases and other activities.

With respect to the Paris Principles, the Ombudsman considers cooperation with NGOs as an important function (Art 30 OA). In this regard, they work together to examine human rights topics and conduct educative projects in order to sensitise the public.

VII. Reform

The People's Advocate's powers in relation to the courts were enlarged in 2005 in order to face the widespread corruption in the judiciary system that caused an increasing number of complaints. The envisaged possibility to apply to the High Court for a re-examination of final court decisions has not yet been realised and procedural rules have yet to be adopted (supra V.2.).

Concerning other areas of control the institution regards its powers as sufficient, but criticises its financial resources as the budget for 2006 was cut by 40% while at the same time the amount of complaints rose by 10% (AR 2005, 66f). The financial situation also prevented the People's Advocate from establishing regional offices, a process that is considered very important, especially considering the absence of the rule of law in remote areas of the country.

---

[163] UN Committee against Torture, Conclusions and Recommendations on the initial report of Albania, UN Doc. CAT/CO/34/ALB (May 2005), para 7(l), 8(l).

VIII. Information

Constitution:
http://www.parlament.al/eng/dokumenti.asp?id=1117&kujam=Constitution

Law:
http://www.avokatipopullit.gov.al/English/Legal%20Basis.htm

Annual Reports:
http://www.avokatipopullit.gov.al/English/Reports.htm

Internet:
http://www.avokatipopullit.gov.al/English/

Andorra

Joachim Stern

A. Constitutional Background

After more than 700 years of feudal rule by the President of the French Republic and the Bishop of the Spanish Diocese of Urgell as Co-princes, Andorra has attained a democratic Constitution, affirmed by referendum in 1993 (Constitution of 28/4/1993, hereafter Const). The micro-state is a constitutional principality. The two Co-princes are jointly and indivisibly Head of State. Although many powers have been shifted from the Co-princes to the Government they have, nonetheless, retained their veto right with regards to both legislation and international treaties.

The General-Council (*Consell General*) is Andorra's legislative assembly (Art 50ff Const). It consists of 28 to 45 delegates. Members of the General Council are elected every four years: half of them through the members of the seven parishes, the other half through direct general elections (Art 52 Const). However, only 20% of the population are in fact Andorran nationals and thus entitled to vote. The Head of Government (*Cap de Govern*) is elected by the General Council and then nominates the other ministers.

All acts of government are subject to judicial control which is organised through a common court structure with a High Court of Justice as the highest court (Art 72 (3), Art 85 (2) Const). There is also a Constitutional Court (*Tribunal Constitucional*), consisting of four judges, two of which are nominated by the Co-princes and two by the General Council for terms of eight years (Art 95ff Const). The Court's competences encompass the following powers: to review laws, executive regulations and the rules of procedure of the general council regarding their constitutionality; to give preliminary opinions on the constitutionality of international laws and treaties; and to decide on conflicts of jurisdiction between constitutional organs. An individual may file complaints in the event that an administrative action should violate the essential contents of the constitutional rights with the exception of the non-renewal of residence permits and the expulsion of foreigners (Art 41 Const).

The Andorran Constitution contains a comprehensive catalogue of rights and freedoms (Art 4ff Const). The Universal Declaration of Human Rights is binding in Andorra (Art 5 Const). Andorra is a member to the Council of Europe since 1994. The ECHR was ratified in 1996.

B. Overview of Existing Ombudsman-Institutions

The Citizen's Advocate (*Raonador del Ciutadà)* is Andorra's national ombudsman-institution. There are no similar bodies on other administrative levels.

C. Institució del Raonador del Ciutadà – Citizen's Advocate

I. History and Legal Basis

The institution of the *Raonador del Ciutadà* is not established by the Constitution. Its legal basis is "The Law to Create (the Position of) and (to Order) the Functions of the Citizen's Advocate" which was passed in 1998 (OJ 33, 8/7/1998, hereafter OA).

In November 1998 the General Council elected the first incumbent. The title *Raonador* is a historical expression meaning "the one who reasons for the citizen".

II. Organisation

The Citizen's Advocate is a **monocratically organised** institution. The Citizen's Advocate has **no deputies**. In the event that a matter under consideration should require a recusal, as is defined in the Administrative Code or in the Basic Law of Justice, the incumbent must not examine the case but shall instead be substituted for the purposes of that matter by a person appointed by the Council of Presidents of the Parliamentary Groups of the General Council (Art 11 (3) OA). The Council of Presidents also has the mandate of appointing an interim in case of an unexpected vacancy of the office for up to six months (Art 10 (3) OA).

The institution currently employs three people who get nominated by the General Council after consultation with the Citizen's Advocate (Art 18 (2) OA[164]). Its budget is proposed by the Advocate himself and approved by parliament without the involvement of the Government (Art 18 (1) OA).

III. Legal Status

The Citizen's Advocate is elected by the General Council with a favourable vote of two-thirds of its members. If the first voting fails, a simple majority is sufficient in the second ballot (Art 8 (1) OA). The incumbent's **term in office** is six years and non renewable. The candidate has to be a citizen of Andorra, of adult age and in full possession of his civil and political rights (Art 11 (1) OA). In contrast to these low profiled requirements for being eligible, the law broadly defines **incompatibilities** with the office: The office is incompatible with the exercise of any other public or political function, whether elected or appointed; with the exercise of any legal career or role in public prosecution; or with any other exercise of legal advice different from that of his function; with the exercise of any liberal, mercantile or working profession; with offices or functions in organisations, associations or societies, whether public or private; or with the membership of any political party, business, or trade union organisation. Moreover, when in office the Citizens' Advocate may not run as a candidate for any political office nor may he take part in the formulation of any political propaganda, whether it

[164] This paragraph is mistakenly numbered Art 18(3) in the English translation.

be local or national (Art 11 (2), (4) OA). However, before his inauguration the General Council may grant the Ombudsman its approval to continue such activities (Art 11 (6) OA).

Should such permission not be granted, the incumbent shall be **removed from his office** by the General Council (Art 11 (5) OA). This is also the case should the Citizen's Advocate be convicted of a "serious criminal offence", and if he loses his political rights (*political disqualification*) or legal capacity (*legal order for disqualification – incapacitate declarada judicialment*). If it is the General Council that initiates the removal, the same majority vote will be required as when the Advocate was elected (Art 9 (3)(b) OA). Further situations that would justify the removal from the position are the "manifest negligence or misfeasance in the exercise of his function". Should this be the case, the General Council must render a decision in absolute majority during full session, subsequent to an audience with the Citizen's Advocate (Art 9 (4) OG).

The law also refers to the Citizen's Advocate as "delegate or commissioner of the General Council" (Art 1 OA) but provides that he "undertakes his functions with objectivity and total **independence**" (Art 6 (1) OA). In the exercise of his functions he may not be prosecuted and thus enjoys **immunity** (Art 6 (2) OA). His income is stipulated by the General Council and is comparable to that of a member of parliament (Q III).

IV. Scope of Control

The **mission** of the Citizen's Advocate is "to defend and to watch over the accomplishment and application of the rights and liberties established in the Constitution" (Art 1 OA). For this purpose the Ombudsman shall monitor whether the public administration performs in a manner that conforms both "in general and fully in spirit" to the fundamental principles of these legal values and that it "serves the general interest with objectivity and is subject to the principles of hierarchy, efficiency, transparency, and full submission to the Constitution and the whole body of law" (Art 2 (1)(a), (b) OA). These standards are congruent with the constitutional guidelines for the exercise of any public power (Art 72 (3) Const) and constitute the **criteria of control**. The preamble to the law emphasises that the focus of activity shall be to ensure the efficiency of administrative action, "since all the acts and regulations of the Administration are subject to jurisdictional control by virtue of the final provisions of Article 72 (3) of the Andorran Constitution" (Para 2 Preamble OA).

The Ombudsman's **jurisdiction** encompasses the administration in general and public organisations (Art 2 (2) OA) and thus, actions of the public administrative authorities, the public private sector as well as public undertakings. The administration of justice is exempted from his control, as is the judiciary itself. In the event that a complainant should institute legal proceedings the Advocate is required to cease his activity immediately (Art 4 (2) OA).

Any natural or legal person (*physical or juridical person*) who has a legitimate interest in the matter has the **right to file a complaint**, whatever his nationality, age, condition or residential status. In the case of minors or those declared incapable, representation must be carried out on their behalf by their legal guardian (Art 13 (1) OA).

Complaints and claims cannot be anonymous and must be "written on ordinary paper". They must contain all details that are required for the purposes of the identification of the complainant, his motives, as well as a recounting of the facts and of the people involved. Any supporting documents should be annexed. Apart from that, complaints and claims are not subject to any formal requirement (Art 12 (2), (3) OA).

The Ombudsman can **reject claims** *a limine* if he believes that it has arisen out of bad faith, if the matter is outside his mandate, if there is a lack of legitimate interest, or when processing of the matter would affect the legitimate interest of a third party. The Advocate has to provide the claimant with reasons for his rejection. If the case is beyond his jurisdiction, he must indicate to which authority in his opinion the person should address himself (Art 13 OA).

The Citizens' Advocate may on his **own initiative** make reports or recommendations on questions of general or social interest (Art 5, Art 14 (5) OA).

A complaint to the Advocate is **free of charge**. It does not interrupt or alter the mandated time for recourse and is **not subsidiary** (Art 15 (1), 4 (2) OA).

The Ombudsman shall carry out his enquiry without delay, which should not take more than three months. He has to inform the complainant and the person or authority involved of the results of the investigation (Art 18 (8) OA). The complainant's name may not be revealed if he so requests or where, by its very nature, the matter could cause "prejudice to the honour or intimacy" of persons who are concerned (Art 15 (2) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Citizen's Advocate has the right to **access any administrative information** relative to any particular case, except where, by law, such information is declared secret (Art 19 (1) OA). All institutions subject to his control are obliged to cooperate with the Ombudsman "in the briefest time possible". The concerned administrative department has to answer within one month at the latest, "particular persons" must reply in writing within 10 days (Art 17 (4), (5) OA). If these obligations are not fulfilled the Ombudsman must remind the concerned organ and also inform his superiors (Art 17 (6) OA). The law does not state further powers to control.

The Citizen's Advocate may "make any **admonishment, recommendation, reminder** of legal obligations or **suggestion** for the adoption of new measures to any authority or servant of the public administrations". In all

cases, the authorities or civil servants are obliged to respond in writing within a period of one month (Art 20 (1) OG). If the administrative authority does not take adequate measures or does not inform the Citizens' Advocate of reasons why such measures have not been taken, the Citizens' Advocate may inform the highest authority in the administration involved. If even then no adequate justification is forthcoming, the Citizens' Advocate shall include the matter in his annual report or in an extraordinary report (Art 20 (2) OA). In such a case he also has the right to name the responsible persons (Art 22 (1) OG).

V.2. Powers in Relation to the Court

The Citizen's Advocate has no right to control courts. He can merely ask them for information about the status of ongoing proceedings. Complaints converning the administration of justice shall not be handled by him but shall be transmitted directly to the superior court. Details about these complaints have to be included in his annual report though (Art 3 OA). If judicial proceedings are started while a matter is under investigation by the Ombudsman he has to cease his activity immediately.

V.3. Powers in Relation to Legislative Organs

The Citizen's Advocate has no right to participate in sessions of the legislative body. However, the Parliament can require him to appear before any full session or before its permanent legislative committee to inform members of any matter within his competence (Art 21 (4) OA). The Ombudsman has no right to legislative initiative. However, he may suggest the adoption of legal reforms and propose improvements to the law concerning his institution in his annual report (Art 22 (2), (3) OA). This report has to be presented in the "first full ordinary meeting of the first parliamentary session of the year. It shall then be debated and published (Art 22 (1), (2), (5) OA). In "urgent and important cases" the Citizen's Advocate may also present an extraordinary report (Art 22 (4) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Citizen's Advocate has no special functions and powers in the field of human rights. According to the Ombudsman, the cooperation with NGOs in that field is an important element of his work.

VI. Practice

In the year 2004, the Citizen's Advocate handled 205 complaints and requests, of which 118 were remedied through informal means. The focus of his control lies with social affairs, matters of housing and transport and questions concerning judicial proceedings, even though he is not competent in regard to the latter. Prisons and children's homes are controlled *ex officio* on a regular basis according to the Citizen's Advocate.

VII. Reform

There are no current plans for reforming the institution according to the Citizen's Advocate. Proposals concerning this matter could expressly be included in the annual report (Art 22 (3) OA).

VIII. Information

Law (only a Catalan version can be found online):
http://www.raonadordelciutada.ad/memo.htm

Internet:
http://www.raonadordelciutada.ad/ang/index.htm

Annual reports are only available in Catalan.

Armenia

Brigitte Kofler

A. Constitutional Background

The current Constitution of the Republic of Armenia entered into force in 1995. According to Art 1 the Republic of Armenia is a sovereign, democratic and social state governed by the rule of law. The territory is divided in the administrative territorial units of provinces and districts (Art 140) with local self-government in the districts (Art 105).

The National Assembly consists of 131 deputies who are elected in general and direct elections for a term of five years (Art 3 and 63). The Head of State, the President of the Republic, is also directly elected by the people for five years (Art 49). However, in 2003 the *OSCE Office for Democratic Institutions and Human Rights* conducted an Election Observation Mission of Presidential Elections and concluded that these did not meet international standards.[165]

There are 17 Courts of First Instance, two Courts of Appeal and one Court of Cassation as the highest court of appeal in civil, economic, criminal and military cases.[166] At present, the ordinary courts are also competent to review decisions of administrative organs, but a special administrative court will be set up in the near future.

Further, there is a Constitutional Court which decides on the constitutionality of laws and other legal acts and, prior to the ratification of an international treaty, may determine the compliance of the commitments stipulated therein with the Constitution (Art 100). Individuals may apply to the Constitutional Court when a final judicial act has been adopted in a specific case and the constitutionality of a provision applied by this act is being challenged.

Chapter 2 of the Constitution contains a list of fundamental rights under the title Fundamental Human and Civil Rights and Freedoms. Armenia is a member of the Council of Europe since January 2001 and acceded to the European Convention on Human Rights on 26 April 2002.

---

[165] *OSCE Office for Democratic Institutions and Human Rights*, Report on Presidential Elections in the Republic of Armenia, 19 February and 5 March 2003, http://www.osce.org/documents/odihr/2003/04/1203_en.pdf (31.10.2007).

[166] *American Bar Association*, Judicial Reform Index for Armenia (2004), http://www.abanet.org/ceeli/publications/jri/jri_armenia_2005_eng.pdf (31.10.2007).

B. Overview of Existing Ombudsman-Institutions

The *Human Rights Defender of the Republic of Armenia* is a **national, parliamentary ombudsman-institution**. No similar institutions on the regional or local level exist. There are plans to establish regional offices of the Human Rights Defender in the cities of Vanazor, Gyumri and Goris (Q III).

C. ՀՀ Մարդու իրավունքների պաշտպան – Human Rights Defender of the Republic of Armenia

I. History and Legal Basis

The Constitution stipulates that every individual is entitled to the protection of personal rights and freedoms from the Human Rights Defender (Art 38). Further provisions concerning the institution are laid down in the *Law of the Human Rights Defender of the Republic of Armenia* (enacted 21 October 2003 as of 1 June 2006; the 'OA'). The first incumbent was appointed on 19 February 2004 by the President and not by Parliament as the law stipulates. However, this appointee was recalled in January 2006 and Parliament elected a new incumbent. Art 7 (2) OA, which stated that the Public Defender is entitled to request information from the courts concerning court proceedings and may also give recommendations and commentaries to the courts with respect to fair trial was declared to be unconstitutional by the Constitutional Court in 2005 (Q II).

II. Organisation

The Ombudsman is a **monocratic** body with no deputies (Art 22 OA was repealed in 2006). Currently the Ombudsman's office has a staff of 36. To benefit from advisory assistance, the Ombudsman may establish an Expert Council composed of not more than 20 individuals with a background in human rights (Art 26 OA).

The office is financed from the state budget, the Ombudsman's **budget** being a separate line item (Art 24 OA).

III. Legal Status

The Ombudsman is **elected** by the National Assembly by a three-fifths majority from candidates **nominated** by at least one-fifth of the deputies (Art 3 (2) OA). Candidates must be citizens of the Republic of Armenia who are at least 25 years old and enjoy a high reputation in society (Art 3 (1) OA).

The Ombudsman is **independent** in executing the powers (Art 5 (1) OA) and enjoys **immunity** from criminal prosecution for actions taken in the capacity as Ombudsman (Art 19 (1) OA). The Ombudsman may either be detained or arrested only with the consent of the National Assembly (Art 19 (2) OA). The Ombudsman and family members are under the protection of the state which means that the competent state agencies are to take necessary measures to ensure their security (Art 21 OA).

The office is **incompatible** with any state or other office or work for compensation excepting scientific, educational or creative activities (Art 14 (1) OA). In addition, the Ombudsman may neither be a member of any political party nor be nominated for elections or participate in pre-election campaigns (Art 14 (2) OA).

The **term of office** is six years. The same person may not be elected for more than two consecutive terms (Art 3 (3) OA). The **salary** of the Ombudsman is equal to the salary of the Chairman of the Constitutional Court (Art 20 (1) OA).

The Ombudsman is subject to **early dismissal** only on a conviction, lose of citizenship, resignation, death or a declaration of incapacity, missing or deceased by an effective decision of the Court. The President of National Assembly is to inform the deputies about the early termination of Ombudsman's powers (Art 6 (2) OA).

IV. Scope of Control

Subject to the Ombudsman's control are the state and local self-governing bodies and their officials (Art 2 OA). The Ombudsman may not intervene with the judicial processes (Art 7 (1) OA).

The **control criteria** are human rights and fundamental freedoms provided by the Constitution, the laws and international treaties of the Republic of Armenia as well the principles and norms of international law (Art 2 and 7 (1) OA). Hence, the protection of human rights is the main task of the Armenian Ombudsman.

The Ombudsman may **initiate** proceedings upon a complaint or on the Ombudsman's initiative; the latter especially when there is information on mass violations of human rights and freedoms, these violations have exceptional public significance or are connected with the necessity to protect the rights of such persons who are unable to use their legal remedies (Art 11 (4) OA).

Any individual, including legal entities, may appeal to the Ombudsman (Art 8 OA). In principle, every complaint is to be considered, but may be rejected under certain circumstances, for example, if they are anonymous (*v* Art 10 (1) and (2) OA). Upon consent of the complainant the Ombudsman may assign the complaint to an official for consideration when the issue may be settled by another state agency and there was no prior discussion of the case by such official (Art 10 (3) OA).

The complaint may be submitted either in writing or orally within one year (Art 9 (1) and (3) OA). Complaints and other documents sent to the Ombudsman by persons under arrest, in preliminary detention or serving their sentence in penitentiaries as well as persons in other places of coercive detention may not be subject to inspection or censorship and are to be directed to the Defender within 24 hours by the administrative staff of those institutions (Art 9 (4) OA).

No state duty may be levied on complaints directed to the Ombudsman (Art 9 (6) OA). If the Ombudsman decides not to accept a complaint, the applicant is to be presented other possibilities of the protection of rights or the complaint is to be assigned to competent state or local self-governing bodies (Art 11 (3) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman has unrestricted access to any state institution or organisation, including military units, prisons, preliminary detention facilities and penitentiaries (Art 12 (1) OA), and may demand information and documentation related to the complaint from any body subject to the Ombudsman's control (Art 12 (2) and (3) OA). Materials, documents or information demanded are to be delivered as soon as possible, but no later than within 30 days of the demand (Art 12 (4) OA).

Any individual attempting to influence or hinder, threatening or offending the Ombudsman, or failing to submit the required information incurs liability for similar violations against a court or a judge (Art 18 OA).

Based on the findings, the Ombudsman may propose to the authority concerned the elimination of the committed violations and an indication of possible necessary measures (Art 15 OA). The authority is to inform the Ombudsman about the measures taken within 20 days. This deadline may be extended upon the consent of the Ombudsman (Art 15 (3) OA).

The Ombudsman may publish information in the mass media about any authority or official failing to respond to or comply with the suggestions (Art 15 (6) OA). If the authority or officials concerned do not invalidate the respective legal act which violates human rights and fundamental freedoms or contravenes the law and other statutes, the Ombudsman is entitled to bring an action before a court on invalidating the respective act (Art 15 (1)4 OA).

Furthermore, the Ombudsman may recommend that the authorised state agencies execute **disciplinary or administrative penalties** or **file criminal charges** against the official (Art 15 (1)5 OA).

The Ombudsman has the right to attend and speak at Cabinet meetings as well as at meetings in other state agencies when issues related to human rights and fundamental freedoms are discussed and may also propose issues for discussion (Art 7 (3) OA).

V.2. Powers in Relation to the Courts

The Ombudsman may ask for information from the courts. Since the Constitutional Court's ruling on Art 7 (2) OA (*v* I.) the Ombudsman can no longer address recommendations to the courts, however, may provide advice to individuals who wish to appeal the decisions and judgments of the court (Art 7 (1) OA).

V.3. Powers in Relation to Legislative Organs

The Constitution lays down the right of the Ombudsman to appeal to the Constitutional Court on the question of the compliance of the laws, resolutions of the National Assembly, decrees and orders of the President as well as decisions of the Prime Minister and local self-government bodies to the human rights and freedoms stipulated in Chapter 2 of the Constitution.

Furthermore, the Ombudsman may attend and address the sessions of the National Assembly when issues relating to human rights and fundamental freedoms are discussed (Art 7 (4) OA).

During the first quarter of each year, the Ombudsman is to submit a report on activities of the office and on the human rights situation to the President and the representatives of legislative, executive and judicial authorities. The report is to be presented to the National Assembly. The Ombudsman also presents the report to the mass media and relevant NGOs (Art 17 (1) OA). In cases that produce widespread public response, or in cases of flagrant violations of human rights or mass occurrence of non-elimination of the violations, the Ombudsman may also issue **unscheduled public reports** (Art 17 (2) OA). One such special report has been published concerning widespread expropriations of land under the disguise of a public interest.

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is the main task of the Armenian Ombudsman. Based on the results of the review and analysis of information on human rights and freedoms, the Ombudsman may provide **advisory clarifications and recommendations** to the bodies and officials subject to the control of the Ombudsman (Art 16 OA).

The Ombudsman-Institution complies with the UN Paris Principles on National Human Rights Institutions and has been assigned accreditation status A by the Accreditation Committee.

VI. Practice

In 2005 the Ombudsman received 1,551 complaints and took 34% into more detailed consideration. Most complaints concerned the activities of the police (191), social security authorities (179) and courts (166). Prisons are continuingly monitored on the **initiative of the Ombudsman**. As long as no regional offices are established, the Ombudsman regularly visits the different regions to stay in contact with officials and hold **consultation days** for the public (Q III).

VII. Reform

The Ombudsman desires to establish regional offices. However, at the moment, this is impossible due to a lack of financial resources (*v* Annual Report 2005). In December 2006 the Council of Europe and the European Commission started a Joint Project, *Ukraine and South Caucasus States* – Fostering *a*

Culture of Human Rights. With respect to Armenia this programme, inter alia, aims at strengthening the role of the Armenian Ombudsman in the course of complaint handling and in the human rights debate.[167]

VIII. Information

Constitution:
Constitution of the Republic of Armenia,
http://www.parliament.am/parliament.php?id=constitution&lang=eng
(31.10.2007)

Ombudsman Act:
Law on the human Rights Defender,
http://www.ombuds.am/main/en/11/21 (31.10.2007)

Annual Report:
Annual Report 2005, http://www.ombuds.am/main/en/10/31/173
(31.10.2007)

Council of Europe:
European Commission for Democracy through Law (Venice Commission), Ombudsman in the Republic of Armenia, Comments by Maria de Jesus Serra Lopes, CDL (2001) 26,
http://www.venice.coe.int/docs/2001/CDL(2001)026-e.asp (31.10.2007)

[167] Homepage Joint Programmes of the Council of Europe and the European Commission, http://www.jp.coe.int/CEAD/JP/Default.asp?ProgrammeID=75 (27.10.2007).

Austria

Brigitte Kofler

A. Constitutional Background

The current Constitution of Austria (Law Gazette No. 1/1930 as of Law Gazette No. BGBl I 99/2002) states in its Art 1 that Austria is a Democratic Republic. Austria is a federal state which is composed of nine federal provinces (*Bundesländer,* Art 2). The Constitution divides the state competences between the federal state and the *Bundesländer*. The most important powers lie with the federal state, however, issues that are not mentioned fall within the competence of the *Bundesländer* (*v* Art 10–14 Const).

The legislative power of the Federation is exercised by the National Council, the *Nationalrat*, jointly with the Federal Council, the *Bundesrat* (Art 24). The National Council is elected by the people in accordance with the principles of proportional representation for a term of four years (Art 26 (1) 27 (1)). The *Bundesländer* are represented in the Federal Council in proportion to the number of nationals in each *Bundesland* (Art 34). The Head of State is the Federal President who is directly elected by the people for a term of six years (Art 60 (1) and (5)). The Federal Chancellor, the Vice-Chancellor and the other Federal Ministers constitute the Federal Government (Art 69 (1)).

Austria has three Supreme Courts, the Supreme Court of Justice, the Constitutional Court and the Administrative Court. The Constitutional Court which was established in 1920 is competent to pronounce whether ordinances are contrary to law (Art 139) and whether laws are unconstitutional (Art 140 (1)). Furthermore it decides on conflicts of competence (Art 138, 126a, 148f) and about rulings by administrative organs if the appellant alleges an infringement of a constitutionally guaranteed right or the infringement of personal rights on the basis of an illegal ordinance, an unlawful promulgation regarding the re-notification of an act or a treaty, an unconstitutional law, or an illegal treaty (Art 144 (1)). Since 1876 also an Administrative Court exists which most importantly decides about the alleged illegality of the ruling of an administrative authority (Art 131).

The Constitution itself does not contain a list of human rights. Moreover, fundamental rights are laid down in various laws which have the status of constitutional laws. The most important documents are the *Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger* (RGBl 1867/142) and the European Convention on Human Rights and its additional Protocols, which in Austria have the status of constitutional laws. Austria has been a member of the Council of Europe since 1956.

B. Overview of Existing Ombudsman-Institutions

The **national, parliamentary ombudsman-institution** is the Austrian Ombudsman Board, the *Österreichische Volksanwaltschaft* whose duty to examine possible instances of maladministration within the executive branch is enshrined in Art 148a (2). Pursuant to Art 148i the *Bundesländer* may pass legislation to declare the national Austrian Ombudsman Board competent to monitor administration within their respective *Bundesland*. This has happened in all *Bundesländer* except for Tyrol and Vorarlberg. There, separate regional Ombudsmen were appointed for the *Bundesländer*-administration. There are no comparable ombudsman-institutions on the local level.

C. Volksanwaltschaft – Austrian Ombudsman Board

I. History and Legal Basis

In 1970 the Austrian Federal Government for the first time announced its intentions to introduce the institution of a "Public Law Attorney" as a further development of the right to petition. The first legislative proposal of 1972 was rejected by the competent special parliamentary committee in 1975. Based on a new draft on 1 July 1977 the Federal Law on the Ombudsman Board, the *Bundesgesetz über die Volksanwaltschaft*, entered into force (Act of 24 February 1977, Law Gazette No. 122/1977). At first the board was only established on a provisional basis but soon its success was recognised and provisions concerning the institution were included into the Constitution. By way of a recent constitutional amendment (Law Gazette I No. 2/2008) the Ombudsman Board gained the right to file a *Fristsetzungsantrag* in case of a court's default with procedural measures. A *Fristsetzungsantrag* is a proposal to a superior court to set a deadline for the court which is in default.

Further provisions concerning the institution are laid down in the Law on the Ombudsman Board, the *Volkanwaltschaftsgesetz 1982* (Law Gazette No. 433/1982 as of Law Gazette No I 158/1998; hereinafter OA). Furthermore the Board has its own rules of procedure, the Rules of Procedure (*Geschäftsordnung,* Law Gazette II No. 254/2001) and an assignment of business *(Geschäftsverteilung,* Law Gazette II No. 255/2001), which regulates the division of powers between the board members (Art 148h (3)).

II. Organisation

The Austrian Ombudsman Board has three members. Its chairmanship rotates annually between the members in the sequence of the voting strength of the parties which have nominated them (Art 148g (3)). There is no Deputy Ombudsman. According to the *Geschäftsverteilung* certain tasks and competencies are assigned to a certain member of the Board. All other matters must be decided upon by the Board as a whole (§ 1 (2)2 Rules of Procedure). Currently 54 staff work for the institution. The **budget** of the Ombudsman is to be approved by Parliament.

III. Legal Status

The members of the Ombudsman Board are elected by the National Council on the basis of a joint recommendation drawn up by the Main Committee in the presence of at least half its members. Each of the three parties with the largest number of votes in the National Council is entitled to nominate one member for this recommendation (Art 148g (2)). Members of the Ombudsman Board may only participate in the parliamentary debates when the Board's report or its budget is discussed. In such cases they also have a right to be heard (Art 148d).

There are **no special qualification requirements** but the office is incompatible with any government office or membership in any popular representative body and any other profession (Art 148g (5)).

The **term of office** is six years. The members may be re-elected once (Art 148g). The **salary** of the members of the Ombudsman Boards is 160% of the salary of a deputy to the National Council (§ 3 *Bundesbezügegesetz* Law Gazette I No. 64/1997 as of Law Gazette I No. 119/2001).

The Ombudsman Board is **independent** in the exercise of its authority (*v* Art 148a (4)). However, the members of the Board do not enjoy **immunity**.

The members of the Board **may not be dismissed**.

IV. Scope of Control

The Ombudsman Board's **control** extends to administrative activities of the *Bund* and the *Bundesländer* (with the exception of Tyrol and Vorarlberg) including their activities as a holder of private rights. Third parties with public authority are only subject to its control if stipulated in the respective acts (Art 148a (2); § 60 (2) *Arbeitsmarkservicegesetz*, Law Gazette No. 313/1994; § 19 (6) *Gesundheits- und Ernährungssicherheitsgesetz*, Law Gazette I No. 63/2002 as of Law Gazette I No. 83/2004). The monitoring of the judiciary is confined to the administration of the judiciary and cases where courts are in default to take procedural measures (Art 148a (3) cf V.2.).

The **control criteria** are the laws and the principles of good administration (Art 148a (1)). The term "maladministration" is interpreted in the way that it comprises contraventions of laws as well as irregularities in the administrative practice.

Everyone affected by an instance of maladministration can lodge a complaint with the Ombudsman Board; its members are also entitled to act *ex-officio* (Art 148a (1) and (2)). All complaints must be investigated by the Board (Art 148a (1)). There are neither special formal requirements nor deadlines for a complaint.

A complaint may only be lodged if the complainant does not have recourse to a legal remedy (Art 148a (1)). All legal remedies which could remedy the issue must be exhausted or no longer available. Naturally, cases of delay on the part of the authority are exempt from this rule.

Submissions to the Ombudsman Board and all other documents issued for use in proceedings before the Ombudsman Board are exempt from stamp duty (§ 9 OA). The complainant is to be informed of the investigation's outcome and of the action which has been taken (Art 148a (1)).

V. Powers

V.1. Powers in Relation to Administrative Organs

All authorities are to support the Ombudsman Board in the performance of its tasks, allow the inspection of their records and upon demand furnish the required information. Official secrecy may not be invoked vis à vis members of the Board. The members of the Board are to observe official secrecy to the same extent as the authority who it has approached in the fulfilment of its tasks (Art 148b). It is also possible to make *in-situ* inspections (Art 5 OA, § 54 AVG – *Allgemeines Verwaltungsverfahrensgesetz*). The authorities' duty to co-operate may as such not be enforced. Yet, non-compliance with this duty may lead to the criminal liability of an official.

If an investigation leads to the result that an act of maladministration has been committed, the Ombudsman Board may issue a formal **statement of grievance** (*Misstandsfeststellung*). The Board may also issue to the (federal) authorities entrusted with supreme administrative business **recommendations** on measures to be taken in or by reason of (*aus Anlass*) a particular case (Art 148c). Within a determined deadline the authority concerned may either implement the recommendations or state in writing why the recommendations have not been complied with (Art 148c; § 6 OA). Recommendations may be published if the duty of secrecy is maintained. In practice, such recommendations are rarely issued for, in most cases the competent member of the Board states that a complaint has been warranted (*Berechtigung zuerkannt*) and as a consequence suggestions (*Anregungen*) are directed to the authority concerned.

Further, the Ombudsman Board may file charges against officials or inform the competent disciplinary authority of relevant conduct of certain officials (Q I).

V.2. Powers in Relation to the Courts

As far as the administration of the judiciary is concerned the Ombudsman has the same powers as in relation to administrative organs. Further, individuals may file a complaint with the Ombudsman if a court is in default with procedural actions. In such cases the Ombudsman Board may take action *ex officio* (Art 148a (3) and (2)). The members of the Board are then entitled to file a *Fristsetzungsantrag* (cf I) or to request measures of the court's supervisory body (Art 148c).

V.3. Powers in Relation to Legislative Organs

The members of the Board are entitled to participate in debates concerning their reports and debates concerning their budget in Parliament and in the Parliamentary Committees and are to be heard upon their request (Art 148d).

Upon application by the Ombudsman Board the Constitutional Court pronounces on the illegality of ordinances issued by a federal authority (Art 148e). When differences of opinion arise between the Ombudsman Board and the Federal Government or a Federal Minister on the interpretation of provisions concerning the Ombudsman Board's control, the Constitutional Court may decide on the matter.

Every year the Ombudsman Board is to render a **report** on its activity to the National Council (Art 148d). Parliament is obligated to discuss the report. The report is divided in standardised chapters which include since 2003 also a Chapter on Fundamental Rights and since 2005 a Chapter on Non-discrimination (Annual Report 2005). The Ombudsman Act does not mention the possibility to render special reports. The Ombudsman Board has to date issued a special report once, but it was rejected by Parliament.

There is also cooperation between Parliament and the Ombudsman Board in dealing with petitions and initiatives of citizens lodged with the National Council (Art 148a (3)).

In its annual report the members may address legislative proposals to the National Council (*v* Resolution of the National Councils 54, XVII. GP).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is not mentioned as an explicit task of the Ombudsman Board but does play an important role in the institution's activity since an act of maladministration can also result from a violation of human rights. Since 2003 the annual report contains a chapter on fundamental rights which mentions inter alia instances of long duration of proceedings and issues of discrimination (Annual Report 2005, 307).

VI. Practice

In 2005 the Ombudsman Board received 16,133 complaints. In 5,337 cases the Board was not competent to start an investigation since the complaints did not concern issues of the administration. In 6,569 cases an investigation procedure was initiated. The remaining 4,227 complaints concerned issues where legal proceedings were still ongoing or legal remedies were still available to the complainant (*v* Art 148a). Further, 68 investigations were started *ex officio* (Annual Report 2005, 17). A great number of complaints concerned activities of the Federal Ministry of Justice (883 complaints) and the Federal Ministry for Social Security, Generations and Consumer Protection (759 complaints; *v* Annual Report 2005, 18). There is no permanent monitoring of certain institutions.

All in all, 7891 cases could be closed in 2005, but only 845 were qualified as warranted. Sixteen cases lead to a "statement of grievance" and in 10 instances a formal recommendation was issued. Furthermore, one regulation was challenged at the Constitutional Court (Annual Report 2005, 21). There is a weekly television production about the Ombudsman Board (*Volksanwalt – gleiches Recht für alle*) in which the Board members alternately present cases falling in their remit. Since this show was re-introduced in 2002 the number of complaints received at the Ombudsman Board has risen significantly.

VII. Reform

The Annual Report 2001 contained a Chapter on the "Advancement of the Ombudsman Board" dealing with a number of requests for the future development of the institution. The proposals included the power to investigate the activity of all privatised entities (*ausgegliederte Rechtsträger*), the power to challenge laws at the Constitutional Court as well as a legal definition of deadlines for authorities to answer requests of the Ombudsman. The wish for a closer co-operation with Parliament was included.

The current government programme envisages a transfer of the existing Advisory Council on Human Rights (*Menschenrechtsbeirat*) to the organisational structure of the Ombudsman Board. Additionally, there are plans to establish a preventive body complying with the requirements of OPCAT. In Tyrol and Vorarlberg, where regional Ombudsmen exist the regional Ombudsman is to gain the respective new competences. There are also plans to amend the Ombudsman Act and introduce provisions for a dismissal of members of the Board with a two-third majority. Furthermore, the office is to become incompatible with being a candidate for public elections.[168]

VIII. Information

Constitution:
Bundesverfassungsgesetz, www.ris.gv.at (31.10.2007)

Ombudsman Act:
Volksanwaltschaftsgesetz 1982,
http://www.volksanwaltschaft.gv.at/i_volksanw.htm (31.10.2007)

Annual Report:
www.volksanwalt.gv.at

[168] Programme of Government 2007–2010,
http://www.bundeskanzleramt.at/DocView.axd?CobId=19542, 25.

D. Landesvolksanwalt von Vorarlberg

I. History and Legal Basis

The institution of the *Landesvolksanwalt von Vorarlberg* has its constitutional basis on the federal level in Art 148i and on the *Bundesländer*-level in Art 59 to 61 *Vorarlberger Landesverfassung* (LGBl 9/1999, hereinafter Vb LConst). These provisions are concretised in the Ombudsman Act, *Gesetz über den Landesvolksanwalt* (LGBl 29/1985 as amended LGBl 58/2001, hereinafter Vb OA). The *Landesvolksanwalt* is a regional institution whose control extends to regional authorities in Vorarlberg. The first incumbent was elected on 30 October 1985.

II. Specific Features

The Ombudsman of Vorarlberg is a **monocratic** body. A deputy may only be appointed if the Ombudsman is unable to exercise the duties for more than a month (Art 61 (2) Vb LConst). Currently three persons are employed at the Ombudsman's office.

The Ombudsman is elected by the Parliament of Vorarlberg, the *Landtag*, with a three-quarter majority of the votes cast (Art 62 (1) Vb LConst). The factions in Parliament may propose candidates. The Ombudsman is to render an annual report to the Landtag (Art 59 (6) Vb LConst) and in addition to give information about the activity to the Parliamentary Committee on the Ombudsman (*Volksanwaltsausschuss*) every four months (§ 6 (2) Vb OA). The report does not contain a chapter on human rights but the Ombudsman regards the protection of human rights as an especially important part of the task. The annual report is published and discussed in Parliament. At the same time it is to be forwarded to the regional Government, the *Landesregierung* (§ 6 (1) Vb OA).

The **control** of the Ombudsman extends to the administration of the Land Vorarlberg (*Verwaltung des Landes*; § 2 (1) Vb OA). This comprises all administrative activities of the region including private activities of the *Bundesland* Vorarlberg (§ 2 (5) Vb OA). There are no exceptions from the right to monitor in this field. Since there is no court system in the regions, the courts are not subject to being monitored by the Ombudsman's.

The Ombudsman is to forward complaints which do not fall within the control to the competent bodies (Art 59 (5) Vb LConst). The complainant is to be informed about the results of the investigation as well as about measures taken (Art 59 (3) Vb LConst; § 3 (3) Vb OA).

Except for the formal power to give a "statement of grievance" the Ombudsman of Vorarlberg has the same powers as the member of the federal Ombudsman Board, hence, may issue recommendations and appeal to the Constitutional Court in comparable cases and like the Federal Ombudsman Board, also does not have any coercive competences.

The **focus** of the monitoring lies with issues of building law (204 inquiries and complaints in 2004) and zoning law (117 inquiries and complaints in 2004) as well as issues concerning social aid (57 inquiries and complaints in

2004; Annual Report 2004, 16). In the opinion of the Ombudsman it is problematic that the recommendations cannot be enforced in any way since at the moment the Ombudsman only has the possibility to persuade the authorities through arguments and by public relations. The Ombudsman has proposed an extension of control.

III. Information

Annual Report:
Annual Reports 1996–2005,
http://www.landesvolksanwalt.at/information/tatigkeitsberichte
(31.10.2007)

E. Landesvolksanwalt von Tirol

I. History and Legal Basis

The Ombudsman of Tyrol has its constitutional basis in Art 148i Federal Constitution and in Art 59 Constitution of the Land of Tyrol, the *Tiroler Landesordnung 1989* (Regional Law Gazette No. 61/1988; hereinafter Tir LO). While the Ombudsman of Vorarlberg is very similar to the Austrian Ombudsman Board, there are considerable differences between these institutions. The institution was legally established by the Constitution of the Land of Tirol of 1989. On 24 May 1989 the first incumbent was elected by the regional Parliament.

II. Specific Features

The Ombudsman is a **monocratic** body. Deputies are not appointed. Currently, a staff of seven are employed at the Ombudsman's office. The Ombudsman is appointed by the regional Parliament of Tirol, the *Landtag* (Art 59 (5) Tir LO). The candidate is to be personally and professionally qualified for the office of an Ombudsman (Art 59 (5) Tir LO) and may be dismissed upon request of the President of Parliament in the event that the Ombudsman is no longer personally or professionally able to be an ombudsman or contravenes the provisions on incompatibilities (§ 59 (6) Tir LO). The Ombudsman may participate in parliamentary debates and is to present an annual report which is published and considered by the Parliament. The report does not include a separate chapter on human rights.

The control of the Ombudsman extends to all issues of the regional administration, the federal administration within the region and administrative activities by private entities (*Auftragsverwaltung*) in the *Bundesland* Tirol (Art 59 (2) Tir LO). The Ombudsman cannot act *ex officio*, but may only start investigations upon a complaint. The Ombudsman is to examine every complaint and either informs the complainant directly or attempts to reach an amicable solution with the competent authority. In such cases the Ombudsman is to inform the complainant about the outcome of the investiga-

tion (Art 59 (2) Tir LO). It is not necessary to exhaust all legal remedies before filing a complaint with the Ombudsman (Q I).

Ex ante the Ombudsman may intervene in pending administrative proceedings for information purposes (Art 59 (2) Tir LO). The monitoring focus concerns social law (1,527 complaints in 2005), building law and regional planning (654 complaints in 2005) as well as issues of handicapped people (536 complaints in 2005; Annual Report 2005, 15). Altogether 5,469 people addressed the Ombudsman in 2005 with their questions and complaints (Annual Report 2005, 10). According to the Ombudsman the most mentioned problem concerns delayed answers of the respective authorities. In general, the Ombudsman would prefer its own Ombudsman Act and, further the possibility to challenge regional laws at the Constitutional Court, as the Ombudsman of Vorarlberg may do.

III. Information

Annual Report:
Annual Reports 2004–2006,
http://www.tirol.gv.at/landtag/landesvolksanwalt/

Azerbaijan

Brigitte Kofler

A. Constitutional Background

The present Constitution of Azerbaijan entered into force on 27 November 1995. Art 7 defines Azerbaijan as a democratic, secular, unitary Republic. The exclave of Nakchicevan has the status of an Autonomous Republic of Azerbaijan. Local self-government is exercised by municipalities (Art 142).

Parliament, the *Milli Majlis*, consists of 125 Deputies (Art 81 to 83). Like members of Parliament, the Head of State, the President of the Republic, is directly elected by the people for the term of five years (Art 101).

Judicial power is executed by the Constitutional Court, the Supreme Court, courts of appeal as well as general and specialised courts in first instance (Art 125 (2)). The Supreme Court is the highest judicial body for civil, criminal, administrative and other cases in reference to the activity of general courts (Art 131 (1)). The Constitutional Court *inter alia* makes decisions in regard to the constitutionality of laws and other acts and the settlement of competency disputes among legislative, executive and judicial powers (Art 130 (3)). Furthermore it may provide interpretations of the Constitution and laws on request of the President, the Parliament, the Cabinet of Ministers, the Supreme Court, the Procurator's Office or the Parliament of the Autonomous Republic of Nakhichevan (Art 130 (4)). Any person alleging the violation of rights and freedoms by a state authority may submit a complaint to the Constitutional Court (Art 130 (5)).

Chapter 2 contains a list of fundamental human rights. Azerbaijan has been member of the Council of Europe since 25 January 2001 and ratified the European Convention on Human Rights on 15 April 2002.

B. Overview of Existing Ombudsman-Institutions

In Azerbaijan, the **National Parliamentary Ombudsman-Institution**, headed by the Commissioner for Human Rights, *Azərbaycan Respublikasının İnsan Hüquqları üzrə Müvəkkili* has been established. Regional centres of the national ombudsman exist in Quba, Sheki, Jalilabad and Ganja (Q III).

C. Azərbaycan Respublikasının İnsan Hüquqları üzrə Müvəkkili – Commissioner for Human Rights

I. History and Legal Basis

The position of a Commissioner for Human Rights was legally introduced by the **Constitutional Act** on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan (Act of 28 December 2001; hereinafter OA). The first incumbent was elected on 2 July 2002 and took up the office on 28 October 2002.

II. Organisation

The Ombudsman is a **monocratic** body. There are **no deputies**. At present, 57 staff are employed in the office (Summary Annual Report, 1).

III. Legal Status

The Ombudsman is **elected** by Parliament with a majority of 83 votes out of three candidates, nominated by the President. Besides the citizenship of Azerbaijan, the **qualification requirements** include a high moral standard, an age not less than 30 years, higher education level and experience in the field of human rights protection (Art 3 (1) OA). A citizen with dual citizenship or obligations towards other states may not be appointed Ombudsman, the same applies for citizens convicted of a serious crime (Art 3 (2) OA).

The Ombudsman is **independent** (Art 5 OA) and **inviolable** while in office, and, in particular, is not subject to criminal or administrative proceedings (Art 6 OA).

The post is **incompatible** with any political activity and political party membership. The Ombudsman must not hold any leading position in a non-governmental organisation (Art 3 (2) and (3) OA) nor work for any legislative, executive or judicial body or be engaged in any business activity excepting research, teaching and creative purposes (Art 3 (2) OA).

The Ombudsman's **term of office** is seven years (Art 4 (1) OA). The same person may hold the post only once (Art 4 (2) OA). He receives a **salary** equal to that of the First Vice-Chairman of Parliament (Art 16 (1) OA).

He may be **dismissed** early by decision of parliament on the basis of a 83 votes majority on contravention of incompatibility provisions or in case of complete incapacity to perform the duties (Art 7 (1) OA). In addition, the Chairperson of Parliament is to declare the termination of the office per decree in case of death, conviction or written request for resignation (Art 7 (3) OA).

IV. Scope of Control

The Ombudsman's control extends to all governmental and municipal bodies and officials of Azerbaijan (Art 1 (1) OA). However, activities of the President of the Republic, deputies of Parliament and judges are explicitly ex-

empted (Art 1 (3) OA). Regarding court complaints, red tape, loss or delayed delivery of documents as well as delays in the execution of court judgments may be examined.

The **control criteria** are human rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is a party (Art 1 (1) OA).

A complaint may be lodged by a natural person or legal entity as well as a third person or nongovernmental organisation with consent of the person whose human have allegedly been violated (Art 8 (1) and (2) OA). The Ombudsman is not entitled to start an investigation on the initiative of the office. Complaints may be lodged either in writing or orally and within a period of one year from the date, the alleged violation of rights of the applicant occurred or became apparent (Art 8 (4)). Complaints addressed by persons held in penitentiary institutions or detention centres are to be delivered to the Ombudsman within 24 hours without being subjected to any kind of censorship (Art 8 (5) OA). Filing a complaint is **free of charge**.

In principle, every complaint is to be investigated within 30 days (*v* Art 12 (5) OA). The Ombudsman does not have to investigate, if the complaint deadline has elapsed, the complaint does not fall within the competency or is anonymous, is already under scrutinity within court proceedings. A re-submitted petition may be dismissed in case it does not contain any new information, facts and evidence (Art 11 OA). To effect an investigation, the Ombudsman may request information from the body or official complained of within ten days (Art 12 (1) OA). Within a period of five days, the Ombudsman's office is to inform the claimants of the measures taken in respect to the complaint and investigation results (Art 13 (1) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

During an **investigation** the Ombudsman has access to state bodies, military units, penitentiary institutions, detention centres and may meet and interview in private, persons held in penitentiary institutions and detention centres. Furthermore, the Ombudsman has the right to receive necessary information, documents and materials within ten days and may obtain court orders (judgments) in force concerning criminal, civil and administrative cases. During an investigation fact-finding tasks may be assigned to relevant bodies. The Ombudsman is to be received without delay by heads and other officials of government and municipal bodies, commanders of military units, by officials of penitentiary institutions and detention centres (*v* Art 12 OA).

If, as a result of an investigation, the Ombudsman finds a violation of the rights and freedoms of an applicant, the Ombudsman may demand from the respective body to remedy those violations. The appropriate bodies and officials are to submit within ten days to the Ombudsman written information of the measures taken in respect of those violations. Where such information is not submitted or the appropriate body fails to comply with the demands

of the Ombudsman, the Ombudsman may apply to the superior authorities (Art 13 (2)1 OA). The Ombudsman may also inform the mass media of the results of the investigation conducted (Art 13 (2)5 OA).

When a certain conduct appears to be a **criminal or disciplinary offence**, the Ombudsman may apply to the relevant bodies (Art 12 (2)2 and 4 OA).

Also, the Ombudsman has the right to apply to a court of justice with a view to the protection of the rights and freedoms violated by decision, or an act or omission of a governmental or municipal body, or an official (Art 13 (2)7 OA). The Ombudsman may submit motions to the President with regard to granting pardon, citizenship and political asylum (Art 1 (4) OA).

Not later than two months after the end of each year the Ombudsman is to submit to the President an **annual report** on the protection of human rights (Art 14 (1) OA).

V.2. Powers in Relation to the Courts

The Ombudsman may examine complaints on violations of human rights relating to red tape, loss or delayed delivery of documents in courts as well as delays in the execution of court judgments (Art 1 (6) OA). In such cases, should these demands not be complied with (*v* V.1.), the Ombudsman may apply to the *Court Legal Council* as the "superior authority".

V.3. Powers in Relation to Legislative Organs

The Ombudsman may submit motions to Parliament with regard to the adoption or review of laws with a view to ensuring human rights and freedoms and may also submit a motion to Parliament with regard to declaring amnesty (Art 1 (5) OA).

Furthermore, the Ombudsman has the right to apply to the Constitutional Court in cases where the rights and freedoms of a person are violated by legislative acts in force (Art 13 (2)8 OA) and is to present the annual report before Parliament (Art 14 (1) OA). Following this, the Report is to be published (Art 14 (5) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is the **major task** of the Ombudsman (*v* Art 1 (1) OA) who has several special powers in this context (*v* V.1., V.2. and V.3.), and may notably include general views and recommendations concerning the protection of human rights in the report (Art 14 (3) OA).

The institution is accredited with Status A as a National Human Rights Institution by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

VI. Practice

In 2004 the Ombudsman received 6,300 applications, 94.8% of which were considered to be complaints. The report of the Ombudsman is divided into a

section on the violation of civil and political rights (41.5%) and a section on economic, social and cultural rights (58.5%). 31.4% of the complaints which were not rejected by the Ombudsman (53.7% of all applications are rejected) were classified as justified. The **focus** of the Ombudsman activity lies with social issues, court proceedings and traffic. Prisons, refugee camps, children's homes and psychiatric hospitals are continually controlled by the Ombudsman ***ex officio***.

VII. Reform

There are some problems concerning the **cooperation** of state bodies with the Ombudsman. In particular, many authorities do not reply in time or inquiries of the Ombudsman are not dealt with by the competent official. Hence, the Ombudsman would favour measures leading to an increased liability of officials who impede the work (Q II).

Further, the Ombudsman criticises that Parliament has delegated the task of considering the Ombudsman's report to a Standing Committee which so far has never taken action. In the opinion of the current incumbent it would further be advisable to let the Ombudsman participate in the work of other public commissions which deal with the protection of human rights (Annual Report 2004) and to extend the competencies. In particular, the Ombudsman should be entitled to receive complaints from those people whose rights were violated by private business sector entities. Furthermore, **training** should be provided for the judges on European Convention on Human Rights and procedural rules of application to and the judgments of the European Court of Human Rights (Q II).

VIII. Information

Constitution:
http://www.un-az.org/UNDP/DOC/constitution.php (31.10.2007)

Ombudsman-Act:
Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, http://www.ioi-europe.org/index2.html (31.10.2007)

Council of Europe:
European Commission for Democracy through Law (Venice Commission), Consolidated Opinion on the Law on Ombudsman in the Republic of Azerbaijan, based on the comments of: P. Van Dijk and M. Serra Lopes, CDL (2001) 83, http://www.venice.coe.int/docs/2001/CDL(2001)083-e.asp (31.10.2007)

Belgium

Joachim Stern

A. Constitutional Background

The Coordinated Constitution of Belgium came into force in 1994 as result of a long-time process of transforming Belgium into a federal state (Constitution of 17/2/1994 as amended 7/5/2007, hereafter Const). The federal Parliament has two chambers: The 150 members of the Chamber of Representatives are elected every four years by the Citizens (Art 61 OA). The 71 members of the Senate are partially elected, partially designated by the regions and communities. Also, the children of the King are senators (Art 67 Const). The King, as Head of State, appoints the Government; however, he is bound to proposals of the Chamber of Representatives. Government must be composed of a maximum of fifteen ministers – of which an equal number has to be French and Flemish speaking (Art 96, 99 Const). The King has the power to enact regulations and decrees required for the execution of laws. His actions may not take effect without the countersignature of a minister, who in doing so takes responsibility for the action (Art 108, 106 Const).

The federation consists of three communities and three regions. The communities are composed of all people of a certain language (Flemish, French and German). The three regions are territorially defined (Walloon region, Flemish region, region of Brussels-Capital). The Flemish region and the Flemish community exercise their powers jointly. Thus, in practice there are five federal entities linked through a complex system for allocating competences. Each of these entities has a parliamentarian organ (Council), the laws enacted by these Councils are named *Decrees*. Disputes concerning the allocation of competences used to be subject to complaints at the Court of Arbitration. The competences of this Court were broadened in 2007: Since then, the Court is also competent to decide about complaints of individuals regarding the constitutionality of laws, decrees and ordinances and has been renamed Constitutional Court (Art 142 Const).

Matters of civil rights as well as of political rights fall within the competence of the regular courts (Art 145 Const) which are headed by the Court of Cassation (Art 147 Const). Administrative disputes concerning matters in which the authority has the right to exercise discretion can be appealed to the Council of State – an independent counselling organ for the legislature which also has the function of an administrative court (Art 160 Const). Depending on the matter involved in a certain case, a case may also be appealed to the superior administrative authority.

The Constitution contains a charter of "the Belgians and their Rights" (Art 8–32 Const), which also provides for some social rights that are subject

to statutory reservations. The charter includes also a right to petition and to consult any administrative document (Art 28, 32 Const).

Belgium is a founding member of the Council of Europe. The ECHR has only partially been directly incorporated in the national legal order. It ranks under the Constitution but above national laws.

B. Overview of Existing Ombudsman-Institutions

In Belgium there are numerous ombudsman-institutions on different levels of administration. The College of the Federal Ombudsmen is generally responsible for all administrative concerns on the **federal level**. Matters for which separate, specialised ombudsman-institutions have been created, are excluded from its jurisdiction. Such institutions exist in areas like telecommunications, postal services, railways, pensions, insurances and banks. The Ombudsservice for Pensions is described below as an example for these institutions which altogether are not parliamentarian (infra G.).

Further parliamentarian institutions exist in the Walloon Region (infra D.), in the Flemish Region (infra E.), as well as within the French Community (infra F.). The German Community and the Region Brussel-Capital are the two **federal entities** without ombudsman-institutions, however, they also exercise fewer powers. The establishment of ombudsman-institutions in Belgium has evolved from the **communal level**, though, when the city of Antwerp created the first institution in 1989.[169] However, there is no country-wide network of ombudsman-institutions on the communal level either.

As an informal platform of the various institutions a "permanent consultation of mediators and ombudsmen" has been created (*Concertation permanente des médiateurs et ombudsmans – CPMO*) with the objective – among others – to offer an overview of and insight into the jurisdictions of the ombudsman-institutions on its website launched in 2007 (www.ombudsman.be). Some of the ombudsman-institutions hold common consultation days.

C. Collège des médiateurs fédéraux – College van de federale ombudsmannen – College of the Federal Ombudsmen

I. History and Legal Basis

The College of the Federal Ombudsmen was created by **law** in 1995. The legal basis has been amended three times (*Loi instaurant des médiateurs fédéraux* 32 of 22/3/1995 as amended 5/2/2001, 4/2/2003, 11/2/2004, hereafter OA). It is complemented by an **interior order** ("house order" – *Règlement d'ordre intérieur du Collège des Médiateurs fédéraux*, 19/11/1998, hereafter IO), which has been elaborated by the Ombudsmen and approved by the Chamber of Representatives. The interior order provides further regulations concerning the rights of the complainants while also repeating

[169] In this regard gratitude is due to the Ombudswoman of the City of Ghent who provided the research project with valuable information.

large parts of the law. There is also a **protocol of accord** between the College of the Federal Ombudsmen and the federal administrative authorities regarding the procedure applied when treating complaints.[170] The institution is **not embodied in the Constitution**.

II. Organisation

The College of the Federal Ombudsmen is composed of **two Ombudsmen**, one French- and one Flemish-speaking. They have to act **collectively** (Art 1 (4) OA), in order to ensure that proceedings are uniform. However, by collegial decision, the Ombudsmen can assign areas to each other (Art 19 OA). The law does not provide for deputies.

Consultations in various parts of the country are held in cooperation with regional and local ombudsman-institutions. The office currently employs around 40 people. The funds necessary for the functioning of the ombudsmen's office are **budgeted** as special allocations distinct from the budgets of Parliament and Government. Official Correspondence sent from the Ombudsmen's office is free of postage (Art 18 OA).

III. Legal Status

The **appointment** of the members of the College is carried out by election in the Chamber of Representatives by simple majority following an open invitation to submit applications (Art 3 OA). Those who hold a public office conferred by election lose their mandate when accepting a nomination (Art 5 (4) OA). **Candidates** are required to be Belgian citizens of irreproachable conduct and must possess full enjoyment of their civil and political rights, a degree giving access to the highest functions of the public service, sufficient knowledge of the other national language, and professional experience of at least five years, either in the legal, administrative or social sphere, or in another field relevant to the function (Art 3 OA). One of the incumbents has to be French-speaking, the other Flemish-speaking (Art 1 (1) OA).

The **term of office** is six years; the same person can only be appointed for a maximum of two terms (Art 3 (3) OA). The office is **incompatible** with positions or offices such as that of a judge, a notary public, or a bailiff, a lawyer, a minister of a recognised religion or a delegate of an organisation recognised by the law which gives moral assistance according to a non-religious philosophy, a public office conferred by election, or employment in public services subject to control.

It is up to the Chamber of Representatives to decide whether a violation against these rules exists and to subsequently **remove** the incumbent from office with a simple majority vote. A general provision also declares any other public or private office which could compromise the dignity or the performance of their duties as incompatible with the office of an Ombuds-

---

[170] Protocole d'accord concernant les relations entre le Collège des Médiateurs fédéraux et les Administrations fédérales pour le Traitement de Plaintes, 19/11/1998.

man (Art 5 OA). Unlike the other incompatibilities a violation of this rule cannot, as such, be the sole basis for a removal. However, the Chamber may also relieve an Ombudsman from his duties "for serious reasons" (Art 6 (2) OA). Otherwise, it shall terminate the office if the Mediator so requests, when an incumbent reaches the age of 65 or if his state of health seriously compromises the exercise of his duties (Art 6 (1) OA).

The Mediators cannot be relieved of their duties due to activities conducted within the framework of their functions. They are **immune** from prosecution (Q I). They do not receive instructions from any authority within the limits of their mission and are thus independent (Art 7 OA).

With regard to their **income** the Mediators enjoy the same status as *Counsellors of the Court of Auditors (*Art 20 OA), which is lower than that of ministers. The Ombudsmen and their personnel have to obey to rules related to secrecy. A violation thereof would be considered a criminal offense (Art 16 OA).

IV. Scope of Control

Subject to control by the Ombudsmen are the operations and the functioning of the federal administrative services (Art 1 (2), Art 8 OA). The notion of "administrative services" includes so called *parastatal* ("half-state") bodies, as well as private entities which have been entrusted with public functions, e.g. supplementary health insurances (*mutuelles*). If communal authorities enforce federal laws, the mediators can, in principle, only intervene with the federal supervisory body. The delimitation in this regard is complicated in practice, respective reform projects are currently under consideration (see infra VII.). All administrative authorities who have their own Ombudsman by virtue of legal regulations are exempt from control. There are neither requirements as to the organ appointing these Ombudsmen nor as to their independence (Art 1 (2) OA). In addition, according to the institution, secret services and police forces can only be controlled with restrictions (Q I). courts of law are generally excluded from control (Art 13 (1) OA).

The **criteria** for exercising a control are not defined in the law itself. The internal order names the "principles of proper administration, of equity or legality" (Art 13 (2) IO). A "Charta for an administration at the service of the user", which has been passed by the Council of Ministers in 2006 is also applied in this context. It mostly contains criteria such as office hours, accessibility and time limits for authorities to respond.[171]

"Any interested person" can **lodge a complaint** with the Ombudsmen. The Ombudsmen may also start an investigation at the request of the Chamber of Representatives, but **not** on their **own initiative** (Art 1 (1), Art 8 (1) OA).

Requirements for complaints are mostly laid down in the internal orders: The complaint has to be filed in one of the three official languages, in writing or verbally. If the complainant is not able to do so, the institution can provide for an interpreter (Art 7 IO). The complaint has to clarify the

[171] Charte pour une administration à l'écoute des usagers, AR 2006, 162.

identity of the complainant, including name, address and citizenship. Its objective has to be clear (Art 8 (1) IO). The Ombudsmen are *empowered* to **refuse** petitions that are anonymous or which relate to events dating back more than **one year**. They *have to* refuse complaints that are clearly unfounded or if the complainant has not contacted the authorities in order to satisfy his claim (Art 8 (2), Art 9 (2)(2) OA). This does not mean though that legal remedies have to be exhausted – complaints with the Ombudsmen are **not subsidiary**. However, as soon as an appeal is filed with an administrative authority or at a court the Mediators have to suspend their investigations (Art 13 OA). The act of lodging a complaint with the Mediators neither suspends does it impede the time limits in place for other means of appeal (Art 13 (3) OA). If another ombudsman-institution is competent for dealing with the issue, the complaint has to be forwarded without delay (Art 9 (3) OA). Administrative authorities concerned by a complaint have to be informed about investigations (Art 10 (2) OA).

The Mediators have to **inform** the complainant about their decision to take up a case or not; a refusal to treat a complaint has to be substantiated (Art 10 (1) OA). Further rights of complainants like the right to be treated respectfully and to be informed about the current situation of the proceedings and the ending thereof can be found in the internal order (Art 14 (1) OA, Art 9 IO); so are obligations to keep information confidential. The action of the Ombudsmen is free of charge (Art 9 (1) IO).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Mediators can direct **questions** to single officers or to the authority and impose binding **deadlines** for responses. They can acquire all the documents and information that they consider necessary and hear all persons concerned on the spot. Persons who are entrusted with privileged information by virtue of their status or profession are relieved of their obligation to maintain confidentiality within the framework of the inquiry carried out by the Ombudsmen. The Mediators may seek assistance by experts in their investigations (Art 11 OA).

One of the functions of the Mediators is to reconcile the complainant's point of view and that of the services concerned. For this purpose they can send any recommendation to the administrative authority that they consider useful and also inform the minister responsible thereof. No obligation to react upon such a recommendation is provided for (Art 14 OA).

If, in the performance of their duties, the Ombudsmen detect an act that could constitute a crime or an offence, they must inform the public prosecutor, whereas in the case of a disciplinary offence the Ombudsmen would notify the competent administrative authority (Art 12 OA).

V.2. Powers in Relation to the Courts

Since the jurisdiction of the College of the Federal Ombudsmen comprises only administrative authorities, the Mediators have no powers vis-à-vis courts. Investigations underway have to be suspended if the complainant applies to a court (Art 13 (1) OA). Complaints received concerning judicial organs are regularly forwarded to the Superior Council of Justice – a constitutionally established collegial organ exercising supervision of judges (Art 151 (3) Const).

V.3. Powers in Relation to Legislative Organs

Every year, by March 31st at the latest, the Ombudsmen have to send a **report** on their activities to the Chamber of Representatives, which should expose possible difficulties that the Mediators encountered in the performance of their duties and has to contain "recommendations that the Ombudsmen consider useful". This also acts as an authorisation to propose amendments to existing laws. The identities of the complainants and of members of staff in the administrative authorities may not be divulged in reports. If considered useful, the Ombudsmen can submit **intermediate quarterly reports**. All of these reports have to be **published** by the Chamber of Representatives. The Ombudsmen enjoy a general right to be heard by the Chamber any time, at their request or at the request of the Chamber.

The Chamber of Representatives can also request that the Ombudsmen lead any investigation on the functioning of federal administrative services that it designates (Art 1 (1)(2) OA). The institution does not entertain any legal relation with the Senate.

V.4. Special Functions and Powers in the Field of Human Rights

The College of the Federal Ombudsmen has no special powers or functions with regard to human rights. The *Center for Equal Opportunities and Opposition Against Racism* has the status of an observer with regard to the criteria laid down in the Paris Principles for National Human Rights Institutions. According to the latest declaration of Government, a separate national commission for human rights was supposed to be created.[172] Belgium has signed the OPCAT, however, it has not yet ratified it thus far.

VI. Practice

In the course of the year 2006, 4,515 petitions reached the institution, among these 961 requests for information and 3,554 complaints. This was a slight decline with regard to the percentage seen in the preceding year. 78% of the complaints were subject to closer investigations, while 18% were refused and 4% delegated to other institutions. 23.5% of the complaints concluded in 2006 were closed with the remark "good administration", 31.2% with the

[172] Déclaration gouvernementale et accord de gouvernement Verhofstadt II, 14/07/2003, 49. http://www.premier.be/fr/politics/20030710-accord_gov.pdf (24/06/2007).

remark "good administration after intervention". In 12.8% of the cases a common solution (*consensus*) could be reached, in 11.3% cases of maladministration were stated. The rest of the investigations were discontinued due to various reasons. Lengthy proceedings lead the statistics (66.6% of all complaints considered justified) followed by careless handling of the case (10.6%) and insufficient information provided by the authority (7.2%). In 1.7% of the cases an administrative performance in contradiction with legal provisions was found. 43% of all admissible complaints considered the Ministry of the Interior – of which a significant part the office for foreigners, 22% the financial administration and 15% the social insurance and parastatal institutions in the social sector.

No permanent control of certain sensitive administrative areas is possible, since the College cannot investigate cases *ex officio*.

VII. Reform

The Ombudsmen consider a reform important that aims at the complicated division of powers between the various ombudsman-institutions and at the unclear definition of administrative authorities that are subject to control. They favour a redefinition elaborated by the Council of State: This would give the Federal Ombudsmen jurisdiction over administrative bodies created or empowered by federal authorities, insofar as their action is determined or controlled by federal authorities, if decision making power is entrusted in them or if they can otherwise act in a legally binding way versus third persons (AR 2006, 15). The incumbents also regard the duty to suspend an investigation as soon as an appeal is filed in a matter as problematic since the complainant thus has to choose between an appeal and a complaint filed with the Mediators at an early stage given the fact that complaints filed with the Mediators do not suspend time limits (AR 2006, 22f). In the sphere of human rights the institution's main criticism has been that protection thereof is not expressly included in the mission of the office and – most of all – that own-initiative investigations are not possible.

VIII. Information

Law:
http://www.ioi-europe.org/legalbases/belgium.pdf

Annual Report:
http://www.mediateurfederal.be/Jaarverslagen/06ENG/06english.pdf

Internet:
http://www.mediateurfederal.be/

D. Médiateur de la Région Wallonne – Mediator of the Walloon Region

I. History and Legal Basis

The institution was founded by a decree of the Walloon Regional Council in 1994. The legal basis has been amended three times thus far (Decree of 22/12/1994 as amended 7/3/2001, hereafter WOA). The first incumbent took office in May 1995.

II. Specific Features

The Mediator of the Walloon Region is a **monocratically organised** institution, currently employing 14 people. The incumbent gets appointed with a simple majority vote by the Regional Council. An additional requirement is that the candidate has to have his permanent residence in the region (Art 3 (5) WOA). A removal from office can be enforced upon any violation related to the criteria for incompatibility. These criteria include any office or function which could harm the independence, impartiality or dignity of the office (Art 4 (7), Art 5 (1)(2) WOA). Up to four years after the end of his term of office the Mediator may not submit his candidature for public elections. If the Mediator is incapable of carrying out his duties the Regional Council can entrust the office to a leading official of the institution on a provisional basis.

The Ombudsman enjoys immunity with regard to statements in the exercise of his duties (Art 7 WOA). The Walloon Ombudsman can also receive complaints orally, but – like written ones – only in French or German (Art 9 (1) WOA). In contrast to the federal institution all appeals have to be exhausted beforehand. Thus, the right to complain is subsidiary, a fact that the institution criticises, especially in connection with the prohibition to carry out investigations on the Ombudsman's own initiative (AR 2005/06, 22).

The access to documents can be denied due to reasons of national defense, security of the state or foreign policy matters (Art 13 (1)(2) WOA). The Mediator can explicitly demand a solution to the matter "*en équité*", meaning beyond a strictly legal framework and can also recommend the amendment of legislation in this context (Art 12 (4) WOA). The law also provides for a duty to react upon recommendations and for the possibility to publish these if not reacted upon by the administration. This publication can be done in a special report, which can be issued anytime. The law does not provide that the Ombudsman can be heard by the Regional Council. Any document of any nature issued by any administrative authority under the Ombudsman's jurisdiction has to inform about the existence of the Mediator (Art 1 (1) WOA).

Efforts to change the law in order to be able to offer mediating services also with regard to communal administrative authorities have not been followed upon by the legislature so far. The office received 2,182 complaints in 2005/06 out of which 32% were refused (AR 2005/06, 115).

III. Information

Law, Annual Report (in French):
http://mediateur.wallonie.be/fichiers/rapport/7/Rapport%202005-2006%20site.pdf

Internet:
http://mediateur.wallonie.be

E. Vlaamse Ombudsdienst – Flemish Ombudsman Service

I. History and Legal Basis

In 1991 the Council of the Flemish Region provided for the legal basis of an Ombudsman, whose functions were limited to matters of access to public documents and who was appointed by the regional Government. An internal administrative regulation extended this jurisdiction to all kinds of complaints. The problem that the institution lacked independence was finally encountered by passing a decree providing for a parliamentarian Ombudsman (Decree of 7/7/1998 on the Establishment of the Flemish Ombudsman Service, hereafter FlOA).

II. Specific Features

The institution is **monocratically organised**. The public calling for candidates is completed by a comparative selection test. Incompatibilities have been defined even broader: Even three years before standing up as nominee, the candidate to the office shall not have been employed in leading positions in an administrative authority. During his term of office he may not exercise any office, position of function whether honorary or paid. The incumbent may not be removed from office or subject to an investigation for any opinion expressed or action exercised "within the normal performance of his duties" (Art 8 FlOA). Complaints concerning general acts or actions are not within his sphere of competence. The Flemish Mediator's criteria of control do not include equity.

A specialty with regard to the legislative power is the duty of the Ombudsman to inform the speaker of the regional Parliament upon the violation of rules of conduct of deputies (Art 3 (4) FlOA).

The Flemish Ombudsman has no right to issue special reports. If he is not content with the reaction of an authority, he can only report the situation to the minister responsible. However, he has the right to be heard by Parliament anytime (Art 19 FlOA).

III. Information

Law:
http://www.vlaamseombudsdienst.be/english/decreten_body.html

Internet:
http://www.vlaamseombudsdienst.be/

Annual Reports are available in Flemish only.

F. Service du Médiateur de la Communauté française – Ombudsman for the French Community

I. History and Legal Basis

The French-speaking community established its Mediator by council decree in 2002 (Decree of 20/6/2002, Official Journal 19/7/2002, hereafter FrOA). Similar to the federal institution an internal order approved by the council further develops some of the legal provisions (*règlement d'ordre intérieur*, Official Journal of 12/2/2004).

II. Specific Features

The institution shares its main characteristics with those of the Walloon Ombudsman. In contrast to the latter the council also appoints a deputy for the entire term of office of six years. The Mediator and his deputy can also be citizens of another country member to the European Union. A removal from office is also possible after a negative evaluation at midterm. During the four years following the termination of the office, neither the former incumbent nor his deputy have the right to be elected in general elections. An appeal to other authorities in the matter under investigation does not automatically suspend the Mediator's action. The Ombudsman may refuse a complaint, if the matter concerns facts under criminal investigation. The law expressly provides for a consideration of the criterion of "équité" by the Mediator. Complaints can only be raised in French. In 2005/06 the office treated 906 complaints.

III. Information

Law (in French):
http://www.mediateurcf.be/Files/media/Publications/Decretsmcf.pdf

Annual Report 2005/06 (in French):
http://www.mediateurcf.be/Files/media/Rapport%202006/rapportannuel2006.pdf

Internet:
http://www.mediateurcf.be

G. Service de Médiation Pensions – Ombudsservice for Pension Matters

I. History and Legal Basis

A law aiming to reform the area of social security, which was passed in 1996, empowered the King to establish an Ombudsservice for matters concerning pensions (*Service de Mediation Pensions*) – after consultation in the Council of Ministers.[173] This was done by Royal Decree of 27/4/1997. The Ombudsservice took up its work in 1999.

II. Specific Features

The decree is to a large part identical to the Law on the College of the Federal Ombudsmen. A difference lies of course within the subject of control: the Ombudsman is only allowed to receive complaints concerning pension-insurance institutions which are subject to federal legislation (*statutory pensions*). A main discrepancy also persists with regard to the appointment and independence of the incumbent: The Ombudsservice is instituted "with the ministry" which also puts employees at the disposal of the Ombudsman. The incumbents, whose term of office can be renewed without limitation, are appointed by the King upon proposal by the minister. If exercising incompatible activities they are removed following the same procedure. A civil servant or other person employed by public authorities who is appointed to the office can retake his activities after ceasing his job as a Mediator. The institution received 1,721 complaints in 2006.

III. Information

Decree (in French):
http://www.ombudsmanpensioenen.be/ra/fr/texte.htm

Annual Report (in French):
http://www.ombudsmanpensioenen.be/rep/fr/2006/rap2006_table.htm

[173] Art 15 Loi portant modernisation de la sécurité sociale et assurant la viabilité des régimes légaux des pensions, 26/7/1996.

Bosnia and Herzegovina

Brigitte Kofler

A. Constitutional Background

The Constitution of the State of Bosnia and Herzegovina is an integral part of the Dayton Peace Agreement which was signed on 14 December 1995 in Paris. The text of the Constitution is contained in Annex 4 of the Peace Agreement. Bosnia and Herzegovina is a decentralised state which consists of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska as well as the Condominium of Brčko. The two entities have their own Constitutions. For administrative purposes the Federation of Bosnia and Herzegovina is further divided into ten cantons.

The Parliamentary Assembly has two chambers: the House of Peoples and the House of Representatives. In the House of Peoples, the *Dom Naroda*, five delegates of the Serbs, the Bosniacs and the Croats have a seat (Art IV (1)). The House of Representatives, the *Zastubnički dom,* consists of 42 members, with two-thirds being directly elected in the Federation and one third in the Republika Srpska (Art IV (2)). All legislation requires the approval of both chambers (Art IV (3)c). Unlike most other states, Bosnia and Herzegovina does not have a single person as Head of State but a "Presidency" of three Members, one Bosnian, one Croat and one Serb. They are each directly elected from the respective entity for a period of four years (Art V). The Chair of the Presidency rotates between the members (*v* Art V (2)b). The Presidency nominates the Chair of the Council of Ministers who in turn nominates the further ministers. No more than two-thirds of all ministers may be appointed from the territory of the Federation (*v* Art V (4)). For several years there have been discussions about a constitutional reform which on 26 April 2006 failed because of Parliament's refusal.

Art VI Const contains provisions about the Constitutional Court. It is quite remarkable that three members of the Constitutional Court are selected by the President of the European Court of Human Rights after consultation with the Presidency (Art VI (1)a). The jurisdiction of the Constitutional Court comprises *inter alia* disputes arising under the Constitution between the entities and institutions, appellate jurisdiction over constitutional issues arising out of a court judgment as well as issues referred to the Constitutional Court by any other court on whether a law is compatible with the Constitution, the European Convention for Human Rights and its Protocols (Art VI (3)). On the national level, there is further a State Court of Bosnia and Herzegovina which is competent to deal with certain criminal and administrative cases. In general, civil and criminal matters are dealt with by courts established by the entities. Furthermore, both entities have their own Constitutional Court.

Article II of the Constitution contains a list of human rights and fundamental freedoms. Bosnia and Herzegovina is a member of the Council of Europe since 24 April 2002 and has ratified the European Convention on Human Rights on 12 July 2002.

B. Overview of Existing Ombudsman-Institutions

During the 1990's several ombudsman-institutions were established in Bosnia and Herzegovina: The Human Rights Ombudsman at the national level (in 1996) and the Ombudsman of the Republika Srpska (in 2000) and the Federation Ombudsmen of Bosnia and Herzegovina (in 1995) at the regional level. The said institutions are currently about to be restructured and merged into one ombudsman-institution on the national level.

C. Ombudsman Za Ljudska Prava Bosne i Hercegovine – Human Rights Ombudsman of Bosnia and Herzegovina

I. History and Legal Basis

The establishment of an ombudsman-institution was provided for in the Dayton Peace Agreement of 1995. The first incumbents took up their work in 1996. The task of the Ombudsman is to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons (Art 1 (1) OA). By the end of 2003 three foreign nationals at a time acted as *transitional Ombudsmen*, only then the first elections of incumbents were held in the national Parliament. The legal basis of the institution is the Act on the Human Rights Ombudsman of Bosnia and Herzegovina (Law No. 19/2002) which has been amended in the course of the restructuring process (Law No. 284/2006).

II. Organisation

The Ombudsman-Institution is comprised of three persons (Art 8 (1) OA) with the chairmanship rotating between them every two years. These Ombudsmen co-operate in the exercise of their functions. Investigating activities may be carried out individually by an Ombudsman alone, but the distribution of tasks among them must not rely on the criterion of ethnic origin of the complainant. In their suggestions, resolutions and reports, the Ombudsmen act jointly (Art 8 (2) OA). The Institution may appoint **advisers**, deputies included, as needed within the budgetary limits (Art 37 OA). The institution's **seat** is in Banja Luka, with further regional bureaus in Mostar, Sarajevo and in Brčko. Upon proposal by the institution, the financial appropriation necessary to the functioning of the institution is included in the **budget** of the Presidency of Bosnia and Herzegovina (Art 39 OA).

III. Legal Status

The Ombudsmen is elected by both Houses of Parliament with absolute majority of votes (Art 8 (6) OA). Any citizen of Bosnia and Herzegovina of age who has a degree in law, at least ten years of experience in the field of human rights and has a good reputation in society may be elected as an Ombudsman (Art 11 OA). A **term of office** is six years and the incumbent may be re-elected (Art 10 (1) OA).

The Ombudsman shall not be subject to outside influences. Within the framework of the constitutional and legal competencies, each Ombudsman is not subject to instructions from any authority (Art 15 OA).

The position of an Ombudsman is **incompatible** with any representative or public office, any political activity or membership of or employment in a political party, trade union, association, foundation, or religious organisation, with being a judge and with any other profession or employment (Art 17 (1) OA).

An Ombudsman's duties **terminate** in case of resignation, expiration of the term of office, manifest inability to perform the duties, failure to give up an incompatible position or on a conviction and final sentencing for an offence (Art 12 (1) OA). In the event of death, resignation, expiry of the term of office or final conviction the post is to be declared vacant by the President of the House of Representatives. In other circumstances, a decision is to be taken by a two-thirds majority by both houses of Parliament after a debate and a hearing of the person concerned (Art 12 (2) OA).

An Ombudsman may not be prosecuted, subjected to investigation, arrested, detained or tried for the opinions expressed or for the decisions taken in the exercise of powers associated with the duties. In all other circumstances, the Ombudsman may not be arrested or detained save in case of *flagrante delicto* relating to an offence punishable with a term of imprisonment greater than five years (Art 16 (1) and (2) OA). Also, criminal proceedings may only be instituted with respect to offences punishable with a term of imprisonment greater than five years and only with the consent of Parliament (Art 16 (3) OA).

IV. Scope of Control

The Ombudsman's control extends to cases concerning governmental bodies. The term "governmental bodies" is defined by the Ombudsman Act as all institutions, authorities, agencies, and departments of the government concerned, as well as private agencies performing public services (Art 1 (2)d OA). The act also expressly states that the Ombudsman is competent to investigate all complaints concerning the military administration (Art 3 OA). In relation to the judiciary the Ombudsman is competent to investigate all complaints made about the poor functioning of the judicial system or the poor administration of an individual case, and to recommend appropriate individual or general measures (Art 4 (1) OA). However, the Ombudsman may not interfere with the adjudicative functions of a court (Art 4 (2) OA).

The **control criteria** of the Ombudsman are the laws and the principles of good administration. The Ombudsman Act states that the Institution shall consider cases involving the poor functioning or violations of human rights and liberties committed by any government body (Art 2 (1) OA).

The Ombudsman either takes action on receipt of a complaint or *ex officio* (Art 2 (2) OA). Any natural or legal person claiming a legitimate interest may complain to the institution without any restriction (Art 18 (1) OA). Complaining to the Ombudsman may not result in any disadvantage for the complainant (Art 18 (2) OA). The Ombudsman, in principle, has a duty to investigate complaints, but may refuse to pursue anonymous complaints and complaints which have been made in bad faith, are ill founded, include no claim, entail damage to the legitimate rights of a third party or which were lodged more than 12 months after the facts, events or decisions complained of (Art 21 (2) OA). Furthermore, complaints concerning decisions, facts or events prior to 15 December 1995 may not be considered (Art 2 (5) OA).

A complaint, in principle, is to be filed in writing (*v* Art 19 OA). Correspondence addressed to an Ombudsman from places where individuals are held in detention, in imprisonment or in custody may not be the subject of any kind of censorship nor may such correspondence be opened (Art 20 (1) OA).

The work of the Ombudsman-Institution is free of charge to the person concerned and does not require the assistance of counsel or a solicitor (Art 19 (2) OA). When an Ombudsman decides that there are sufficient grounds for investigation, the governmental body concerned is to be informed of the material elements of the case so that the responsible person may submit a written statement within a period indicated by the Ombudsman (Art 23 (1) OA).

Also, the complainant is to be informed of the result of the investigations and activities, and of the reply given by the governmental body concerned unless the reply, by its nature, is to be considered as confidential or secret (Art 33 (1) OA). Decisions of an Ombudsman may not be appealed (Art 22 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

An Ombudsman may demand at any time any document deemed necessary for the investigation (Art 23 (2) OA). Governmental bodies are obligated to provide the Institution with preferential assistance in its investigations and inspections (Art 25 (1) OA). During an investigation, the Ombudsman may personally attend any government body to check all requisite information, conduct personal interviews or study the necessary files and documents (Art 25 (2) OA), and may not be denied access to any file or administrative document or to any document relating to the activity or service under investigation (Art 25 (3) OA). The right to access documents also comprises documents classified as confidential or secret. In such cases, the Ombudsman

must not make them available to the public (*v* Art 28 OA). Superior officials or governmental bodies may prohibit officials subordinate to them or in their service from responding to a request from or speaking to an Ombudsman. In such a case the Ombudsman may approach the said superior in respect of all operations necessary to the investigation (Art 27 OA).

If a hostile attitude or an attitude impeding the investigation of an Ombudsman is maintained by a governmental body or its officials the Ombudsman may issue a special report or may mention such incidents in the corresponding part of the annual report (Art 31 (1) OA) and may send the relevant file to the official's superior or to the competent prosecuting authorities for the appropriate disciplinary or penal action to be taken in accordance with the law (Art 31 (2) OA). Where the competent authority fails to take action, the Ombudsman may, in substitution for this authority, institute disciplinary proceedings against the official responsible or, where appropriate, bring the case before a criminal court (Art 31 (3) OA) though it remains unclear whether the Ombudsman then has the role of a prosecutor.

The Ombudsman's act states that the Institution may recommend appropriate individual or general measures (Art 2 (4) OA). So, when an investigation reveals that an abuse, arbitrary procedure, discrimination, error, negligence or omission was perpetrated by an official of a governmental body, the Ombudsman may communicate this finding to the official concerned. On the same date the same document is to be transmitted also to the official's superior and setting out the **recommendations** considered pertinent (Art 29 OA). The Ombudsman may make further recommendations to governmental bodies with a view to the adoption of new measures whereupon the respective governmental bodies are obligated to reply in writing within a period indicated by the Ombudsman (Art 32 (1) OA). If the government body concerned does not take appropriate measures within the period indicated or does not inform the Ombudsman of the reasons for not doing so, the Ombudsman may draw the attention of the minister or of the highest authority concerned to the course of the case and the recommendations made. Should the Ombudsman obtain no satisfaction in a case in which it would have been possible to find a solution, the matter should be included in the annual report or in a special report mentioning the names of the authorities or officials failing to correct an injustice (Art 32 (2) OA). The Ombudsman further may suggest the amendment of the criteria used in the adoption of government measures or orders (Art 32(3) OA). General recommendations of an Ombudsman may be published in the Official Gazette (Art 33 (3) OA). All other recommendations of an Ombudsman are to be accessible to the public excepting in cases which are confidential or secret, or where the complainant has expressly requested that the name and the circumstances of the complaint should not be revealed (Art 33 (4) OA).

When an Ombudsman becomes aware of possible offences, the competent prosecuting authority is to be informed (Art 30 OA).

Where, during an investigation, an Ombudsman finds that the execution of an authority's decision may result in irreparable prejudice to the rights of

the complainant, the Ombudsman may suggest to the competent government body to suspend the execution of the challenged measure until the expiry of a period of no more than ten days (Art 24 (1) OA). The authority concerned may refuse to comply with the suggestion, explaining within three days in writing the reasons, failing which, the suggestion is binding the authority (Art 24 OA).

V.2. Powers in Relation to the Courts

The Institution's competence comprises the power to investigate all complaints made about the poor functioning of the judicial system or the poor administration of an individual case and to recommend appropriate individual or general measures. In this context the Ombudsman may not interfere with the adjudicative functions of a court, but may initiate court proceedings or intervene in pending proceedings whenever such action is necessary for the performance of the duties. An Ombudsman may also make recommendations to the governmental body as a party or be consulted by the parties (Art 4 (2) OA).

V.3. Powers in Relation to Legislative Organs

Each year the Ombudsman is to present an annual report to the Presidency of Bosnia and Herzegovina and both houses of Parliament (Art 34 (1) OA). If the public prominence or urgency of the facts so require a special report may also be submitted (Art 34 (2) OA). Annual and special reports are to be published (Art 34 (3) OA). When, following the examination of a case, an Ombudsman finds that the manner in which a rule is implemented leads to inequitable results, the Ombudsman may propose appropriate amendments to acts and regulations in the annual or special report (Art 32 (4) OA).

V.4. Special Functions and Powers in the Field of Human Rights

An Ombudsman may refer cases of alleged human rights violations to the highest judicial competent in human rights matters whenever this is necessary for the effective performance of the duties (Art 6 OA). The Ombudsman is accredited as a National Human Rights Institution pursuant to the **UN Paris Principles** with the International Coordination Committee with Status A.

VI. Practice

Due to the re-structuring process the last statistical information available concerns the year 2003. During that year about 150 case investigations were opened per month and about just as many could be closed (Compilation 2003, 3). The focus of the Ombudsmen's monitoring activity lies with general grievances such as complaints about authorities which claim unnecessary documents or fees from the individuals or plainly refuse to issue certain documents. There are also many complaints relating to property disputes, is-

sues of labour law as well as court proceedings and their long duration in particular (Compilation 2003, 2). Prisons, refugee camps, children's homes and psychiatric hospitals are **continually monitored** *ex officio*.

VII. Reform

The process of restructuring the Ombudsman-Institutions in Bosnia and Herzegovina is entering its last phase. To this end the Venice Commission of the Council of Europe has elaborated a number of principles that should be followed. In particular, it is to be ensured that the current level of human rights protection will be preserved, the number of ombudsmen gradually is to be reduced and as a consequence it will be necessary to reduce the staff and rationalise existing infrastructures.[174]

VIII. Information

Constitution:
Homepage of the Constitutional Court of Bosnia and Herzegovina,
http://www.ccbh.ba/eng (31.10.2007)

Annual Report:
Compilation for the Annual Report 2003,
http://www.ohro.ba/files/Annual_2003.e.pdf (31.10.2007)

[174] Commission for Democracy Through Law (Venice Commission), Agreed Conclusions of the Working Meeting on "Restructuring Ombudsman Institutions in Bosnia and Herzegovina", Opinion No. 274/2004, CDL(2004)028rev, http://www.venice.coe.int/docs/2004/CDL(2004)028-e.pdf (31.10.2007).

Bulgaria

Joachim Stern

A. Constitutional Background

The Constitution of 12 July 1991 declares Bulgaria a parliamentary republic (Art 1 (1) Constitution of the Republic of Bulgaria, State Gazette (SG) 56 of 13/7/1991 as amended SG 27 of 31/3/2006; hereafter Const). Bulgaria is a unitary state with local self-government (Art 2 Const). The territory is divided into regions and municipalities (Art 135 Const).

The National Assembly (*Narodno sabranie*) is Bulgaria's unicameral Parliament consisting of 240 members, who are elected for a period of four years (Art 63f Const). The Head of State is the President, who is assisted by a Vice-President. Both are directly elected by the people for a period of five years (Art 93f Const). Parliament elects the Prime Minister and, upon motion of the latter, the other members of Government (Art 84 Const).

The Supreme Court of Cassation is the final court of appeal in civil and criminal matters. The courts also supervise the legality of acts and actions of the administrative bodies. Citizens and legal entities are free to challenge any administrative act which affects them in court, except those listed expressly by law. The Supreme Administrative Court is the final authority in these matters (Art 119 (1) Const).

The most important role of the Constitutional Court is determining the consistency of laws and of acts of the President with the Constitution and with international treaties that have been ratified by Bulgaria, as well as the authoritative interpretation of these laws and acts (Art 149ff Const). The Court may be called upon to decide a matter by at least one fifth of the members of Parliament, by the President, the Council of Ministers, the Supreme Court of Cassation and by the Prosecutor-General (Art 150 Const).

Chapter II of the Constitution contains a charter of "fundamental rights and duties of the citizens". Bulgaria acceded to the Council of Europe in 1992 and ratified the ECHR during the same year. Ratified international treaties and the universally recognised norms of international law are among the criteria which may be applied by the Constitutional Court (Art 149 (1)(4) Const).

B. Overview of Existing Ombudsman-Institutions

Bulgaria has a **national parliamentarian ombudsman-institution** with a general mandate. The establishment of specialised ombudsman-institutions, for example a health-sector-Ombudsman, is currently under discussion. Since 1998, local Ombudsmen have been operating without a clear legal basis in some communities. Since 2003, an amendment to the Law on Local Self-

Government and Local Administration allows municipal councils to elect public Mediators with functions and powers similar to those of Ombudsmen (Art 21a SG 77 of 17/9/1991; exact date of amendment unknown).

C. Омбудсман на Република България – Ombudsman of the Republic of Bulgaria

I. History and Legal Basis

The **Law on the Ombudsman** – the institution's legal basis – was passed in 2003 and entered into force in 2004 (SG 48 of 23/5/2003; hereafter OA). Parliament twice failed to agree on a candidate for the office; the first Ombudsman was finally elected in April 2005. In 2006, an amendment to the **Constitution** institutionalised the office of the Ombudsman. Art 91a of the Constitution now briefly provides that Parliament shall elect an Ombudsman, who shall defend the rights and freedoms of the citizens. The Ombudsman shall elaborate rules on the organisation and activities of the institution, which are to be approved by a decision of the National Assembly and promulgated in the State Gazette (Art 3 (2) OA).

II. Organisation

The Bulgarian Ombudsman is a **monocratically organised** institution. The law provides that Parliament shall, upon the proposal of the Ombudsman, appoint a **Deputy Ombudsman** within one month after the election, who shall fulfil the same election criteria as the Ombudsman and who shall assist the latter in his office (Art 5, Art 11 OA). The deputy may be dismissed by Parliament upon a justified proposal by the Ombudsman, or alternatively for any of the same reasons for which the Ombudsman may be dismissed (see infra III.). The Ombudsman may assign some of his powers to the Deputy Ombudsman (Art 19 (3) OA). The institution is **financed** by the state budget "and/or by other public sources" (Art 7 OA).

III. Legal Status

The Ombudsman is **elected** by the National Assembly in a secret vote by simple majority of those participating (Art 8, Art 10 (2) OA). Members of Parliament and parliamentary groups may submit proposals for candidates (Art 10 (1) OA).

Election criteria require the Ombudsman to be "a Bulgarian citizen, possessing university degree, revealing high integrity and meeting the requirements for the election of member of Parliament" (Art 9 OA).

The office is **incompatible** with the holding of any other state office, managerial position in a commercial company or non-profit-organisation, as well as membership in political parties or trade unions. The Ombudsman is not allowed to perform any commercial activities (Art 14 OA).

The **term-in-office** is five years, re-election is possible once (Art 5 (4) OA). Parliament can **remove** the incumbent Ombudsman from office before the end of his term if he performs incompatible activities or becomes ineligible, if he fails to carry out his duties, or if he violates the Constitution and the laws or "the commonly accepted ethical rules". A removal from office requires a motion backed by at least one fifth of the members of Parliament and a subsequent simple majority in the National Assembly. His term in office will also come to an end if a sentence for intentional crime enters into force, upon his resignation, or upon his death (Art 15 OA). In these cases the President of the Parliament is to declare the Ombudsman's term in office to be terminated. The Ombudsman has the right to speak before the National Assembly in case of his early removal.

The Ombudsman is **independent** in his activities (Art 3 OA). He enjoys the same **immunity** as members of Parliament (Art 16 OA, see Art 69–70 Const).

The **salary** of the Ombudsman is equal to three times the amount of an average salary of civil servants and employees in the public sector, according to the data of the National Statistical Institute. The deputy is entitled to 80% of this amount (Art 18 OA).

IV. Scope of Control

The **mandate of the institution** is to "defend the rights and freedoms of the citizens" (Art 91a (1) Const). State and municipal authorities and their administrations as well as other persons assigned with the provision of public services are **subject to the Ombudsman's control** (Art 2 OA). The term "public services" encompasses educational, healthcare and social activities, activities related to water, heat and electricity supply, postal and telecommunications activities, commercial activities, activities related to security and transport safety as well as other similar services, provided for satisfying public needs and in relation to which administrative services may be performed" (§ 1 Additional provision OA).

The Ombudsman's **criteria of control** include the entire body of law; Art 3 of the law lists the Constitution, the laws, and ratified international treaties to which the Republic of Bulgaria is a party.

The **initiative** for an action lies with "natural persons, irrespective of their citizenship, gender, political affiliation or religious beliefs" (Art 24 OA). The Ombudsman may act on his own initiative as well as "when he has established that the necessary conditions for protecting citizens' rights and freedoms have not been created" (Art 19 (2) OA). **Complaints** can be raised in written or orally, and submitted personally, by post or "by other traditional means of communication" (Art 25 (1) OA). Oral complaints are to be recorded in a written protocol (Art 25 (4) OA). Anonymous complaints and complaints concerning events which date back more than **two years** will not be investigated (Art 25 (3) OA). In principle, the Ombudsman must reply in writing to the person who has lodged the complaint within one month. If the

case requires a more thorough examination, this term shall be extended to three months (Art 19 (3) OA). The right to raise a complaint is not subsidiary. The Ombudsman is **obliged to "make examinations** upon the complaints and signals received" (Art 19 (1)(2) OA). He shall maintain a public register of oral and written complaints received and detailing the action he has taken in the matter (Art 21 OA). The law entitles the ombudsman to publicly express his opinion and make statements, including in the media, while also providing a **duty not to disclose** any circumstances which are state, official or commercial secrets or are of a personal nature (Art 20 OA). The submission of complaints before the Ombudsman is **free of charge** (Art 26 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman has the right to **demand information** from state and municipal authorities and their administrations. Also, legal persons and citizens are obliged "to provide the Ombudsman with information, entrusted to them officially, and to provide assistance to the Ombudsman in relation to the complaints and signals sent to him." It could not be established whether this obligation concerns only those who complained to the Ombudsman or if it states a general duty to make information accessible to him (Art 6 OA). The Ombudsman has **access** to those subject to his control, including the right to be present when they discuss and make decisions (Art 20 (1)(2) and (3) OA).

He may publicly express his opinions and give statements, including in the media (Art 20 (1)(3) OA). If he concludes that the complaint is founded he can make **proposals and recommendations** for the reinstatement of the violated rights and freedoms. The authorities and the persons under his control to whom the opinions, proposals and recommendations have been addressed, are obliged to **consider them within fourteen days** and to notify the Ombudsman on the measures taken (Art 19 (1)(4), 24 OA). The Ombudsman can also act as a **mediator** between the administrative authorities and the persons concerned "for overcoming the violations admitted and [..] reconcile their positions" (Art 19 (1)(5) OA). If the Ombudsman has information regarding a crime he must notify the Public Prosecution Office thereof.

Any person who hinders the Ombudsman in the performance of his duties or who fails to submit information or documents requested by the Ombudsman is subject to administrative penal provisions. The Ombudsman may request that a court institute proceedings under these provisions and may participate in the proceedings if he finds it necessary (Art 29–32 OA).

V.2. Powers in Relation to the Courts

Courts are not subject to the Ombudsman's control (*arg. e. contr.* Art 2 OA).

V.3. Powers in Relation to Legislative Organs

The Ombudsman himself cannot apply to the Constitutional Court for the invalidation of laws but can only **notify** the authorities authorised to do so in order that they may approach the Constitutional Court, when "he is of the opinion that it is necessary that the Constitution be interpreted or a law be declared unconstitutional" (Art 19 (1)(7) OA, Art 150 Const).

By March 31st every year he has to submit an **annual report** on his activities to the National Assembly. The annual report shall also contain general information regarding respect for human rights and fundamental freedoms and the efficiency of legislation in force in this area (Art 22 OA) and it must be made public. There is no provision obliging the Assembly to discuss the report. Upon his own initiative or upon request by the National Assembly the Ombudsman shall prepare **reports on particular cases**. The law provides that the Ombudsman shall also publish an "annual bulletin on his activities" (Art 23 OA).

V.4. Special Functions and Powers in the Field of Human Rights

In addition to his powers to control situations *ex post*, the Ombudsman may also act preventatively by making proposals and recommendations to authorities under his control regarding the elimination of conditions likely to produce violations of rights and freedoms (Art 19 (1)(6) OA). The Ombudsman is obliged to include in his annual report an assessment of the overall situation regarding respect for human rights (supra V.3.). No Bulgarian institution is currently accredited as NHRI according to the Paris Principles. The country has currently neither signed nor ratified the OPCAT.

VI. Practice

No annual reports or other relevant material on the Ombudsman's activities are currently available in English.

VII. Reform

No information about plans for reform of the institution could be found. The establishment of a Special Ombudsman for Health Services has been in planning for some years.[175]

VIII. Information

Constitution:
http://www.parliament.bg/?page=const&lng=en

---

[175] See The Healthcare Ombudsman – Best Practices and Prospects for Bulgaria, www.csd.bg/publications.php (31/10/2007).

Law:
http://www.csd.bg/artShow.php?id=157

Internet (In Bulgarian only):
http://www.ombudsman.bg/

Croatia

Brigitte Kofler

A. Constitutional Background

Croatia's Constitution entered into force in 1990 and since then has been amended and modified several times (consolidated version in *Narodne Novine* No. 41/01 of 7 May 2001). Croatia is a Parliamentary Republic. It is a unitary state, with self-government on the regional and local level. Since an amendment of the Constitution in 2001 Parliament, the *Sabor*, consists of only one chamber. This chamber is elected by the people in direct elections for a period of four years (Art 70 (1), 71 (1) and (2)). The Head of State is the President of State who is also elected by the people directly.

Croatia has its own Constitutional Court since 1964. Its most important competencies comprise the power to examine laws and regulations and to deal with individual complaints against the decisions of state entities which violate human rights or fundamental freedoms (*v* the competencies of the Constitutional Court, Art 128).

The judiciary is organised in three instances with the Supreme Court as court of last resort in civil and criminal matters (Art 118). In addition, there are commercial courts. Decisions of administrative organs may be appealed to the Supreme Administrative Court.

Part III of the Constitution contains a list of human rights and fundamental freedoms (Art 14 to 69). Croatia is a member of the Council of Europe since 1996 and has ratified the European Convention on Human Rights in 1997.

B. Overview of Existing Ombudsman-Institutions

The *Pučki pravobranitelj*, the Defender of People's Rights is a national**, parliamentary ombudsman-institution** with general scope of control. There are no comparable institutions on the regional or local level but the *Pučki pravobranitelj* is competent to control regional and local entities (Art 92 (4) Const). However, there are no field offices but only a seat in Zagreb. On the national level, there are two further **specialised parliamentary Ombudsmen**, an Ombudsman for Children and an Ombudsman for Issues of Gender Discrimination.

C. Pučki pravobranitelj – Ombudsman

I. History and Legal Basis

The institution of the *Pučki pravobranitelj* was established by law on 29 September 1992. Its office opened on 1 January 1994. Art 92 of the Constitution

states that the Ombudsman, as a Commissioner of the Croatian Parliament shall protect the constitutional and legal rights of citizens in proceedings before the state administration and bodies vested with public authority (Art 92 (2)). By constitutional amendment in 2001 the Ombudsman's control was extended to the Minister of the Defense, the military forces and the secret service (Act of 23 April 2001). Further provisions concerning the institution are laid down in the Ombudsman Act of 25 September 1992 (hereinafter OA).

II. Organisation

The Ombudsman is a **monocratic body** with three deputies who are chosen and dismissed by Parliament upon the proposal of the Ombudsman for a term of eight years (Art 3 OA). In all, the Ombudsman's office has a staff of three. The funds for the work of the Ombudsman, the deputies and expert service are provided for in the national budget (Art 21 OA).

III. Legal Status

The Ombudsman is chosen and dismissed by Parliament by simple majority of votes (Art 3 (1) OA). To be elected Ombudsman, an individual must be a citizen of Croatia and a graduate lawyer with at least 15 years of working experience in the legal profession and known to the public for a personal commitment in the field of the protection of human rights (Art 16 OA). The same requirements apply to the deputies (Art 18 OA).

The Ombudsman is **independent** and may not be given instructions or orders (Art 2 (1) OA). There are no provisions on **incompatibilities** stated in the Ombudsman Act but in practice membership or functions in a political party, a union, state offices and professional activities in general are considered to be incompatible with the office of the Ombudsman.

The Ombudsman is elected for a **term** of eight years and is eligible for re-election (Art 3 (4) OA).

The Ombudsman's **salary** corresponds to a minister's salary (Q III).

The Ombudsman and the deputies may be **dismissed** before the expiration of their term if they tender a resignation which is accepted by Parliament, lose citizenship or the Parliament passes a resolution (Art 19 OA). The Parliament may apparently dismiss the incumbent without stating special reasons.

IV. Scope of Control

The Ombudsman's control comprises the state authorities, bodies with public authority, or officials in those bodies or bodies during the execution of their duties (Art 5 OA). The Head of State and the courts are not subject to being monitored. In relation to the judiciary the Ombudsman may only obtain information about pending proceedings through intervention at the Ministry of Justice (Q II). In practice, the Ombudsman receives many com-

plaints relating to court procedures especially to the long duration of proceedings and forwards these complaints to the Ministry of Justice.

The Ombudsman's **control criteria** are the constitutional and legal rights of citizens as well as the principles of good administrative practice (Art 12 (1) OA). The Ombudsman functions within the framework of constitutional and legal regulations and international legal acts on human rights and freedoms adopted by the Republic of Croatia (Art 2 (2) OA).

An investigation may be initiated by the Ombudsman or on the request of a citizen (Art 12 (1) OA). Every person has the right to file a grievance with the Ombudsman whether the violation of the constitutional and legal rights of the citizens caused direct injury to the citizen or not and then the Ombudsman decides whether or not to take the grievance into consideration (Art 12 (2) OA). Complaints from prisoners are not subject to censorship, but complaints of people in pre-trial investigation may be inspected by the judge (Q III).

The Ombudsman may not deal with cases under legal or other proceedings (Art 6 OA). There is no fee for submitting complaints to the Ombudsman (Art 13 OA).

After completing an investigation, the Ombudsman is to inform the complainant about the actions undertaken (Art 14 OA). Even after leaving office the Ombudsman and the employees are subject to the duty of confidentiality (Art 11 (1) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman has access to all the data, information and documentation of state authorities regardless of the level of confidentiality (Art 11 (1) OA). State authorities are to offer any form of assistance. They are obligated to cooperate and on a demand submit reports and respond to the questions posed to them (Art 11 (3) OA). The Ombudsman may also at any time inspect correctional institutions (Art 15 OA). However, there are no means to enforce the official's duty to cooperation.

The Ombudsman is to submit **opinions**, including warnings, suggestions or recommendations (Art 7 (1) OA). Within a period of 30 days state authorities are to inform the Ombudsman about measures undertaken (Art 7 (3) OA). If they fail to act according to the recommendations, the Ombudsman may inform Parliament and the public about the violations (Art 7 (4) OA). The media are obligated to report about such incidents (Art 7 (5) OA). If the report contains comments concerning the work of correctional institutions, the supervising authority should inform the Ombudsman not later than 30 days about corrective measures taken (Art 15 (2) OA).

If the Ombudsman determines that a violation of rights with elements of a criminal act, an offence or a contravention of working discipline has occurred, the Ombudsman may recommend the initiation of **criminal, misdemeanour or disciplinary proceedings** (Art 7 (2) OA).

V.2. Powers in Relation to the Courts

Since the Ombudsman's control does not extend to the courts, there are no powers in this respect.

V.3. Powers in Relation to Legislative Organs

The Ombudsman is entitled to **recommend changes to laws** which protect the rights of citizens (Art 10 OA) and may also request the implementation of ratified but not sufficiently implemented international treaties (Q III).

Pursuant to Art 35 of the Constitutional Act on the Constitutional Court (*Narodne Novine* No. 49/02 of 3 May 2003) the Ombudsman is entitled to challenge the constitutionality of laws and the constitutionality and legality of regulations at the Constitutional Court to protect the constitutional and legal rights of citizens. However, this power is rarely exercised (Q II).

The Ombudsman is to submit an **annual report** to Parliament containing statistical data and an analysis of investigations conducted throughout the year (Art 8 OA). The report is to be published and discussed in Parliament. If there has been a major violation an additional report may be submitted to Parliament and the competent Ministry (Art 9 OA). For instance, such special reports were issued on the human rights situation of refugees in Croatia, on the situation in prisons and on the issue of property restitution. The Ombudsman may only participate in parliamentary debates when the report is discussed.

V.4. Special Functions and Powers in the Field of Human Rights

The Ombudsman regards the protection of human rights as an important task of the Ombudsman-Institution (Q II). However, there also exists a *Human Rights Office* established by the Croatian Government which specifically deals with citizens' complaints concerning human rights violations. Hence, there are no special powers of the Ombudsman in this field except for the power to recommend changes and amendments of laws (Art 10 OA). However, such a recommendation, as always, is not binding in any way.

VI. Practice

The **focus** of the Ombudsman's work lies with social issues as well as issues concerning refugees and the environment. Further, the Ombudsman continually and *ex officio* **monitors** prisons, refugee camps, orphanages and psychiatric hospitals (Art 15 OA). In 2004, 2,701 investigations were conducted including 2001 new investigations. In the year 2005 the Ombudsman received 1,635 written complaints (Q III).

VII. Reform

According to the Ombudsman the biggest problem faced by the institution is the fact that many authorities do not follow the recommendations (Q II). Further difficulties relate to the long duration of court proceedings in Croa-

tia. At the moment the Ombudsman does not have any competences vis à vis ordinary courts. However, many people approach the office with complaints concerning court proceedings. Therefore, it would be considered helpful to be entitled to intervene in cases of extraordinarily long court proceedings and in cases of alleged abuse of power by judges. In such cases the incumbent believes that the office should have the right to see documents and give proposals and recommendations as well as recommend disciplinary charges. In addition, a decentralised office outside of Zagreb is favoured, but this would require significantly more financial and personal resources (Q II).

VIII. Information

Constitution:
www.sabor.hr (31.10.2007)

Ombudsman Act:
www.ombudsman.hr (31.10.2007)

Annual Report:
Activity Report of the Ombudsman of Croatia 2004,
http://www.Ombudsman.hr/DOWNLOAD/2006/02/17/ANNUAL_REPORT_2004.mht (31.10.2007)

Annual Report Croatian Ombudsman 2005,
http://www.Ombudsman.hr/DOWNLOAD/2006/10/09/2005_ANNUAL_REPORT.pdf (31.10.2007)

Cyprus

Brigitte Kofler

A. Constitutional Background

The current Constitution of the Republic of Cyprus entered into force on 16 August 1980. Before, Cyprus had been a British Crown Colony for more than 80 years and today it still is a member of the Commonwealth. The majority of the population consists of Greek Cypriots and Turkish Cypriots. This fact has given rise to severe conflicts between the two groups during the last decades. Since 1974 the northern part of the island has been occupied by the Turkish Army. On this territory the Turkish Republic of Northern Cyprus (TRNC) has been proclaimed, which is not recognised as a sovereign state by the international community. A buffer zone has been established by the United Nations which nowadays separates the northern and the southern part of the country.

The Constitution of Cyprus, which is based on the principle of dualism, has become virtually obsolete in certain parts since the Turkish Cypriots withdrew their participation and declared the establishment of the TRNC. On 24 April 2004 a referendum was held about the UN's plan of reuniting the island but it was not approved of by the Greek Cypriot Community.

The factual organisation of the judiciary deviates from the system foreseen by the Constitution. The Constitutional Court has been merged with the Supreme Court which therefore acts as a court of last resort in civil, criminal and administrative matters and additionally has the competences of a constitutional court. In this context, it has *inter alia* the power to give rulings about the constitutionality of laws and deal with individual constitutional complaints. The district courts are the courts of first instance which have jurisdiction over all civil actions excepting matters that fall within the jurisdiction of the Rent Control Tribunal, the Industrial Disputes Tribunal and the Family Court. They also have jurisdiction in criminal matters but minor offences are tried by the Assize Courts.

In the TRNC a separate court system has been established on the basis of the proclaimed Constitution of the TRNC.

Cyprus is a member state of the Council of Europe and has ratified the European Convention on Human Rights in 1962.

B. Overview of Existing Ombudsman-Institutions

In Cyprus, there is one **national, parliamentary Ombudsman**, the *Epitropos Diikiseos* which means "Commissioner for Administration". Due to the division of the country the Parliamentary Ombudsman only has factual con-

trol over the southern part of the island. In the northern part a separate ombudsman-institution has been established (see D.).

C. Γραφείο Επιτρόπου Διοικήσεως (Ομπουτσμαν) – Office of the Commissioner for Administration

I. History and Legal Basis

The Ombudsman of Cyprus is not mentioned in the Constitution. The legal basis is the *Commissioner for Administration Act* (Law Gazette No. 3 of 18 January 1991 as amended Law Gazette No. 36 (I) 2004, hereinafter OA). The first incumbent took up the office in March 1991.

II. Organisation

The Ombudsman is a **monocratic body**. **No deputies** are appointed. Currently a staff of 44 are employed at the office (Q II).

III. Legal Status

The Ombudsman is appointed by the President on the recommendation of the Council of Ministers and with the prior consent of the House of Representatives (§ 3 (1) OA). The candidate must be a citizen of the Republic of at least thirty five years of age, with a high level of education and experience, and with highest integrity (§ 3 (1) OA).

The Ombudsman is independent and is not subject to external instructions.

The office of the Ombudsman is **incompatible** with any other post or office in the Republic or engagement in any other remunerated occupation (§ 3 (3) OA).

The **term of office** is six years without statutory restrictions concerning re-appointments (§ 3 (2) OA).

The Ombudsman may only be **dismissed** or withdrawn from office for the same reasons and in the same way that judges of the Supreme Court may be dismissed or withdrawn from office (§ 3 (7) OA). This means that dismissal is possible in case of mental or physical incapacity or infirmity which renders the incumbent incapable of discharging the duties of the office or on the ground of misconduct. A council consisting of judges decides about the dismissal (*v* Art 153/3f). In any case, the office ends if the Ombudsman submits a resignation in writing to the President or attains the age of sixty eight (§ 3 (5) and (6) OA).

No legal proceedings may be brought against the Commissioner in relation to any act or any opinion expressed in a submitted report in the exercise of the functions provided that such exercise of functions and powers are in good faith and within their limits (§ 12 (1) OA).

The Ombudsman receives a **remuneration** and benefits equal to that of the Auditor-General (§ 14 (1) OA).

IV. Scope of Control

The Ombudsman's control extends to any service or officer exercising an executive or administrative function (§ 5 (1) OA). The term "service" is defined as public service which is accountable to the Republic and every local authority and includes the public education service, the police, the army, the national guard and any public corporation which is established under the law in the public interest in so far as its administration is under the control of the Republic.

However, the President of the Republic, the House of Representatives, the Council of Ministers, any court of law, the Attorney-General, the Auditor-General, the Governor of the Central Bank, ministers in relation to actions concerning matters of general governmental policy and their activities as members of the Council of Ministers are exempted from the Ombudsman's control (§ 1 (2) OA). Furthermore, the Ombudsman may not investigate actions concerning the relations of the Republic with any other state or international organisation or the defense, security or foreign policy of the Republic as well as any action in relation to which proceedings are pending before a court of law or the examination of a hierarchical recourse before a competent administrative authority (§ 5 (2) OA).

The **control criteria** are human rights, the laws in general as well as the rules of proper administration and correct behaviour towards the administered (§ 5 (1)a OA).

The Ombudsman investigates complaints provided that a person is directly and personally affected, or upon order by the Council of Ministers or ***ex propio motu*** matters of general interest (§ 5 (1) OA). It is at the discretion of the Ombudsman whether to initiate or to continue or discontinue an investigation in relation to a complaint submitted by an individual (§ 5 (3) OA). The complaint is to be submitted within twelve months since the complainant became aware of the act or omission of the specific act (§ 5 (1)a OA).

Filing a complaint is **free of charge**.

The Ombudsman is to give to the service or person concerned an opportunity to comment on any allegation (§ 8 (1) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

Upon request of the Ombudsman all services are to provide the office with **every assistance necessary** in the execution of the duties (§ 8 (7) OA). In principle, no service or officer is allowed to invoke the duty of confidentiality during an investigation unless the issue concerns international relations, defense, security or foreign policy of the Republic (§ 9 (1) OA). People who without lawful excuse obstruct the Ombudsman's work are guilty of an offence and liable to imprisonment not exceeding six months or to a fine not exceeding three hundred pounds (*v* § 11 OA).

The Commissioner is to draw up a report about each specific case examined in which the complaint was found to be justified or a **recommendation,**

comment, or suggestion was made (§ 6 (2) OA). When the examination of a case requires a lengthy period, the Commissioner may submit an interim report (§ 6 (3) OA). If suggestion or recommendation is not complied with by the competent authority, the Commissioner may submit to the Council of Ministers a **special report** making reference to this fact (§ 6 (8) OA).

In practice, the Ombudsman proposes changes to legislation when such investigative finding justifies it. If the minister agrees with the Ombudsman on the need for change it will then be presented by the minister concerned to the Parliamentary Committee for discussion (Q II).

If at any stage of the investigation or after its completion the Commissioner decides that a **criminal or disciplinary offence** may have been committed by any officer, the matter is to be referred to the Attorney-General or the competent authority (§ 8 (3) OA).

V.2. Powers in Relation to the Courts

The courts as a whole are exempt from the Ombudsman's control. Therefore, there are no powers in this respect (*v* IV.).

V.3. Powers in Relation to Legislative Organs

The Ombudsman is not entitled to initiate legislation (but see V.1.). The Ombudsman is to submit to the President an annual **report** about the exercise of the functions with comments and suggestions. A copy of the report is to be sent to the Council of Ministers and the House of Representatives. Such a report also is to be published (§ 6 (1) OA). Also **special reports** may be submitted to Parliament (cf § 6 (8) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is regarded as an important, independent function of the Ombudsman. In particular, the Ombudsman is also the head of the Cyprus "**Equality Authority**", which investigates complaints regarding discrimination in the work place, and Head of the Cyprus' "**Anti-discrimination Body**", which deals with complaints regarding racist acts. The Ombudsman's annual report contains a separate section on human rights protection (Q II). The institution is not accredited as National Human Rights Institution according to the UN Paris Principles.

VI. Practice

In 2006 the Ombudsman received 3,095 complaints (Q III). The focus of this activity lies within social issues, property law and estate law issues as well as complaints of civil servants. In principle, there is **no continual monitoring *ex officio***, however, the Ombudsman regularly visits prisons and detention centres.

VII. Reform

The most frequent practical **problems and obstacles** of the Ombudsman's monitoring activity are delays of administrative organs in responding to the Ombudsman's requests for information and in conforming to the Ombudsman's suggestions. In order to overcome these problems the Ombudsman seeks a better and more efficient communication with the administrative organs. Furthermore, the possibility of obtaining expert advice on matters such as violations of town planning laws, environmental laws and laws on submitting an offer to provide services or goods to governmental organisations is also proposed (Q II).

D. KKTC Yüksek Yönetim Denetçisi – Office of the Ombudsman of the TRNC

I. History and Legal Basis

The Ombudsman of Northern Cyprus, the *Yüksek Yönetim Denetçisi* is mentioned in Art 14 of the Constitution of the TRNC. A more detailed provision on the institution is laid down in the "Law on the Appointment of an Ombudsman and the Establishment of an Office of the Ombudsman" (Law No. 38/1996 of 16 July 1996). The Ombudsman-Institution was founded in January 1997. The Ombudsman's control is confined to the territory of the proclaimed TRNC.

II. Specific Features

The Ombudsman is appointed by the President of the TRNC after the candidate has been elected in Parliament (Art 14 (1) Const TRNC; § 4 OA TRNC). If a two-third majority cannot be reached in the first ballot, only an absolute majority of votes is necessary in the second round. The president has the right to propose candidates for the office of the Ombudsman. The **qualification requirements** are eligibility to parliament, a university degree in law, political sciences, administration or economics and at least ten years of professional experience in a higher position (Q I).

There are **no incompatibilities** stated in the Ombudsman Act. However, membership in a political party or union is regarded as incompatible with the office of the Ombudsman (Q I).

The Ombudsman's control extends to activities of public entities and third parties with public authority. The president, the secret service, the police, the military and the courts are exempted (Art 144 (3) Const TRNC; § 13 OA TRNC).

There are **no deadlines** for a complaint. As long as a matter is investigated by the public prosecutor or by the police the Ombudsman is to inform the complainant that any action may only be taken after the completion of the investigations of the said bodies (§ 15 (2) and (3) OA TRNC). After conducting an investigation the Ombudsman may direct **recommendations** to the authorities concerned and also state that they have contravened the laws.

Every six months the Ombudsman is to submit a detailed report about the activity before Parliament which also is published (§ 16 (1) OA TRNC).

The **focus** of the activity is in social issues (Q I).

Czech Republic

Joachim Stern

A. Constitutional Background

The Constitution of the Czech Republic was passed in 1992 and came into effect in 1993 with the dissolution of the Czechoslovakian Federal Republic. It declares the Czech Republic a parliamentary republic in the form of a unitary state (Constitution of 16/12/1992, as amended 515/2002 Coll., hereafter Const). Parliament consists of two chambers, the Chamber of Deputies (*Poslanecká snêmovna*), whose 200 members are elected for a term of four years according to the principles of proportional representation, and the Senate, whose 81 members are elected for six years according to a majority system. The Senate has mostly counselling and controlling competencies (Art 15–53 Const). The Head of State is the President of the Republic (Art 54 Const). He is elected by Parliament in a joint session of both chambers. The President has the power to veto laws and send them back to Parliament. He has the right to attend meetings of both chambers of Parliament and of the Government (Art 64 Const). The President nominates the Prime Minister and upon proposal of the latter the other members of Government (Art 68 (2) Const).

The judiciary system consists of the Supreme Court and superior, regional and district Courts (Art 91(1) Const). Any administrative decision may be appealed to the superior authority. Additionally, decisions may be subject to judicial review by the Supreme Administrative Court in the last instance. The Constitutional Court is charged "with protection of constitutional rule" (Art 83 Const). In addition to its role of revising general norms the Court decides cases regarding the violation of constitutionally guaranteed fundamental rights and freedoms by public authorities.

Since its separation from Slovakia the Czech Republic has been a sovereign member of the Council of Europe. The ECHR had already been ratified by Czechoslovakia. As a promulgated international agreement that has been ratified and approved by Parliament, the ECHR constitutes a part of the domestic legal order and prevails over conflicting laws (Art 10 Const).

B. Overview of Existing Ombudsman-Institutions

The *Veřejný ochránce práv* – Public Defender of Rights – is the Czech Republic's **national parliamentary ombudsman-institution** with a general mandate. There are no similar institutions on a regional or communal level.

C. Veřejný ochránce práv – Public Defender of Rights

I. History and Legal Basis

Initially, a bill to establish an ombudsman-institution was prepared by the Czechoslovakian Government. The project envisaged the creation of an office of a Public Defender of Rights, composed of six members and intended to represent the federal structure of the Czechoslovakian Republic. The dissolution of the federation prevented the bill from passing into law. In 1995, the Parliamentary Committee for Petitions, Human Rights, and Nationalities undertook a further attempt which was heavily criticised by the Government and failed to obtain a majority in the plenary session. After a change in Government in 1999 a new project was finally adopted in Parliament. It created the institution of the Public Defender of Rights. The recommendations of the Council of Europe on establishing ombudsman-institutions are said to have been the decisive argument for the passing of the Law.[176] In July 2000, the first attempt to elect an Ombudsman failed. In December of the same year the President of the Republic and the Senate nominated the Minister of Justice for the post. He received a clear majority and took office soon afterwards.

In 2003, in the course of an administrative reform, the Ombudsman's mandate was enlarged. During a reform of the public finances sector in 2005, the legal provisions concerning the Ombudsman's salary were altered. In 2006, the competences of the institution were enlarged in order to fulfil obligations under the OPCAT and the institution was designated as NPM.

The institution of the Public Defender of Rights is **not embodied in the Constitution**. Its legal basis is the Law on the People's Advocate (Zákon o Veřejný ochránci práv 349/1999, as amended 342/2006; hereafter OA).

[176] http://www.ochrance.cz/en/ombudsman/obecne.php (22/2/2007).

II. Organisation

The Public Defender of Rights is a **monocratically organised institution**. The Ombudsman has **one deputy** who is elected according to the same procedure as the Ombudsman. He "fully represents" the Public Defender during periods of his absence. The Public Defender may also delegate part of his duties to the Deputy (§ 2(4) OA).

Like the supreme judicial organs the institution has its seat in the city of Brno. It currently employs 86 people (2005). Its budget is approved by Parliament. The Government is involved in this process.

III. Legal Status

The Public Defender is **elected by the Chamber of Deputies** by a simple majority of votes for a **term of six years**. The Senate and the President of the Republic each have the right to nominate two candidates; identical proposals are permitted. Any one person can be elected for a maximum of two consecutive periods (§ 2 OA).

Anybody who is eligible for the Senate is **eligible** for the post of Public Defender (§ 2 (2) OA). Candidates thus have to be Czech citizens, in full possession of their rights to vote, and of a minimum age of 40 years (Art 19(2) Const). The Public Defender assumes his duties by taking an oath before the Chairperson of the Chamber of Deputies within ten days of his election. If he fails to do so, the election is considered not to have taken place (§ 4 OA).

The Public Defender shall carry out his duties **independently** and is accountable only to the Chamber of Deputies (§ 5 OA). Criminal proceedings against him may not be instigated without the approval of the Chamber of Deputies and he thus enjoys **immunity** (§ 7 OA).

The Public Defender shall also carry out his duties impartially. To guarantee impartiality the law defines a broad catalogue of **incompatibilities**: The function is not only incompatible with all public offices and administrative functions but also with other profit-making activities except for the management of his own private property. Activities of a scientific, educational, publishing, literary or artistic nature are permitted as long as they are not detrimental to the discharge of his function and the dignity of the office, and the activity "does not threaten the trust in the independence and impartiality in the discharge thereof". Furthermore, the Public Defender may not be a member of a political party or movement (§ 3 OA). It is up to the Chamber of Deputies to decide whether a violation of these rules has occurred and to consequently **remove** the incumbent from office.

Otherwise the office **ends** with the expiry of the incumbent's term, the coming into force of a court sentence convicting the Public Defender of a criminal act, the loss of eligibility for the Senate (loss of the right to vote or loss of Czech citizenship), by taking on another public office or by his resignation. In all of these cases it is up to the Chairperson of the Chamber of Deputies to declare the office forfeited (§ 6(2) OA).

In terms of **salary**, expenses and benefits the Public Defender enjoys the same rights as the President of the Supreme Audit Office (§ 8(2) OA). He earns approximately twenty-five percent more than a minister (Q 3).

IV. Scope of Control

It is the **mission** of the Public Defender of Rights "to defend persons in relation to the actions of authorities and other institutions listed in this Law, should such actions be inconsistent with the law, in contradiction to the principles of a democratic legal state and good administration, and also in the event of inaction by these authorities, thereby contributing to the defence of fundamental rights and freedoms" (§ 1(1) OA).

The **jurisdiction** of the Public Defender encompasses ministries and other administrative authorities having competence over the entire territory of the Czech Republic, administrative authorities subject to such authorities, the Czech National Bank when acting as an administrative authority, the Council for Radio and Television Broadcasting, bodies of municipal authorities when performing state administration, as well as the Police, the Army, the Castle Guard, the Prison Service and facilities performing custody, imprisonment, protective or institutional care, or protective therapy, and public medical insurance organisations.

Expressly excluded from his jurisdiction are the Parliament, the President of the Republic, the Government, the Supreme Audit Office, the intelligence services of the Czech Republic, authorities responsible for criminal proceedings, state prosecutors and courts, with the exception of the public prosecutor's administrative bodies and the state administration of courts.

The **criteria of control** are made up of the entire body of law as well as of "principles of a democratic legal state" and principles of good administration (§ 1 (1) OA). Human rights are indirectly included: an investigation based on the above criteria is supposed to contribute to the defense of fundamental rights and freedoms.

Anyone affected by a case – whether a natural or legal person – has the **right to address a complaint** to the Public Defender (§ 10(1), § 12(1) OA). Complaints from people who are restricted in their personal freedoms are not subject to official inspection (§ 10(2) OA). Members of either of the Houses of Parliament can refer complaints addressed to them to the Public Defender (§ 9(1)(b), (c) OA). Besides that the Public Defender may also act on his **own initiative**. He is required to systematically visit places "where there are or may be located persons whose freedom is restricted by public authority or as a result of their dependence on care provided, in order to strengthen protection of such persons against torture, or cruel, inhumane and degrading treatment, punishment or other mistreatment" (§ 1(3) OA).

Complaints must be addressed to the Defender in writing, but may also be "entered verbally into a record" (§ 10(1) OA). A complaint must contain the name, surname and domicile of the complainant and a description of the important circumstances of the case. The authority concerned must be speci-

fied. The complaint is **not subsidiary** *stricto sensu* but it must include documentary proof that an unsuccessful appeal was made to the relevant authority to rectify the matter (§ 11 OA).

The Ombudsman shall **reject** a complaint if the case does not fall within his competence or does not concern the person or entity filing the complaint. He may also do so if the complaint is incomplete, manifestly unfounded, if it concerns a decision or events which date back more than **one year**, or if the case is or has been subject to judicial review (§ 12 OA). The Public Defender shall inform the appellant in writing of the suspension of the complaint and the reasons therefore, or inform the appellant that an investigation has been initiated (§ 12(3), § 14 OA). Should the complaint by its content be a matter for appeal according to the regulations on administrative or judicial affairs or appeal before the administrative courts, or if it is a matter for a constitutional complaint, the Public Defender shall inform the appellant thereof without delay and provide him with instructions regarding the conduct of procedures (§ 13 OA).

The complaint to the Public Defender of Rights is **not subject to a fee** (§ 10(3) OA).

V. Powers

V.1 Powers in Relation to Administrative Organs

The Public Defender of Rights is authorised to **access all areas** of the authority concerned in order to carry out an investigation. This can involve the consultation of files and the interviewing of employees and of persons detained without the presence of third parties. While those responsible for the relevant authority must be made aware of the inspection, no advance warning is required to be given.

All state administration bodies and persons conducting public administration are obliged to provide the Ombudsman with any **support** requested (§ 16 OA). They must provide him with information and explanations, files and other written materials, written opinions concerning the facts of the case and legal matters, and must also carry out supervisory actions as permitted by law and suggested by the Public Defender, all within a time limit set by the Ombudsman (§ 15 OA). Since 2006, the Ombudsman has unrestricted access to the citizens register information system (§ 16a OA).

If the Public Defender discovers a "violation of the law or other misdemeanours" he invites the authority concerned to provide a reply within 30 days. If he considers the reply and the measures announced sufficient he can close the case. Otherwise he informs the complainant and the authority concerned of his **final decision** on the matter including a **proposal for corrective measures** to be taken. These recommended measures can include the starting of an administrative procedure to review the action concerned, the institution of measures to prevent non-action, the instigation of disciplinary or similar action or prosecution for a criminal act, offence or administrative offence, the provision of compensation or the instigation of a claim for com-

pensation (§ 19 OA). After having visited a facility where people are restricted in their personal freedom the Public Defender of Rights is to produce a report on his findings, whether these confirm the existence of grievances or not (§ 21a OA).

In case an authority does not cooperate, does not act upon the recommendations or does not take sufficient action, the Public Defender may inform a superior authority or the Government as well as the public. He has the explicit right to disclose the names and surnames of persons authorised to act on behalf of the authority (§ 20 OA).

Since 2006, the Public Defender has had the right to propose that the Supreme Public Prosecutor bring an action for the protection of the public interest (§ 22 OA, § 66(2) Code of Administrative Justice, No. 150/2002 Coll).

The Public Defender is authorised to recommend the issuing, amendment, or annulment of a legal regulation or internal order. Such recommendations are presented to the authority concerned and, if the matter concerns a ruling, a governmental decree or a law, to the Government itself. The authority concerned is obliged to present its point of view within sixty days (§ 22(1) OA).

The Defender can file a petition to demand the annulment of administrative regulations ("enactment") at the Constitutional Court (§ 64(2)(f) Act on the Constitutional Court No. 182/1993 Coll. as amended 83/2004 Coll.).

V.2 Powers in Relation to the Courts

The judiciary is outside the scope of the Ombudsman's control, except for the administration of justice ("administration of courts"; see supra IV.). He is only able to demand information about the status of ongoing judicial procedures.

V.3 Powers in Relation to Legislative Organs

The Public Defender of Rights shall provide the Chamber of Deputies with a report on each case which has not been resolved adequately. At least once every three months he shall provide the Chamber with general information on his activities; and each year before March 31st, he is to provide an **annual written report** which is a "parliamentary publication" and is to be published "in a suitable manner" (§ 23(1) OA). Copies are to be sent to the Senate, the President of the Republic, the Government and other administrative authorities having competence over the entire territory of the Republic. The Chamber of Deputies is required to **debate reports and information** presented by the Public Defender. The latter has the right to participate in plenary sessions and sessions of committees of the parliament if a matter falls within his sphere of competence (§ 24(3) OA).

If the Public Defender of Rights wants to recommend the issuing, amendment, or annulment of a legal regulation he is to address his proposal to the Government (§ 22(1) OA; supra V.1.).

V.4 Special Functions and Powers in the Field of Human Rights

Since 2006, the institution of the Public Defender of Rights has been charged with the functions of an NPM according to the OPCAT. The International Coordination Committee lists the office in its directory, although it is not accredited as an NHRI.

VI. Practice

In 2005, the Public Defender of Rights considered 4,939 cases of which only 2,816 fell within his jurisdiction. Problems regarding social insurance institutions were singled out as the biggest part of complaints (10.9%), followed by complaints concerning construction permits (7.0%), the administration of justice (5.1%), as well as the army and the interior administration (4.9%). Prisons, but also refugee camps, children's homes and psychiatric hospitals are controlled *ex officio* on a permanent basis.

The Ombudsman has a specific duty to inform the public about his competences and actions (§ 23 OA). In this regard he holds press-conferences once a month. A TV-program entitled "A Case for the Public Defender of Rights" in which recent cases are presented has been a great success. Discussions as to further productions are currently underway.

VII. Reform

In its own view, the most significant problem faced by the institution of the Public Defender of Rights is the failure of parliament to follow up on many of the institution's recommendations, as well as the tendency of the administration to refuse information on the basis of confidentiality despite the fact that the Ombudsman is expressly entitled to demand that an official's confidentiality obligations be lifted (§ 15 OA). However, all in all the institution considers its powers sufficient (Q II).

VIII. Information

Constitution:
http://www.hrad.cz/en/ustava_cr/index.shtml

Law:
http://www.ochrance.cz/en/dokumenty/law_349_1999_amd_342.pdf

Annual Report:
http://www.ochrance.cz/en/dokumenty/dokument.php?back=/cinnost/index.php&doc=480

Internet:
http://www.ochrance.cz/en/index.php

Denmark

Joachim Stern

A. Constitutional Background

The Constitutional Act of the Kingdom (*Riges Grundlov* – "Basic Law of the Kingdom", Act of 5/6/1953, hereafter Const*)* and the Act of Succession have been in force without amendments since 1953. These documents together comprise the Danish Constitution. The Constitutional Act declares Denmark a constitutional monarchy with a parliamentary-democratic form of government. The unicameral Parliament (*Folketing)* consists of 179 Members of which two are elected from Greenland and the Faroe Islands. The Head of State is the Queen. She has the right to dissolve Parliament (§ 32 Const) and to participate in meetings of the Council of State (§§ 17–18 Const) However, the exercise of her functions is mostly ceremonial and representative in nature.

The Government is composed of the ministers and lead by the Prime Minister. Together they form the *Council of State*. They are responsible to the Parliament for public administration which is organised hierarchically. 273 local authorities (*kommuner*) make up the local self-government which has seen its functions enlarged since the 1970s.

The Faroe Islands and Greenland enjoy home-rule in interior matters dating back to 1948 and 1979 respectively and they each have their own local parliaments (*landsting*). However, foreign-policy matters and police functions are still matters covered in national legislation and administration. The latter is represented by a Chief Administrative Officer *(Rigsombudsmand*) who resides in the territories. The Faroe Islands and Greenland are not part of the EU.

Administrative decisions may be appealed to a superior authority and the Constitution also empowers the courts of justice to rule upon any matter which relates to the scope of the executive's authority (§ 63 (1) Const). There are no specialised administrative courts or special rules of procedure for administrative disputes in court. Denmark has no Constitutional Court either. Questions of constitutional legality are reviewed by the court dealing with the case and then may be appealed to the Supreme Court of Justice (*Højesteret*). For cases of impeachment brought against ministers for maladministration of office the High Court of the Realm (*Rigsretten*) has jurisdiction to deal with these matters (§ 59f Const).

The Constitutional Act also contains a charter of fundamental rights and freedoms including social rights, like the right to work on terms securing one's own existence and the right to public assistance if one is unable to support oneself (§ 67ff Const).

Denmark is a founding member of the Council of Europe and ratified the ECHR in 1953. In 1992 the ECHR was incorporated into the legal order as a national law.

B. Overview of Existing Ombudsman-Institutions

The *Folketingets Ombudsmand* is Denmark's national parliamentarian Ombudsman. In the territories enjoying home-rule separate Ombudsmen exist. This has been the case in Greenland since 1995 and in the Faroe Islands since 2001. The incumbents of these institutions are elected by the regional parliaments; their control extends to the regional authorities. The provisions governing the Office of the Faroe Islands' Ombudsman are not available in English and those regulating the Ombudsman of Greenland[177] are identical to the provisions for the national Ombudsman on all major points. As such they will not be discussed further here.[178] It should be pointed out that the national Ombudsman is still responsible for controlling the national administration exercised in these territories. However, in 2006 an amendment to the National Ombudsman Act, which is not yet available in English, provided that by royal order the enforcement of the National Ombudsman Act can be suspended or adopted to local necessities of the territories under home-rule.[179]

C. Folketingets Ombudsmand – Parliamentary Commissioner for Civil and Military Administration in Denmark – Parlamentarischer Ombudsman

I. History and Legal Basis

With the adoption of the new Constitution in 1953 the Danish Parliament was attempting to bring the public administration under stronger parliamentary control and to reinforce means of individual legal protection. This was considered important given that the executive branch had developed a life of its own after the emergency regulations of the 1930s and the economical reconstruction during the post-war years. Thus, paragraph 55 of the **Constitution** provides that "Statutory provision shall be made for the appointment by the *Folketing* of one or two persons, who shall not be members of the *Folketing*, to supervise the civil and military administration of the State."

The **law** creating the office of the *Folketingets Ombudsmand* – The Ombudsman of the *Folketing* or Parliamentary Commissioner for Civil and Military Administration in Denmark – was passed in 1954 (Act 203 of 11/6/1954) and the first Ombudsman took office on April 1, 1955. The act has since been amended four times. As of 1959 the Ombudsman was no longer responsible for controlling administrative acts which became subject

---

177 Greenland Law 7 of 13/6/1994 as amended 1/1/1997.

178 See *Frandsen*, The Ombudsman – The Faroe Islands and Greenland, in *Gammeltoft-Hansen /Olsen (eds.)*, The Danish Ombudsman 2005 (2005), 303.

179 Law 556 of 24/6/2005.

to control by courts of justice. Also, complaints can only be introduced after the exhaustion of all means of administrative appeal. In 1961 local authorities were made subject to the Ombudsman's control in certain aspects and in 1971 the modalities concerning the Ombudsman's appointment were laid down more precisely in the law. An amendment in 1996 brought about substantive changes and since then local authorities have been subject to the Ombudsman's control in all aspects. The change also distanced the institution from its Swedish role-model by abolishing the Ombudsman's powers to prosecute officials, hence, not focussing on the individual official's any more (Act 473 of 12/6/1996, hereafter OA). This last modification laid down in detail the Ombudsman's right to conduct investigations on site. A further amendment made in 2006 concerning the Ombudsman's powers in regard to the territories enjoying home-rule is not available in English (supra B.).

The Parliament can lay down general rules governing the activities of the Ombudsman (§ 10 OA). However, currently no such guidelines are in force. Details concerning the Ombudsman's relationship to Parliament can also be found in the standing orders of the *Folketing* (*Forretningsorden for Folketinget,* hereafter ParlO).[180]

II. Organisation

The Constitution permits the appointment of one or two incumbents. The law narrows down this possibility to one Ombudsman and thus provides for a **monocratically organised office** (§ 1 (1) OA). The Ombudsman has **no deputies** but may order that one of his staff members carry out his functions temporarily (§ 27 OA). In the event of the death of the Ombudsman, the Legal Affairs Committee of the *Folketing* shall designate one person to carry out the functions of the Ombudsman until the *Folketing* has elected a new Ombudsman (§ 1 (2) OA). If a case involves circumstances which may give rise to doubt about the impartiality of the Ombudsman the Legal Affairs Committee of the *Folketing* must be involved. The committee then determines who should carry out the Ombudsman's functions (§ 29 (1) OA).

The Ombudsman can hire and dismiss his own staff. However, the number of employees, their salaries and pensions is fixed in accordance with the Rules of Procedure of the *Folketing*. The expenditures incident to the office of Ombudsman shall be charged to the **budget of the *Folketing*** (§ 26 OA).

The institution currently employs eighty-four persons. The designation of "ombudsman" or any other designation which may be confused therewith shall not be used except when authorised by an Act passed by the Folketing (§ 30 OA).

III. Legal Status

After every general election or in case of a vacancy the *Folketing* elects an Ombudsman by **simple majority** in a meeting without debate (§ 1 OA, § 17

[180] http://www.ft.dk/pdf/standing_orders.pdf (1/6/2007).

(2) ParlO). This provision is meant to ensure that the reputation of the institution does not become damaged by political debate. A recommendation for a candidate has to be elaborated by the *Folketing's* Committee for Legal Affairs (§ 1 (1) OA, § 17 (2) ParlO). The **term in office** depends on the legislative period which is generally four years in length. There are no restrictions relating to the re-election of the same incumbent.

The law requires the Ombudsman to be a graduate of law and not a member of the *Folketing* or a local council (§ 2 OA). The office is **incompatible** with any other position in public or private firms, undertakings or institutions. However, exceptions to this rule can be granted by the Legal Affairs Committee of the *Folketing* (§ 29 (2) OA).

If the Ombudsman ceases to enjoy the confidence of the *Folketing*, it may **dismiss** him at any time with a simple majority vote (§ 3 OA). However, if discharged without notice the Ombudsman shall retain his salary for three months (§ 6 OA). In case the Ombudsman wants to resign six months' notice must be given (§ 4 (1) OA). At the end of the month in which the Ombudsman attains the age of 70 he shall retire (§ 4 (2) OA).

Aside from being susceptible to removal by the *Folketing* the Ombudsman is **independent** in his or her functions. Parliament can only lay down general rules governing his or her activities (§ 10 OA). The incumbent is **not immune** against criminal procedures. If civil action is brought against an Ombudsman as a consequence of his decisions or statements made in the course of his functions, the Ombudsman may ask the court to dismiss the case (§ 25 OA).

The Ombudsman's **salary** is to be determined by the *Folketing*. The current amount is not known but the law provides that the Ombudsman is entitled to severance pay and a pension under provisions corresponding to those of ministers (§ 5 OA).

IV. Scope of Control

The main **function** of the Ombudsman is the supervision of the civil and military administration of the State (§ 55 Const). As the law does not provide for such a distinction, the jurisdiction of the Ombudsman extends to all parts of the public administration (§ 7(1) OA), meaning any authority that has to apply the Public Administration Act (Danish Ombudsman 2005, 60). Additionally, the Ombudsman can extend his scope of control to include "companies, institutions, associations etc" that fall under the Public Administration Act, the Access to Public Administration Files Act or the Public Administration Data Protection Act (§ 7 (4) OA). This is a power that has not yet been used by the institution. Private persons acting on a private-law basis are generally excluded from the Ombudsman's jurisdiction; however, private institutions that are fully financed by public funds, such as private day nurseries, have been regarded as part of the public administration. In a few cases special legislation has extended the Ombudsman's control to parts of limited companies – such as the state railways (Danish Ombudsman 2005,

74). The local administration and their undertakings – even if organised by acts of private law – are subject to the control of the Ombudsman, who must then take into account "the special conditions under which local government functions" (§ 8 OA). The Established Church (*Folkekirke)* can be investigated by the Ombudsman except for matters which directly or indirectly involve the tenants or doctrines of the Church (§ 9 OA; see § 4 Const).

Courts of Justice cannot be controlled by the Ombudsman (§ 7 (2) OA). This restriction does not only concern judicial but also administrative aspects. Also, the Ombudsman shall not consider complaints against "boards which in a satisfactory way make decisions on disputes between private parties, even if the board concerned in other contexts is regarded as part of the public administration", such as the Danish Consumer Complaints Board. Since 1996, complaints against the Refugee Board can no longer be filed with the Ombudsman (§ 32 OA).

The law provides that the Ombudsman shall assess whether the concerned authorities act "in contravention of existing legislation or otherwise commit errors or derelictions in the discharge of their duties", thus defining the **criteria of control** (§ 21 OA).[181]

"Any person" may **lodge a complaint** with the Ombudsman. The complaint is subsidiary in the sense that it cannot be lodged against a formal decision which may be appealed to another administrative authority until that authority has made a decision on the matter (§ 14 OA). Although a complaint with the Ombudsman can be lodged parallel to procedures at a court of law, the Ombudsman generally refuses matters in which the complainant intends to institute legal proceedings.

The complaint has to be filed within **twelve months** of the commission of the act complained of and the only formal requirement is that the complainants state their name (§ 13 OA). Any person deprived of his personal liberty is entitled to express his concerns in writing and forward them on to the Ombudsman in a sealed envelope (§ 13 (1) OA). However, complaints about the treatment of persons deprived of their personal liberty – except when such measures are carried out by the administration of criminal justice – have to be referred to a Supervisory Board appointed by the *Folketing* (§ 71 (7) Const). The Ombudsman can only investigate such complaints if the board seeks his assistance (§ 15 OA).

The Ombudsman may take up a matter for investigation on his **own initiative** and also undertake general investigations into the way an administrative authority processes cases (§ 17 OA). In practice the Ombudsman applies this provision to scrutinise selected cases within a particular field after they are closed (Danish Ombudsman 2005, 27).

The Ombudsman can freely determine whether a complaint "offers sufficient grounds for investigation". Thus he is not obliged to carry out an investigation (§ 16 (1) OA). It is deemed to be self-evident that complaints are **free of charge**.

---

[181] See *Olsen*, Good Administrative Practice (2004), http://www.ombudsmanden.dk/publikationer/administrative_practice/ (12/6/2007).

Also, there are no explicit provisions that the Ombudsman has to inform complainants about the outcome of the investigation. Decisions which are taken up in the annual report are also published in the electronic legal information system.[182]

The Ombudsman and his staff are bound to observe rules of secrecy, provided this is "necessary ipso facto" (§ 28 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

All authorities within the jurisdiction of the Ombudsman are under the obligation to furnish him with such **information, documents and written statements** as he demands. An authority's duty to maintain secrecy cannot be opposed to him. The Ombudsman also has the right to subpoena persons to give evidence in court on any matter of importance to investigations (§ 19 OA) – a right which has never been used thus far. Furthermore the Ombudsman may inspect any institution, firm or place of employment within his jurisdiction (§ 18, § 19 (4) OA).

After the investigation the Ombudsman may "express **criticism**, make **recommendations** and otherwise **state his views** of a case". The concerned person then has the opportunity to make a statement (§§ 22, 20 OA). The law does not provide any duty to act upon these recommendations.

If the Ombudsman reveals "errors or derelictions of major importance" he shall report the matter to the Legal Affairs Committee of the *Folketing* and to the responsible minister or local authority (§ 24 OA). As with matters included in the annual report (infra V.3.) he must include what the person or authority concerned pleaded as a defense (§ 11 (2) OA).

If any "deficiencies" in existing laws or administrative regulations come to the attention of the Ombudsman, he shall notify the *Folketing* and the responsible minister or the local authority concerned thereof (§ 12 OA). The Ombudsman considers this right to be limited to technical amendments only (Q II).

Since 1996, the Ombudsman does not have the explicit power to initiate disciplinary proceedings. However, it is still possible to suggest that disciplinary or criminal proceedings be commenced in a recommendation.

V.2. Powers in Relation to the Courts

Courts are exempted from the Ombudsman's control in all judicial and administrative aspects. The Ombudsman also rejects cases in which the claimant intends to initiate legal proceedings or if a similar case is pending in court. The Ombudsman can recommend that the Minister of Justice grant free legal aid to a complainant (§ 23 OA). This provision is aimed at permitting the Ombudsman and the complainant to obtain judicial decisions in controversial cases.

---

[182] http://www.retsinformation.dk/fo/fo.htm (31/10/2007).

V.3. Powers in Relation to Legislative Organs

The *Folketing*, its committees and members as well as its administration are not subject to the Ombudsman's control.

The Ombudsman has to submit an **annual report** on his work to the *Folketing* which shall be printed and published (§ 11 OA). This report is subject to discussion in the Legal Affairs Committee. Since 2002, the incumbent is regularly invited to participate in this debate (Q II). The report does not contain a special section whereby fundamental rights and freedoms are separately discussed.

The Ombudsman has the power to present **special reports** if he reveals "errors or derelictions of major importance". These special reports are submitted directly to the Legal Affairs Committee (§ 24 OA). At any time, the Ombudsman can inform Parliament and the ministers about **deficiencies in existing laws** (§ 12 OA). There is no corresponding obligation to react to these suggestions.

V.4. Special Functions and Powers in the Field of Human Rights

The institution of the *Folketingets Ombudsmand* has no special obligations or powers in the field of human rights. Still, systematic inspections of institutions where people are restricted in their personal freedoms play a major role in the Ombudsman's activities. In this regard plans exist to declare the Ombudsman as NPM according to the provisions of the OPCAT. The Danish Institute for Human Rights (*Institut for Menneskerettigheder*) – an institution for the research and education in the field of human rights – is accredited as Denmark's NHRI according to the Paris Principles.

VI. Practice

In 2005, the institution of the Danish Ombudsman responded to 4,266 cases, which was slightly more than the year before. 164 investigations were conducted *ex officio*. The Ombudsman rejected 3,352 cases. In 734 cases the complaint was considered unqualified. 197 times the Ombudsman expressed criticisms or made recommendations. Organs of the Ministry of Justice, especially in the field of the administration of prisons have been criticised most often (69 cases) followed by the Ministry of Refugees, Immigration and Integration (18 cases).

The Ombudsman conducts approximately 25 on spot investigations per year. The Ombudsman also considers the supervision in the field of non-discrimination of disabled people as an inherent function of the institution and regularly undertakes inspections of public buildings with particular regard to accessibility for handicapped people.

As an interesting side note: even though the legal provisions concerning the appointment and removal of the ombudsman are very flexible the institution has only been headed by four different incumbents since its founding more than fifty years ago.

VII. Reform

The Ombudsman considers himself not to be in the position to politically demand reforms concerning the institution, but generally judges its powers to be sufficient. In regard to the potential designation of the institution as NPM according to the provisions of the OPCAT, various NGOs criticise the Ombudsman because he generally refrains from commenting on legislative initiatives and draft laws, which would be in direct contradiction to an NPM's obligation of reviewing legislation with regards to anti-torture measures and general human rights issues. Also the homogeneous professional composition of the Ombudsman's staff is criticised as it mostly consists of lawyers and lacks experts from other fields.[183]

VIII. Information

Constitution:
http://www.folketinget.dk/pdf/constitution.pdf

Law:
http://ombudsmanden.dk/ombudsmanden_en/

Annual Report:
http://www.ombudsmanden.dk/aarsberetning_en/Summary2005.pdf/

Internet:
http://www.ombudsmanden.dk/english_en/

[183] Alternative Report to the list of issues to be considered by the UN Committee against Torture during the examination of the 5th periodic report of Denmark, 19/2/2007, 19–21.

Estonia

Joachim Stern

A. Constitutional Background

The Constitution of Estonia went into force in 1992, after having been confirmed by referendum (Constitution of 28/6/1992 as amended 25/2/2003, hereafter Const). It declares Estonia a democratic republic (§ 1 Const). The unicameral Parliament (*Riigikogu)* consists of 101 members, chosen in general, uniform and direct elections on the principle of proportionality (§ 60 Const). The Head of State is the President of the Republic. He is elected by Parliament for a five year term of office which is renewable once (§§ 77–85 Const). Estonia is a unitary state.

The judiciary is composed of County Courts and Administrative Courts in the first instance, of Circuit Courts as common courts of appeal and the Supreme Court as court of cassation (§ 149 Const). The Supreme Court also sits as the court for constitutional review. In any court proceeding, judges shall not apply laws or other legislation that is in conflict with the Constitution or the "spirit of the Constitution". In such a case, they shall forward their relevant judgment to the Supreme Court, which can declare the provisions invalid (§ 152 Const). The President of the Republic, the Chancellor of Justice, local government councils and the Parliament have the right to contest general norms in the Supreme Court (§ 3 (4) Constitutional Review Court Procedure Act[184]). Individuals cannot submit complaints.

The Estonian Constitution contains an extensive charter of "Fundamental Rights, Freedoms and Duties". Many of these rights are limited to citizens of Estonia, which seems to be problematic with regard to the large number of stateless persons.[185] Estonia is a member to the Council of Europe since 1993 and ratified the ECHR in 1996. As ratified international treaty the Convention has precedence over contradicting national laws.

B. Overview of Existing Ombudsman-Institutions

The Chancellor of Justice (*Õiguskantsler)* is Estonia's national ombudsman-institution with a general mandate. There are no similar bodies on regional or local levels.

---

[184] Act of 13/3/2002 RT I 2002, 29, 174 as amended by RT I 2005, 39, 308.

[185] Cf CoE Committee of Ministers, Resolution ResCMN (2006)1 on the implementation of the Framework Convention for the Protection of National Minorities by Estonia, 15/2/2006.

C. Õiguskantsler – Chancellor of Justice

I. History and Legal Basis

The institution of the Chancellor of Justice was established by the 1938 Constitution and abolished in 1940 under Soviet rule. The **Constitutional Act** of 1992 reintroduced the office (§§ 139–145 Const). In January of 1993, Parliament elected a legal scholar as first incumbent. He took office in June of the same year, after a **law** regarding the organisation of the institution was passed (Legal Chancellor Activities Organisation Act, 5/5/1993, RT I 1993, 25, 436). The mandate of the Chancellor was foremost to supervise the constitutionality and legality of general norms. The law regarding the organisation of the institution was replaced with the Chancellor of Justice Act in 1999 (Act of 25/2/1999, RT I 1999, 28, 406) which gave the Chancellor powers to supervise the executive branch and thus typical functions of an Ombudsman. In 2003, his competences were broadened in two aspects: natural persons or legal persons in private law performing public duties are now also subject to his control (infra IV.). Moreover, the Chancellor is also able to conduct conciliation proceedings between natural persons or legal persons in private law for cases of discrimination (amendment RT I 2003, 23, 142; hereafter OA). Further provisions concerning the Chancellor of Justice can be found in the Code of Criminal Procedure (12/2/2003, RT I 2003, 27, 166 as amended by RT I 2004, 65, 456), in the *Riigikogu* Rules of Procedure Act (11/2/2003, RT I 2003, 24, 148 as amended by RT I 2004, 12, 77) as well as in the Constitutional Review Court Procedure Act (13/3/2002 RT I 2002, 29, 174 as amended by RT I 2005, 39, 308).

II. Organisation

The Chancellor of Justice is a **monocratically organised** institution. Upon the Chancellor's proposal Parliament appoints two deputies (*Deputy of Chancellor of Justice – Adviser*) who are covered by the same regulations on incompatibility as the Chancellor of Justice (§ 37, § 39 OA). The latter decides, which deputy acts for him in case of his absence. In directing his office, the Chancellor has the same rights which are granted by law to a minister in directing a ministry (Art 141 (1) Const).

The institution, which has its seat in the capital city of Tallinn, currently employs 41 people. On a regular basis, employees make consultations and receive complaints in the cities of Tartu, Jõhvi, Narva and Pärnu; in other parts of the country they are held in irregular intervals. Visits are announced beforehead in the media.

III. Legal Status

The Chancellor of Justice is elected by Parliament with a **simple majority** of votes upon nomination by the President (Art 140 (1) Const). The **term of office** is seven years, there are no restrictions concerning a re-election of the incumbent. The law **requires** that the candidate hold Estonian citizenship, that

he be of legal capacity, of high moral character and "fully proficient" in the Estonian language (§ 5 OA). Furthermore, he must have completed an academic education in law and be an "experienced and recognised lawyer" (§ 6 OA). The law also provides that the candidate submit to a security check effected by the Security Police Board, however, the result is not binding for Parliament, (§ 6^1 OA).

The office of the Chancellor of Justice is **incompatible** with other state or local government offices or positions in a legal entity under public law. The Ombudsman is not permitted to participate in the activities of political parties, or to belong to the management board, supervisory board or body of commercial companies, or even to engage in entrepreneurial activities, with the exception of caring for his own private property. The incumbent may exercise researching or teaching activities, unless this hinders the performance of his functions (§12 OA). However, there are no sanctions associated with these restrictions.

The Chancellor of Justice is **independent** in his activities (§ 139 Const; § 1 (1) OA), but subject to interpellations of the members of the *Riigikogu* (§ 3 OA). An early **removal** from office is only possible in case of his "extended inability to perform his functions for more than six consecutive months". Upon a motion of the President of the Republic, the Supreme Court has to judge in an *en banc* sitting if these conditions are met (§ 8 (3) OA; see infra V.1. for the corresponding right of the Ombudsman to demand the President's removal from office).

The Chancellor of Justice enjoys **immunity** from prosecution, which can be lifted upon proposal of the President of the Republic followed by a parliamentarian majority vote (§ 11 OA; see § 145 Const; for the corresponding right of the Ombudsman infra V.1.). If Parliament lifts the Ombudsman's immunity, he is automatically suspended from exercising his office. In the case of a subsequent conviction for an intentional crime, or an offence committed due to negligence that results in his imprisonment, he **loses his office** as of the date of entry into force. Otherwise, his powers are automatically reestablished when the case is closed.

The office also **ends** when the term expires, when the incumbent dies or when he resigns. The Chancellor of Justice shall notify the President of the Republic of his resignation at least four months in advance of his planned departure (§§ 8–9 OA).

The **salary** of the Ombudsman is determined by law. It corresponds to five and a half times the average salary in Estonia and thus equals that of a minister. It is higher than that of members of Parliament (§ 14 (1) OA, Salaries of State Public Servants appointed by Riigikogu or President of the Republic Act RT I 1996, 81, 1448).

IV. Scope of Control

The differences in the mandates and powers of the Chancellor – Ombudsman, guardian of constitutionality, and conciliation agency in cases of discrimination – make it necessary to describe these areas separately:

IV.1. Ombudsman

State agencies, local government agencies or bodies, legal persons in public law (eg the national banc or universities), natural persons or legal persons in private law performing public duties (eg parking surveillance, ambulance services) are all **subject to the Ombudsman's control**. However, the postal services, electricity or water providers, or the railways are not to be included in this definition of privatised companies (§ 19 OA).

Fundamental rights and freedoms as well as principles of sound administration are listed as the Ombudsman's criteria of control. Also, rights not defined in the Constitution but in simple Acts of Parliament are included in this definition (§§ 19, 33 OA).

"Everyone has the **right of recourse** to the Legal Chancellor in order to have his or her rights protected" (§ 19 (1) OA). The complaint can be filed personally or through an authorised representative and shall contain the name, address, personal identification number or date of birth of the petitioner, the name of the agency which allegedly violated the rights, and a "sufficiently clear description" of the case (§ 23 OA). Necessary documents shall be included. Complaints can also be filed orally. The Chancellor shall then put down the petition in writing. Petitions by prisoners, conscripts, or persons in psychiatric hospitals, special or general care homes, children's or youth homes shall be promptly forwarded without examining the contents of the petition and at the agency's expense (§ 24 OA, § 97 (3) Imprisonment Act RT I 2000, 58, 376; as amended by RT I 2002, 84, 492).

A precondition for raising a complaint is that no court judgment shall have entered into force in the matter; also the matter shall not be subject to judicial proceedings or mandatory pre-trial complaint proceedings (§ 19 (3) OA). Thus, the right to complain to the Chancellor is **subsidiary**. The Ombudsman may act on his **own initiative** "on the basis of obtained information". In such a case, he shall notify the concerned agency of the reasons for and purpose of his proceedings (§ 34 OA).

The Chancellor *shall* reject complaints beyond his jurisdiction. He can do so, if the complaint does not meet the formal requirements, if the complainant has failed to eliminate the deficiencies within a designated term, or if the petition is clearly unfounded (§ 25 OA). The Ombudsman may also reject a complaint if it is over **one year** after the person became aware or should have become aware of the violation of his rights.

The Chancellor of Justice may classify a petition and the information therein if the complainant so requests, or, if the Chancellor finds that the access to the petition must be restricted in order to protect the rights and freedoms of persons (§ 23 (8) OA).

Complainants shall be **informed** of the decision to refuse or to investigate a case (§§ 25 (3), 26 OA). If they have substantiated doubts regarding the impartiality of the person dealing with the complaint, they may demand that the case be treated by a different employee (§ 22 OA).

IV.2. Guardian of Constitutionality

As guardian of constitutionality, it is the Chancellor's **mandate** to review the legislation of the legislative and executive powers and of local governments for conformity with the Constitution and laws (§ 139 Const). **Subject to his control** are general acts of Parliament and of the executive power, as well as international treaties before their ratification. In this area, the Constitution, higher ranking acts, as well as ratified international treaties are the Chancellor's criteria of control.

All persons – whether personally affected or not – may elect to raise a petition in this field of activity. The Chancellor shall also act on his own initiative.

IV.3. Anti-discrimination

When acting as a conciliation agency in cases of discrimination, the Chancellor of Justice follows cases of alleged discrimination based on one's sex, "race", nationality (or ethnic origin), "colour", language, origin, religion or religious beliefs, political or other opinion, property or social status, age, disability, sexual orientation, or other attributes specified by law, that have been committed by natural persons and legal persons in private law (§ 19 (2) OA). The Chancellor may not act on his own initiative, even though he shall exercise general supervision over the activities of natural persons and legal persons in private law concerning discrimination (§ 35^5 OA). However, a person who has a legitimate interest to check compliance with the requirements for equal treatment, such as an NGO, may act as a representative (§ 23 (2) OA). The Chancellor cannot take any measure if the case concerns the professing and practicing of faith or working as a minister of a recognised religion; relations in family or private life, or the right to legal succession (§ 35^5 (2) OA). In cases of discrimination the Ombudsman can refuse to treat complaints which are raised more than **four months** after the alleged discrimination was committed (§ 35^6 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Chancellor of Justice has the **right** to unrestricted, unconditional and immediate access to documents, other materials and areas in the possession or under the control of agencies under his supervision (§ 27 (1) OA). He can demand their professional assistance and, if necessary, may obtain the opinion of specialists (§ 21 (2) OA).

Agencies under his control can be asked to submit written explanations within a set time limit (§ 29 OA). Furthermore, the Chancellor has the right

to summon persons for whom "there is information that they know facts relevant to the matter and are capable of providing truthful testimonies concerning such facts" (§ 30 OA).

If the Chancellor concludes that rights or principles of good administration have been violated, he may **provide criticism, suggestions, or express his opinion** in other ways. He can also make proposals for the elimination of the violation to the agency (§ 35^{1} OA). The agency must inform the Ombudsman of the details for compliance with the suggestion or proposal within the set time frame (§ 35^{2} OA). Upon non-compliance with a suggestion or proposal, or upon failure to answer, the Chancellor can report the case to the authority exercising supervision, to the Government or to the Parliament (§ 35^{2} (3), (4) OA). Recommendations can also include a request to provide legal aid to petitioners or to exempt them from court fees (§ 35^{3} OA). The Aliens Act provides that the Chancellor may recommend that the Citizenship and Migration Board grant an extension to an individual's period of stay if this is of "national interest" (§ 10^{19} Aliens Act RT I 1999, 44, 637 as amended by RT I 2004, 58, 410).

The Chancellor of Justice has the right to commence **disciplinary proceedings** against officials who obstruct his activities. If he finds that an official has violated the Constitution or the law, he shall notify either an investigative body or another competent body thereof in writing and forward all relevant information and documents to the body (§ 35^{4} OA).

The Ombudsman can **participate in sessions of the Government** and has the right to speak. Agendas of sessions shall be sent to him beforehand (§ 2 OA). He also has the right to state his opinion concerning the Government's proposals for appointing judges. For information about his powers concerning norms of general application, see infra V.3.

The Chancellor of Justice is the only organ that is competent to request that Parliament suspend the President's immunity and to submit a request to the Supreme Court *en banc* to declare the President of the Republic incapable of performing his duties. He can also ask Parliament to suspend the immunity of members of Government as well as the immunity of the Auditor General (§ 1 (3), (4) OA, *v* infra V.2.).

V.2. Powers in Relation to the Courts

Courts of law are, as a principle, not subject to the Ombudsman's control. However, since 2002, the Chancellor may, as the only organ outside of the judiciary, demand disciplinary proceedings to be brought against judges (§ 91 Courts Act RT I 2002, 390). The power to decide upon sanctions rests with the disciplinary chamber, which consists solely of judges. The Ombudsman can also, as the only organ with such a power, ask Parliament to suspend the immunity of Supreme Court Judges.

In other regards, his powers concerning the judiciary are limited to information about ongoing court proceedings.

V.3. Powers in Relation to Legislative Organs

In order to enable the Chancellor of Justice to exercise his mandate of guardian of constitutionality, all institutions with the right to enact norms of general application – this includes Parliament, all executive powers including local governments – are required to send copies of such acts to the Chancellor within ten days of their proclamation. This duty also concerns international treaties before their ratification, decisions of the Supreme Court in constitutional disputes, and parliamentary resolutions to hold a referendum (§ 16 OA).

If the Chancellor concludes that legislation of general application is contrary to the Constitution or the law, in full or in part, he shall propose to the body which passed the legislation that the legislation or a provision thereof is brought into conformity with the Constitution and the law within twenty days. If the organ does not follow the Chancellor's recommendation, he shall apply to the Supreme Court and **demand the provision to be repealed** (§ 142 Const, § 17 OA). If Parliament decides to submit a law – except a draft act to amend the Constitution – to a referendum, within 14 days the Ombudsman can challenge the Parliament's decision in the Supreme Court, claiming a violation of the Constitution or of the parliamentary procedure (§ 18^1 (1) OA). In Supreme Court cases concerning early parliamentary elections, the refusal of an organ to promulgate a law, or the prohibition of political parties, the Chancellor has the right to be heard (§ 28 (5), § 33 (2) Constitutional Review Procedure Act).

The Chancellor can **participate in any parliamentary session** with the right to speak (§ 141 Const, § 2 OA). Draft legislation to be debated shall be sent to the Chancellor of Justice beforehand. In return, the Chancellor is subject to a right of interpellation by the members of Parliament (§ 3 OA).

As the only organ provided for, the Chancellor has the right and obligation for making a proposal to the *Riigikogu* that criminal charges be brought against a member of the *Riigikogu*, the President of the Republic, a member of the Government of the Republic, the Auditor General, or a Justice of the Supreme Court (Art 139 (3) Const). Since 2006, he can also ask the President of the European Parliament to suspend privileges and immunities of members elected in Estonia (Q III).

During the third working week of the autumn plenary session, the Chancellor of Justice has to present an **annul report** to Parliament with an overview on the conformity of legislation of general application with the Constitution and acts. This report shall be published in the official journal (§ 4 (1) OA). Furthermore, a report regarding his activities as an Ombudsman has to be published and presented annually (§ 4 (2) OA). Parliament is not obliged to debate these reports, but usually does so. The Chancellor has no right to present special reports.

V.4. Special Functions and Powers in the Field of Human Rights

Acting as conciliator in cases of discrimination, the Chancellor of Justice forwards the petition of the discriminated person to the party accused, ask-

ing it to submit a written response. To establish the facts of the case, the Chancellor has the same rights as concerning officials, and thus has access to all documents and can also summon people.

He cannot oblige people to participate in conciliation proceedings. However, if the alleged discriminator consents to proceedings, the Chancellor can require that both parties personally participate in mediation sessions, during which he can explain the content of the petition and the corresponding rules of law and grant the petitioner and the respondent the possibility to voice their position (§ 35^{9} (1) OA). The Chancellor shall then establish whether the case involves discrimination and shall make a proposal to resolve the dispute and **enter into an agreement**. The petitioner and respondent may, within ten working days as of the receipt of the proposal of the Chancellor of Justice, present their positions expressing consent or opposition to the content of the proposal. Failure to present a position is considered as consent to the proposal (§ 35^{12} (4) OA). If a consent is reached, the agreement has to be fulfilled within 30 days. Otherwise it can be sent to a bailiff for enforcement (§ 35^{14} OA). The agreement can only be contested in an administrative court claiming a breach of the procedural rules by the Chancellor of Justice. If the conciliation procedure fails, the discrimination matter can only be brought to court within 30 days.

Only in the field of non-discrimination does the Ombudsman have the express right to make proposals for amendment of legislation to the *Riigikogu* and the executive as well as to "employers" [!] (§ 35^{16} (3) OA). The Chancellor shall also promote the principles of equality and equal treatment and to foster co-operation in this field between individuals, legal persons, agencies and other persons (§ 35^{16} OA). There is no duty to present an annual report in this area. However, thus far cases have been included in the general report (AR 2005, 148ff). The institution of the Chancellor of Justice is a member of the European Commission's Advisory Committee on Equal Opportunities for Men and Women.

In 2006, the institution was designated as NPM in the process of ratifying the OPCAT. It is not accredited as NHRI according to the Paris Principles.

VI. Practice

In 2005, the Chancellor of Justice received 2,043 complaints. Of these complaints, 1,666 could be investigated into, out of which 941 were rejected due to lacking jurisdiction of the Chancellor of Justice, but also because other means of legal protection were still at hand.

Acts within the responsibility of the Ministry of Justice were most often complained about (397 cases), mostly they pertained to the situation in prisons (305 cases). The second most common object of concern was based on the Ministries of the Interior and of Social Affairs (131 and 134 cases respectively).

247 cases concerned the question of constitutionality of laws, 19 of these investigations were carried out *ex officio*. The institution has used its right to

question norms of general application more than 400 times thus far, in most cases successfully. In 24 cases, the repeal of such legislation in the Supreme Court was asked for. 21 times the Court approved the Chancellor's motion.

The Ombudsman served as conciliator in cases of discrimination only three times in 2005. In no recorded cases was an agreement between parties reached (AR 2005, 148). The Chancellor of Justice emphasises the importance of cooperating with NGOs who often raise complaints for individuals.

According to the institution, prisons, children's homes and psychiatric institutions are visited on a regular basis *ex officio*. The Chancellor holds regular meetings with pupils and teachers to inform them of his functions.

VII. Reform

There is no information about set plans concerning an eventual reform of the institution.

VIII. Information

Constitution:
http://www.riigikogu.ee/index.php?rep_id=450377

Law:
http://www.legaltext.ee/text/en/X30041K6.htm

Annual Report 2005:
http://www.oiguskantsler.ee/.files/183.pdf

Internet:
http://www.oiguskantsler.ee/index.php?lang=eng

European Union

Brigitte Kofler

A. Constitutional Background

The European Union was established by the Maastricht Treaty in 1992 (OJ C 191 of 29 July 1992). The European Union itself has no legal personality but provides for an institutional framework for the cooperation of its member states on the basis of three pillars. The first and oldest pillar is the European Communities, the second pillar is the European Union Common Foreign and Security Policy (CFSP) and the third pillar concerns Police and Judicial Co-operation in Criminal Matters. The two European Communities, EC and EAEC, are international organisations with supranational powers. Currently, the European Unions has 27 member states from Western, Central and Eastern Europe. The joint organ of the European Union is the European Council which comprises the heads of state or government of the Union's member states along with the President of the European Commission (Art 4 (2) TEU). Important bodies of the European Communities include the European Parliament, the Commission, the Council, the European Court of Justice and the European Court of Audit.

The judicial branch of the Union consists of the European Court of Justice and the Court of First Instance. Furthermore, there is a Civil Service Tribunal. Apart from proceedings before the Civil Service Tribunal individuals only have few possibilities to directly approach the European Court of Justice. Examples include the action for annulment pursuant to Art 230 (3) and (4) TEC seeking annulment of a measure adopted by an institution or actions for failure to act pursuant to Art 232 (3) TEC.

The European Union has not ratified the European Convention on Human Rights. However, the Union has to respect fundamental rights, as guaranteed by the Convention (Art 6 TEU). In several rulings the European Court of Justice has recognised fundamental rights as general principles of law and therefore declared them to be part of Community law.[186] On 7 December 2000 the Charter of Fundamental Rights of the European Union was signed and proclaimed at the European Council Meeting in Nice. Art 43 states the right to file a complaint with the European Ombudsman. The Charter so far is not legally binding, but the list of fundamental rights contained therein has been included in the draft Constitution Treaty.

---

[186] *Kingreen* in Calliess/Ruffert (Hrsg), Art 6 EUV Rz 16 ff; *Winkler* in Mayer (Hrsg), Kommentar, Art 6 Abs 2 EUV, Rz 47.

B. Overview of Existing Ombudsman-Institutions

The European Ombudsman receives complaints concerning instances of maladministration in the activities of the Community institutions or bodies. However, issues of the Union's Common Foreign and Security Policy do not fall within the control.[187] Furthermore, the Ombudsman is not competent to investigate complaints about national, regional or local administration bodies in the member states. In 1995, when the European Ombudsman was established, comparable ombudsman-institutions existed in 13 of then 15 member states. Today every member state has established an ombudsman-institution on the national or at least on the regional level.[188]

C. The European Ombudsman

I. History and Legal Basis

The idea of an ombudsman-institution on the European level was first introduced by Denmark.[189] It was established by the Maastricht treaty's Art 138e TEC (now Art 195 TEC) which entered into force on 1 November 1993. The first incumbent was elected by the European Parliament on 12 July 1995 and took up work in September of the same year.[190] The reason for the establishment was the wish to make the European institutions more transparent and more citizen-oriented.[191]

Pursuant to Art 195 (4) TEC the European Parliament on 9 March 1994 took the Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties (OJ L 113 of 4 May 1995, 15 as of OJ L 92 of 9 April 2002, 13; hereinafter Statute). On the basis of Art 14 of the Statute further implementation provisions were adopted (OJ C 225 of 19 October 2002, 24; hereinafter Decision). Besides, there are provisions concerning the European Ombudsman in Art 194–196 Rules of Procedure of the European Parliament (16th edition – 2007, Rules of Procedure, http://www.europarl.europa.eu).[192]

II. Organisation

The European Ombudsman is a **monocratic** body. **No deputies** are appointed. Currently, 55 employees are on staff at the European Ombuds-

---

187 *Kluth*, Art 195 EGV, in Callies/Ruffert (Hrsg), Kommentar zum EU-Vertrag und EG-Vertrag, Beck, München, 2007[3], Rz 1; *Solar*, Art 195 EGV, in Mayer (Hrsg), Kommentar zu EU- und EG-Vertrag, Manz, Wien, Loseblatt, Rz 23.

188 www.ioi-europe.org.

189 *Kluth*, Art 195 EGV, in Callies/Ruffert (Hrsg), Kommentar zum EU-Vertrag und EG-Vertrag, Beck, München, 2007[3], Rz 1.

190 *Guckelberger Anette*, Der Europäische Bürgerbeauftragte und die Petitionen zum Europäischen Parlament, Duncker und Humblot, Berlin, 2004, 83.

191 *Solar*, Art 195 EGV, in Mayer (Hrsg), Kommentar zu EU- und EG-Vertrag, Manz, Wien, Loseblatt, Rz 2.

192 *Geschäftsordnung des Europäischen Parlaments*, 6. Auflage – September 2007, http://www.europarl.europa.eu.

man's office. The seat of the Ombudsman is in Strasbourg (Art 13 Statue) with one additional office in Brussels.

III. Legal Status

The Ombudsman is appointed after each election of the European Parliament for the duration of its term, which is five years (Art 195 (2) TEC, Art 6 (1) Statute). Candidates for the office of the European Ombudsman may be nominated by the members of the European Parliament (Art 194 (1) Rules of Procedure). Nominations are to have the support of at least forty members who are nationals of at least two member states (Art 194 (2) Rules of Procedure).

The Ombudsman is chosen from among persons who are Union citizens, have full civil and political rights, offer every guarantee of independence and meet the conditions required for the exercise of the highest judicial office in their country or have the acknowledged competence and experience to undertake the duties of an Ombudsman (Art 6 (2) Statute). During the term of office, the Ombudsman may not engage in any political or administrative duties, or any other occupation, whether gainful or not (Art 10 Statute). The **term of office** is five years but the reappointment of the incumbent is possible (Art 195 (2) TEC).

The Ombudsman is to be completely **independent** in the performance of the duties and shall neither seek nor take instructions from any body (Art 195 (3) TEC). The Ombudsman enjoys **immunity** (see Art 10 (3) Statute and Chapter V Privileges and Immunities of the European Union). In terms of **remuneration**, allowances and pension, the Ombudsman has the same rank as a judge at the Court of Justice of the European Communities (Art 10 (2) Statute).

The Ombudsman ceases to exercise the duties either at the end of the term of office or on resignation or dismissal (Art 7 (1) Statute). The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if deemed not able to fulfil the conditions required for the performance of the duties or is guilty of serious misconduct (Art 195 (2) TEC and Art 8 Statute; see in detail Art 196 Rules of Procedure).

IV. Scope of Control

The Ombudsman may **monitor** the activities of the Community institutions and bodies excepting the Court of Justice and the Court of First Instance acting in their judicial role (Art 195 (1) TEC and Art 2 (1) Statute). Hence, also legislative activities of the Community jurisdictions are in fact within the control of the Ombudsman.[193]

The **control criterion** is good administration. The Ombudsman helps to uncover maladministration in the activities of the Community institutions

[193] *Reif*, Good, 367.

and bodies (Art 2 (1) Statute). Acts of maladministration may be found in illegal actions as well as in violation of principles of proper administration (arg *maladministration*).[194] In 2005 the European Ombudsman published the "European Code of Good Administrative Behaviour" to help define principles of good administrative practice (see also Art 41 Charter of Fundamental Rights of the European Union).

The Ombudsman conducts inquiries either on the initiative of the office or on the basis of complaints submitted excepting where the alleged facts are or have been the subject of legal proceedings (Art 195 (1) TEC). Any citizen of the Union or any natural or legal person residing or having a registered office in a member state may refer a complaint to the Ombudsman. The complainant may do so either directly or through a member of the European Parliament (Art 2 (2) Statute). A direct and individual interest of the complainant is not required.[195] There is also no duty to examine every complaint (Art 195 TEC).

The complaint is to identify the person lodging the complaint and the object of the complaint, though the person lodging the complaint may request that the complaint remain confidential (Art 2 (3) Statute). A complaint is to be filed within two years of the date on which the facts on which it is based came to the attention of the person lodging the complaint (Art 2 (4) Statute). No further formal requirements exist.

The complaint is to be preceded by the appropriate administrative approaches to the institutions and bodies concerned (Art 2 (4) Statute). Complaints submitted to the Ombudsman do not affect time limits for appeals in administrative or judicial proceedings (Art 2 (6) Statute).

Filing a complaint is **free** of charge.

The Ombudsman and staff may not divulge information or documents which they obtain in the course of their inquiries. They are to treat in confidence any information which could harm the person lodging the complaint or any other person involved (Art 4 (1) Statute). The complainant is entitled to see the Ombudsman's file on the complaint excepting confidential documents or information (Art 13 Decision). A person lodging a complaint is to be informed by the Ombudsman of the outcome of the inquiries, opinion expressed by the institution or body concerned and any recommendations made by the Ombudsman (Art 3 (7) Statute). The Ombudsman is to inform the institution or body concerned as soon as a complaint is referred to the office (Art 2 (2) Statute). They may submit any useful comment to the Ombudsman (Art 3 (1) Statute).

---

[194] *Kluth*, Art 195 EGV, in Callies/Ruffert (Hrsg), Kommentar zum EU-Vertrag und EG-Vertrag, Beck, München, 2007[3], Rz 7; *Höllscheidt*, Art 195 EGV, in Grabitz/Hilf (Hrsg), Das Recht der Europäischen Union, Beck, München, Loseblatt, Rz 11.

[195] *Bonnor*, The European Ombudsman: A novel source of soft law in the European Union, 25 European Law Review, 2000, 39 (41).

Based on Art 288 TEC the Community may be held liable for wrongful assessment of a complaint by the Ombudsman (Art 288 EGV; ECJ on 23 March 2004, C-234/02P, *European Ombudsman v Frank Lamberts*).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Community institutions and bodies are obligated to supply the Ombudsman with any information requested and give access to the files concerned. They may refuse to do so only on duly substantiated grounds of secrecy (Art 3 (2) Statute). The Ombudsman may require officials or other servants of Community institutions or bodies to give evidence (Art 3 (2) Statute and Art 5 3 Decision) and may request Community institutions and bodies to make arrangements for the Office to pursue inquiries on the spot (Art 5 (4) Decision). Community Institutions are to give access to documents originating in a member state and classified as secret by law or regulation only where that member state has given its prior agreement (Art 3 (2) Statute). The member states' authorities are in principle obligated to provide the Ombudsman with any information that may help to clarify instances of maladministration by Community institutions or bodies (Art 3 (3) Statute). If the assistance request is not forthcoming, the Ombudsman is to inform the European Parliament, which may make appropriate representations (Art 3 (4) Statute).

As far as possible, the Ombudsman should seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint (Art 3 (5) Statute). On a finding of maladministration, the Ombudsman should co-operate with the institution concerned in seeking a friendly solution (Art 6 (1) Decision).

If such a solution is not possible or unsuccessful, either the case is closed with a reasoned decision that may include a **critical remark** or a report is provided with **draft recommendations** (Art 6 (3) Decision). If the Ombudsman finds there have been instances of maladministration, the institution or body concerned is to be informed and, where appropriate, provided draft recommendations. The institution or body so informed is to send the Ombudsman a detailed opinion within three months (Art 195 (1) TEC and Art 3 (6) Statute). The Ombudsman then sends a report to the European Parliament and the institution or body concerned and makes recommendations in the report (Art 3 (7) Statute). If the Ombudsman does not consider the detailed opinion as satisfactory, a special report may be submitted to the European Parliament in relation to the instance of maladministration. A copy of the report is to be sent to the institution concerned and to the complainant (Art 8 (4) Decision).

If, in the course of inquiries, facts are ascertained that may relate to criminal law or a disciplinary offence, the Ombudsman is to immediately notify the competent national authorities or the Community institution with authority over the official or civil servant concerned (Art 4 (2) Statute).

V.2. Powers in Relation to the Courts

The Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling (Art 1 (3) Statute) though instances of maladministration in the activities of the Court of Justice and the Court of First Instance not acting in their judicial role may be investigated (Art 2 (1) Statute). In case of alleged wrong assessment of a complaint by the Ombudsman the complainant can claim for damages on the basis of Art 288 TEC (Art 288 TEC; see ECJ 23 March 2004, C-234/02P, *European Ombudsman v Frank Lamberts*).

V.3. Powers in Relation to Legislative Organs

Since the legislative organs also fall under the Ombudsman's control the Ombudsman has the same powers in the field of legislation (see IV.) as in respect of administrative organs (see V.1.).

Furthermore, the Ombudsman may inform parliamentary committees at their request or may request to be heard by them (Art 195 (3) Rules of Procedure). The Ombudsman has no formal right to legislative initiative but may propose new laws or changes to laws. This is accomplished via "draft recommendations", "special reports" and in the Annual Report (Q II). Although none of these are legally binding, the Parliament in nearly all cases has adopted a corresponding resolution. Hence, it may be concluded that by the proposals the Ombudsman is able to exert considerable political pressure upon Parliament.

At the end of each annual session the Ombudsman is to submit to the European Parliament a report on the outcome of his inquiries (Art 3 (8) Statute). It is divided into several sections. Although there is no separate human rights section, human rights issues are mentioned frequently throughout the report (Q II). The Committee on Petition of the European Parliament is responsible for dealing with the Ombudsman's report. It draws up in its own report a resolution which is then submitted to Parliament for debate (Rule 195 (2) Rules of Procedure). Also, special reports concerning certain topics (proposals for legal amendments or in case of unsatisfactory replies of a certain organ) can be issued by the Ombudsman. All kinds of reports are published on the Ombudsman's homepage and announcements concerning the adoption of annual and special reports are to be published in the Official Journal (Art 16 Decision).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is regarded as an important and integral function of the Ombudsman (Q II). The Ombudsman deals with complaints of violations of human rights through the same procedures as any other complaint lodged with him (Q II).

VI. Practice

During the year 2005, the European Ombudsman received 4,416 complaints (see Annual Report 2005). According to the Ombudsman's information the majority of complaints concern four major subjects, namely, disputes about tenders and contracts, the role of the Commission as a "Guardian of the Treaty" (citizens complaint about the Commission NOT taking action against member states who violate EC law), personnel matters and finally the issue of openness, especially access to document and information (Q I).

The European Ombudsman does not exercise monitoring functions *ex officio*. The Ombudsman may cooperate with authorities of the same type in certain member states if this may help to make the enquiries more efficient and better safeguard the rights and interests of persons who file complaints, (Art 5 Decision). The European Ombudsman does not hold regular consultation days in the member states but frequently undertakes official visits to the member states (Q III).

VII. Reform

No reform ambitions are known to date.

VIII. Information

Ombudsman Act:
http://ombudsman.europa.eu/lbasis/de/statute.htm (31.10.2007)
http://ombudsman.europa.eu/lbasis/de/provis.htm#def1 (31.10.2007)

The European Code of Good Administrative Behaviour:
http://ombudsman.europa.eu/code/pdf/en/code2005_en.pdf (31.10.2007)

Annual Report:
Annual Reports 1995–2006,
http://ombudsman.europa.eu/report/de/default.htm (31.10.2007)

Finland

Joachim Stern

A. Constitutional Background

The Finnish Constitution was fundamentally reformed in 1999 and came into force in 2000 (Constitution of 11/6/1999; hereafter Const). Finland is a republic with a unicameral parliament (*Eduskunta)* which consists of two hundred members elected every four years in a general election. The Head of State is the President of the Republic who is elected every six years for no more than two consecutive terms. The Government consists of the Prime Minister and the "necessary number of ministers" who shall be "Finnish citizens known to be honest and competent" (Art 60 Const). The Parliament elects the Prime Minister who then nominates the other ministers. The President of the Republic decides together with the Government in a number of matters. He also directs the foreign policy of Finland in co-operation with the Government (Art 93 Const).

Finland is a unitary state divided into six provinces (*lääni*). The provincial administration is directed by governors who are nominated by the President. The local self-government is competent in social matters, education, health services and construction regulations.

Decisions of administrative organs can be appealed to the Regional Administrative Courts and then to the Supreme Administrative Court. The Supreme Court, the Courts of Appeal and the District Courts are all general courts of law (Art 98 Const). The High Court of Impeachment deals with charges for unlawful conduct in office brought against a member of the Government, the Chancellor of Justice, the Parliamentary Ombudsman or a member of the Supreme Court or of the Supreme Administrative Court. It also has jurisdiction for general criminal proceedings against the President (Art 101, Art 113 Const). This High Court of Impeachment is composed of the Presidents of the Supreme Courts, three Presidents of the Courts of Appeal and five members elected by Parliament. The Prosecutor-General is appointed by the President of the Republic (Art 104 Const).

Finland has no Constitutional Court. However, if the application of an act was in obvious conflict with the Constitution, any court may give primacy to the Constitution. If a provision in a decree or another statute of a lower level than an act is in conflict with the Constitution or an act even public authorities other than courts shall not apply the concerned provision (Art 106–107 Const).

In 1995, the catalogue of basic rights and liberties was entirely revised and can now be found in Art 6–23 Const. The revision inserted social, economic and cultural rights into the Constitution and transformed many citi-

zens' rights into human rights. However, only one of the social provisions is guaranteed as a subjective right.

Finland has been a member to the Council of Europe since 1989 and the ECHR has been ratified as a law with priority over other laws.

B. Overview of Existing Ombudsman-Institutions

In Finland there are two constitutionally established complaint offices or "Overseers of Legality": The *Chancellor of Justice* – the much older organ (infra D.) – is appointed by the President. The Ombudsman (infra C.) is its parliamentary counterpart. The two institutions are subject to the same provisions on all major points (Art 108–118 Const) and both institutions have the same general mandate for all levels of government. However, the Chancellor of Justice is exempted from the *duty* to control the Defense Forces, the Border Guards or peacekeeping personnel, prisons and other institutions where people are confined against their will (Act on the Allocation of Duties, 21/12/1990-1224). This does not restrict his *right* to control these areas (Art 110 Const).

Besides these ombudsman-institutions with a general mandate there are several specialised ombudsman-institutions provided for by law. However, the incumbents of these are all nominated by the Government and are themselves subject to control by the Overseers of Legality. In consequence they will not be further discussed here.

C. Eduskunnan Oikeusasiamies – Riksdagens justitieombudsman – Parliamentary Ombudsman

I. History and Legal Basis

After Finland's declaration of independence in 1917, the first draft of the Constitution provided for the establishment of a constitutional monarchy in which a parliamentary Ombudsman would be the sole parliamentary organ exercising control over the Government. The powers of this position would be equivalent to those of the Chancellor of Justice (Infra D.). Even though the country eventually became a republic in 1919, the institution of the parliamentary Ombudsman was still provided for in the new Constitution. This was also due to the fact that a lot of the powers formerly envisioned for the monarch were then given to the President, so that means for balancing the powers between the executive and the legislature were still deemed important.[196] The first incumbent, who was elected in 1920, was still a member of Parliament and exercised the office in addition to his mandate. In 1928, the two positions were declared incompatible. Sometimes considered redundant, the institution had to constantly defend its right to exist vis-à-vis the more established Chancellor of Justice. In 1933, the office was consequently en-

[196] *Lehtimaja*, Welcoming Address, in *Rautio* (ed.), Parliamentary Ombudsman of Finland. 80 Years (2000), 9.

trusted with the sole responsibility of supervising closed institutions and, by such, gained importance. At the same time the term in office was extended from one to three years. In 1974 this period was changed to four years and the office was opened to female incumbents. With regard to the ever-increasing number of complaints the law provided for one deputy in 1972 and for a second one in 1998.

In 1991, reacting to privatisation measures, Parliament included outsourced institutions to the control of the Ombudsman (infra IV.). In the same year, the distribution of obligations between the two Overseers of Legality was redefined.

The re-codification of the basic rights and freedoms in 1995 brought about an enrichment of the Ombudsman's mandate in terms of an express obligation to oversee the implementation of these rights.

The **constitutional provisions** concerning the institution itself have been carried over to the new Constitution without changes with regards to their content. They now can be found in Articles 38, 48, and 109–117 of the Constitution. Secondary provisions which until then had existed as parliamentary guidelines were consequently adopted in the form of an **act** and entered into force as of April 1st, 2002 (Act 197/2002, hereafter OA).

II. Organisation

The office of the Parliamentary Ombudsman is a **monocratically organised** institution. The Ombudsman has **two deputies** who are elected and dismissed under the same conditions as the Ombudsman and who in general enjoy the same legal status (Art 38 (1) Const, infra III.; for reform plans concerning deputies cf infra VII.). The Ombudsman is solely responsible in all matters unless he refers functions to the deputies, who must be heard before a decision on the allocation of duties can be made (Art 14 OA). The deputies can act on their own initiative in any case but have to refer the matter to the Ombudsman if they want to issue a reprimand or bring charges (infra V.1.). In case the Ombudsman has to recuse himself from a case or is otherwise prevented the senior Deputy-Ombudsman shall perform his duties (Art 16 OA).

The staff of the office comprises fifty-six people (2006, Q II) and its budget is part of the parliamentary finances (Q I).

III. Legal Status

The Ombudsman and his deputies are elected by Parliament by a **simple majority** for a term in office of **four years**. The sole **precondition to their appointment** is "outstanding knowledge of law" (Art 38 (1) Const). There are no restrictions concerning the re-election of incumbents.

All other public offices are **incompatible** with the function of an Ombudsman. Furthermore, the Ombudsman and the deputies shall not have public or private duties that may compromise their credibility or impartiality as Overseers of Legality or otherwise impede the performance of their duties

(Art 17 OA). After their election they have to submit to the Parliament a declaration of business activities and assets as well as duties and other interests which may be of relevance in the evaluation of their activity (Art 13 OA).

Parliament may **dismiss** an Ombudsman before the end of his term for "extremely weighty reasons". Such a decision must be supported by at least two-thirds of the votes cast, after having obtained the opinion of the Constitutional Law Committee (Art 38 Const).

The incumbent is not immune from criminal proceedings. However, only the High Court of Impeachment, upon request of the Parliament, can decide upon issues of lawfulness in relation to his official acts (Art 117, 114 Const).

The Ombudsman is **independent** from the executive branch, which already follows from his position as a parliamentary organ. In addition, Parliament cannot give him any directions. This follows from his position as a supreme organ of oversight of legality but is not expressly laid down in the Act or the Constitution.

The Ombudsman in entitled to the same **income** as the Chancellor of Justice (Art 18 OA), which is higher than that of a member of Parliament but lower than that of a minister (Q III). The Ombudsman forfeits remuneration from any other employment during his term (Art 18 OA).

IV. Scope of Control

The Ombudsman's **mandate** is to "ensure that the courts of law, the other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Ombudsman monitors the implementation of basic rights and liberties and human rights" (Art 109 Const).

The **jurisdiction** of the Ombudsman is subject to a broad definition. The law does not provide for any exclusions – also the Head of State and the courts of law are subject to the Ombudsman's control (Art 112–113 Const).

Legality with special attention on fundamental and human rights are the **criteria** for an investigation. The Constitution even provides for principles of "good governance" (Art 21 (2) Const). Thus, the Ombudsman can also conduct an investigation based on these standards. It may be highlighted that the Finnish understanding of legality also includes aspects of equity.[197]

"Anyone who thinks a subject has acted unlawfully or neglected a duty in the performance of their task" has the **right to file a complaint** with the Ombudsman (Art 2 (1) OA). The complaining party does not have to be personally affected. The complaint shall be filed **in writing** and contain the name and contact details of the complainant, as well as the necessary information on the matter to which the complaint relates (Art 2 (2) OA). The exchange of letters between people in prisons or in custody cannot be con-

[197] *Pellonpää*, Finnish Parliamentary Ombudsman as Guardian of Human Rights and Constitutional Rights, in *Rautio* (ed.), Parliamentary Ombudsman of Finland. 80 Years (2000), 73.

trolled.[198] Complaints are **not subsidiary** to legal remedies. The Ombudsman must examine them if there is reason to suspect that the subject has acted unlawfully or neglected a duty. If the complaint relates to a matter more than **five years** old, the Ombudsman shall only examine the case if there is "special reason for the complaint being investigated" (Art 3 OA).

The Ombudsman may also, on his **own initiative**, take up any matter (Art 4 OA). He shall carry out on-site inspections of public offices and institutions necessary to monitor matters within his jurisdiction – specifically in prisons and other closed institutions "to oversee the treatment of inmates, as well as in the various units of the Defense Forces and Finnish peacekeeping contingents to monitor the treatment of conscripts, other military personnel and peacekeepers" (Art 5 (1) OA).

It is free of charge to file a complaint even though this is not expressly provided for in the law. Also, the right of the complainant to be informed of the outcome of his matter is not explicitly laid down in the Act.

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman has the right – as laid down in the Constitution – to "receive from public authorities or others performing public duties the **information** needed for their supervision of legality" (Art 111 (1) Const). He can also request **executive assistance** free of charge from the authorities as is deemed necessary and has the right to obtain relevant copies or printouts of documents and files (Art 6 OA). The Ombudsman may also order that a police inquiry, as referred to in the Police Act, or a preliminary investigation, as referred to in the Preliminary Investigations Act, be carried out in order to clarify a matter under investigation (Art 8 OA). In the context of an inspection, the Ombudsman and his representatives have the right of **access to all premises** and information systems of the public office or institution, as well as the right to have confidential discussions with the personnel of the office or institution and its inmates (Art 5 (2) OA). If there is reason to believe that the conduct of a person will give rise to criticism, the concerned subject shall have an opportunity to be heard (Art 9 OA).

The Ombudsman also has the right to attend meetings of the Government (Art 111 (2) Const).

If necessary, the Ombudsman may express to the organ his **opinion** concerning what constitutes proper observance of the law, or **draw the attention** of the subject to the requirements of good administration or to considerations of fundamental and human rights (Art 10 (2) OA). If he concludes that the organ has acted unlawfully or neglected a duty, but not in a way that warrants criminal charges or disciplinary proceedings, he may issue a **reprimand** to the subject for future guidance (Art 10 (1) OA).

---

[198] Chap 8 § 3 Law on pretrial custody, Act 768 of 23/9/2005; Chap 12 § 3 Law on confinement, Act 767 of 23/09/2005.

A **recommendation** can be addressed to the competent authority, stating that an error be redressed or a shortcoming rectified (Art 11 (1) OA). The Ombudsman may also draw the attention of the Government or of another body responsible for legislative drafting to **defects in legislation or official regulations** and make recommendations concerning the development of these and the elimination of the defects (Art 11 (2) OA). There is no duty to react to these recommendations.

The Ombudsman can also **prosecute** or **order** that criminal charges be brought (Art 110 (1)(2) Const, see also infra V.2.). He has no corresponding powers concerning disciplinary proceedings.

If he concludes that the President of the Republic is guilty of treason, high treason, or a crime against humanity he shall communicate this to the Parliament which can, by majority of three-quarters, decide that the Prosecutor-General shall indict the President in the High Court of Impeachment (Art 113 Const).

If the Ombudsman becomes aware that the lawfulness of a decision or measure taken by the Government, a minister, or the President of the Republic gives rise to a **comment**, the Ombudsman shall present a reasoned comment on the aforesaid decision or measure. If the comment is ignored the Ombudsman shall have the comment recorded in the minutes of the Government and, where necessary, undertake other measures (Art 112 (1) Const).

V.2. Powers in Relation to the Courts

The Ombudsman has the same powers vis-à-vis organs of the judiciary as versus other public institutions. Together with the Chancellor of Justice he shares a monopoly to bring charges against a judge for unlawful conduct in office (Art 110 Const). Both Overseers can also, as the sole organs empowered to do so, bring charges against Judges of the Supreme Court and the Supreme Administrative Court in the High Court of Impeachment (§ 10 Act on the High Court of Impeachment).[199]

At the Supreme Court and the Supreme Administrative Court the Ombudsman can request that a manifestly erroneous decision be annulled. However, this right does not exceed the general right of anyone to demand such a decision to be revised by means of an extraordinary appeal.

The Ombudsman can prosecute people subject to his control, independently from the Prosecutor's decision to act in the matter (supra V.1.).

V.3. Powers in Relation to Legislative Organs

The Ombudsman has to present Parliament an **annual report** on his activities, but also generally on the state of the administration of justice, the public administration and the overall performance of public tasks. The report must include information on defects observed in legislation with special attention

[199] Act 196 on the High Court of Impeachment and the Treatment of Charges against ministers of 25/2/2000.

being given to the implementation of fundamental and human rights (Art 12 (1) OA). On matters deemed to be of importance he can submit a **special report** at any time. The Ombudsman has the right to **participate in debates** when his reports or other matters taken up on his initiative are being considered (Art 48 Const). The reports can even expressly contain detailed recommendations on how to remedy defects in legislation. If a defect relates to a matter that is already under deliberation in Parliament, the Ombudsman may also communicate his observations to the relevant body within the Parliament (Art 12 (3) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Ombudsman has no additional powers concerning the protection of human rights. Rather this is an integral part of his overall activity. In this context the Ombudsman's obligation to inspect closed institutions and the armed forces might be highlighted. Currently the subject of debates is whether these duties and powers are sufficient in view of Finland's ratification of the OPCAT and plans to designate the Ombudsman as NPM (AR 2006, 29). The institution has the status of an observer at the International Coordination Committee for NHRIs according to the Paris Principles.

VI. Practice

The institution received 4,241 applications in 2006, out of which 3,620 were complaints. 42 matters were transferred from the Chancellor of Justice, 49 investigations were started *ex officio*. 47 times the Ombudsman received requests for expertise. The majority of complaints concerned social services, followed by police offices, health institutions, prisons and courts. The largest proportion of complaints to be found qualified was within the military services (29%) and within prisons (27.8%), sharply contrasting the average rate of 15.9% of complaints to be found qualified. The Ombudsman did not prosecute anyone during the course of 2006. 70 institutions were inspected on site, amongst these residence for children and for foreigners, special care homes, as well as army and police institutions. The Ombudsman regularly publishes decisions on his homepage.

VII. Reform

It is currently being debated whether the institution of the parliamentary Ombudsman will be designated as NPM for the ratification of the OPCAT and, if so, whether this will require adjustment concerning his legal basis. A constitutional amendment providing for a possibility for the Ombudsman to personally appoint an additional deputy was adopted by Parliament on 14/10/2005 but still has to be confirmed by the new-to-elect Parliament in 2007. This has yet to come into effect.

VIII. Information

Constitution:
http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf

Law:
http://www.oikeusasiamies.fi/Resource.phx/eoa/english/lawlinks/act-ombudsman.htx

Annual Report:
http://www.oikeusasiamies.fi:80/Resource.phx/eoa/english/publications/annual.htx

Internet:
http://www.oikeusasiamies.fi/

D. Oikeuskansleri invirasto – Justitiekansler – Chancellor of Justice

I. History and Legal Basis

The history of the Finnish Chancellor of Justice dates back to the 18th Century when Finland was part of the Swedish Kingdom. The Swedish Chancellor of Justice was also responsible for supervising the courts and public offices in Finland (see Report on Sweden). In 1809 Finland became part of the Russian Empire as an autonomous grand duchy and as such maintained the constitutional basis from the Swedish Reign including the office of the Chancellor of Justice. However, his powers were transferred to the Procurator who had to assist the Governor-General in his obligation to oversee compliance with the law. After Finland's declaration of independence in 1917, the office was again renamed Chancellor of Justice and incorporated into the Finnish Constitution. In its recent version the relevant provisions can be found in Articles 48, 69, 108, 110–117 of the Constitution. These are to a large extent the same provisions as those for the Ombudsman. The Act on the Chancellor of Justice of the Government (Act 2000/193; hereafter ACJ), entered into force the same time as the new Constitution.

II. Specific Features

The Chancellor of Justice is **appointed by the President** of the Republic for an undetermined period of time. The incumbent does not only have to possess outstanding knowledge of law (Art 69 Const), but also has to be a Finnish citizen (§ 7 Act on Public Officials,[200] Art 125 (1) Const). The President appoints a Deputy and a Substitute to the Deputy for a maximum-term of five years. The Chancellor is "attached to Government". According to the

[200] Act 17/3/2000-281.

constitutional tradition he is entirely independent, though and acts free from instructions (Q I). The incumbents can de dismissed by the President (Q I).

The Chancellor of Justice has the same powers and obligations as the Ombudsman but is released from the duty to oversee legality in matters concerning the armed forces, prisons and other institutions where people are kept on an involuntary basis (Act on the Division of Duties 21/12/1990-1224). An additional function of the Chancellor is the explicit duty to supervise the legality of the official acts of the Government and the President of the Republic. He therefore has to be present at meetings of the Government and when matters are presented to the President of the Republic in a presidential meeting of the Government – in contrast to the Ombudsman who *can* participate in such meetings. He has to present a comment to the Government if he doubts the lawfulness of a decision or measure and, if ignored, must have it entered into the minutes which generally have to be monitored by him concerning correctness (Art 111–112 Const, Art 2 ACJ). Upon request he shall provide the President, the Government, and the ministers with information and opinions on legal issues (Art 108 (2) Const). If the Government considers an act of the President to be contrary to law, it must inform the Chancellor and demand his opinion, before communicating to the President that it will not execute his decision (Art 112 (2) Const).

Notifications of penal judgments have to be sent to the Office of the Chancellor which must then be revised (Art 3 (3) ACJ). The aim here is to establish a permanent means of supervision of the criminal court system. It is unclear if further powers are linked to this process. The Chancellor shall not only act upon complaints or *ex officio* but also upon notification by authorities (Art 3 (1) ACJ).

An additional function of the Chancellor is the supervision of advocates in completion of the Bar-Association's internal mechanism of control for the compliance with their obligations.[201] The Chancellor shall ensure that advocates fulfil their obligations but shall not interfere with their work. He can initiate disciplinary proceedings at the Bar-Association and permanently supervise the Bar-Association's decisions.

The annual report of the Chancellor of Justice has to provide information about his activities and contain general observations on how the law has been obeyed. It has to be addressed to the Government as well as to Parliament (Art 108 (2) Const). In Parliament the Chancellor has the same right to participate in debates as the Ombudsman (Art 48 (2) Const).

The institution treats approximately 1,400 matters annually, of which an average of 10–20% lead to further action by the Chancellor.[202]

---

[201] Advocates Act 496/1958.

[202] Information Brochure "The Chancellor of Justice – Guardian of Law" http://www.chancellorofjustice.fi/43/okven.pdf (31/10/2007).

III. Information

Law, Annual Report:
http://www.chancellorofjustice.fi/43/Summary2005.pdf

Internet:
http://www.chancellorofjustice.fi

France

Joachim Stern

A. Constitutional Background

The Constitution of the Fifth French Republic has been in force since 1958 (Constitution of 4/10/1958 as amended OJ 2005-204, hereafter Const). It declares France an indivisible, secular, democratic and social Republic. The French Parliament consists of the National Assembly and the Senate. The 577 members of the Assembly are elected directly according to an absolute majority system for a five year term. The Senators, who are currently 331, are elected by indirect suffrage for a term of six years.

The President of the Republic is Head of State (Art 5 Const). He gets elected for a term of five years by a process of direct universal suffrage (Art 6 Const as amended 24/9/2000) and has extensive powers. He appoints the Prime Minister and then, pursuant to the proposal of the latter, the other members of Government (Art 8 Const).

France is a unitary state divided into 100 Departments including overseas territories. The Departments form 26 regions. The Regional Council is elected every six years and is only entitled to limited powers, as is the General Council which is the respective organ of the departmental level. At the local level, there are Municipal Councils, also elected for every six years.

Judicial control of the executive branch is exercised on three levels: through Administrative Tribunals, the Administrative Courts of Appeal and the Council of State as supreme administrative court. Other supreme judicial instances are the Court of Cassation, which has jurisdiction over civil and criminal matters and the Constitutional Council, which primarily decides upon the constitutionality of elections and of laws before their promulgation. It cannot treat individual complaints (Art 56 ff Const).

The French Constitution does not contain a catalogue of fundamental rights and freedoms of its own. Its preamble makes reference to preceding documents such as the Declaration of Rights of Man of 1789 and the preamble of the Constitution of 1946. These provisions have been declared of constitutional value by the Constitutional Council. France is a founding member of the Council of Europe. The ECHR was ratified in 1974 and has, like other ratified international treaties, priority over conflicting national laws (Art 55 Const). While Courts cannot decide upon the constitutionality of laws, they can examine them with regard to their conformity with the European Convention on Human Rights.

B. Overview of Existing Ombudsman-Institutions

In France there is no Ombudsman appointed by Parliament. However, the *Médiateur de la République* – Mediator of the Republic – is a national ombudsman-institution appointed by the Government having extensive powers. He can also exercise these powers with regard to bodies equipped with their own ombudsman-institution, such is the case in some communes.

The Défenseur des Enfants – Defender of Children – is a specialised ombudsman-institution whose relation to the Mediator of the Republic is described below (infra D.).

C. Médiateur de la République – Mediator of the Republic

I. History and Legal Basis

The institution of the *Médiateur de la République* was provided for by law in 1973 (Loi instituant un Médiateur de la République, Law 73-6 of 3/1/1973), the first incumbent was appointed soon afterwards. The legal basis has been amended eight times so far, always leading to an improvement of the Ombudsman's position and powers (last amendment Law 2007-148 of 2/2/2007, hereafter OA). Thereafter, an amendment provided an extension of powers towards the judicial authorities. This amendment was declared unconstitutional by the Constitutional Council before entering into force (see infra VII.). The Institution is **not embodied in the Constitution**.

The Law is supplemented by two agreements with the Minister of Justice about the access to prisoners in selected penitentiaries as an experiment (Accords of 16/3/2005, 25/1/2007). There is also a treaty with the *Défenseur des Enfants* about the responsibility for examining complaints.

II. Organisation

The Mediator is a **monocratically organised institution**. No deputies are provided for in the law. However, all over France, including the territories overseas, there are close to 300 **delegates** who are appointed by the Mediator for a renewable term of one year. These delegates serve as a contact point and can be authorised by the Mediator to exercise his duties. If a complaint cannot be solved on the basis of this power, only a Senator or Deputy can pass on the complaint to the Mediator. The delegates have to exercise their honorary office at least two half-days a week and receive expenses paid. They have to be legally educated or must have knowledge of administrative proceedings due to prior professional experience. Currently, more than half of these delegates are pensioners (AR 2004). Following an amendment in 2005, they are enabled to offer their services even in the Chambers of Commerce and Industry (*Chambres consulaires*) in order to facilitate the possibility for companies to file a complaint (Law of 02/08/2005). Also, since 2005, offices in ten selected prisons have been created for allowing prisoners to contact the institution. This has been done on an experimental basis. It was extended

to 25 penitentiaries in 2007. Since 2005, a special delegate shall be at the disposal for people with disabilities.[203]

The headquarters in Paris currently employs 97 people. The law defines the conditions under which the Mediator can employ and dismiss his staff (Art 15 (3) OA).

Parliament approves the institution's **budget** within the framework of the national budget. The finances of the institution are now part of the budget of the Prime Minister; their amount depends on results: The benchmark for the allocation of funds is defined in relation to how far the institution "favours the accessibility of the law to everybody". This is calculated according to the percentage of cases treated within less than 130 days (Loi 2005-1719 du 30 déc 2005 Art 135 V; statement). The accounts are open to inspection by the State Audit Office (*Cour des Comptes*; Art 15 (2) OA).

III. Legal Status

The Mediator is appointed by **decree of the President** issued in the Council of Ministers (Art 2 OA) for a **term of office** of six years, which is not renewable. There are **no** personal **requirements**; all incumbents have been former members of Government or other high ranking political officials so far.

A **removal** from office is only possible if the Mediator is prevented (*empêchement)* from performing his duties (Art 2 OA). Furthermore, a decree of the Council of State provides that the existence of such prevention can only be decided upon by an assembly composed of the Vice-President of the Council of State, the President and First President of the Court of Cassation, and of the State Audit Office. This college can only be convoked by the President; its decision must be rendered unanimously (Décret en Conseil d'Etat 73-253 du 9 mars 1973). The law includes no further provisions dealing with the end of the office.

The Mediator is not allowed to stand for elections to the National Assembly (Art L. 130-1 Code electoral); however, he has the right to stand for the election of a General Council (departmental level) or a Municipal Council if he already exercised such mandates before his appointment. In such a case he can simultaneously exercise these functions (Art 4, Art 5 OA). The office is **incompatible** with other public offices.

Regarding his sphere of competence, the Mediator shall not receive any instruction from any authority, he is thus **independent** (Art 1 (2) OA). The incumbent enjoys **immunity** from prosecution, arrest, detention and judgment in respect of any opinion or act in the exercise of his duties (Art 3 OA).

The amount for his **salary** is decided upon by the Prime Minister together with the Minister of Finances and the Minister for the Public Sector.[204]

---

[203] Loi pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées, Law of 5/2/2005.

[204] Décret no. 2004-1435 du 23 déc 2004 relatif au régime indemnitaire du Médiateur de la République.

It currently equals that of a director of a central administrative agency (*Directeur d'administration centrale*).

IV. Scope of Control

Subject to control by the Mediator are government offices, local public authorities, public establishments and any other bodies vested with a public service mission in respect of their dealings with the public (Art 1 (1) OA).

All these offices can deny the Ombudsman's request for information due to reasons of national defense, security of the state and foreign policy which makes the secret services **exempt** from his right of investigation (Q I). The Mediator is not competent for disputes between authorities and their officials, as long as they are in office (Art 8 OA).

The **criteria for exercising a control** are defined through a "failure of an authority to accomplish its public mission" (Art 1, Art 6 OA). Therefore, the entire legal system as well as principles of good administration can serve as standard for investigations. The law also provides that the Ombudsman shall take into account the principle of equity (*équité*) when assessing a complaint: He can analyse any complaint from a superior perception of justice and can recommend authorities "any solution" that would aid in implementing the principle of equity.

Any natural person concerned by a measure – as well as, since 1992, also any legal person – has the **right to demand an investigation** (Art 6 (1) OA). However, the actual control procedure has to be started by a member of Parliament who has to refer the complaint to a Delegate or the Mediator himself. In the eventuality that a complaint is not filed directly with a member of Parliament but instead with a Delegate of the Mediator, the Delegate can then either attempt to remedy the complaint by himself or he may refer the case to the Mediator, but only through a Senator or Deputy. Members of Parliament can also on their own initiatives refer matters to the Mediator when they consider that a situation warrants his intervention (Art 6 (3) OA). Upon request by a standing committee of one of the Chambers of Parliament, the President of the respective chamber can pass petitions on to the Mediator (Art 6 (4) OA). Also, since 2000, the European Ombudsman or foreign counterparts can directly refer complaints filed with them to the Mediator if they consider him competent to deal with the case. The Mediator is in **no** way under an **obligation to investigate** into a given case.

There are **no time limits** for filing a complaint with the Ombudsman. The complaint is **not subsidiary**, but has to be preceded by "appropriate action" with the authority concerned (Art 7 (1) OA). It is even possible for the Mediator to consider a case when legal proceedings concerning the matter are underway, even at a Court. This is due to the role of the Mediator who shall not only contribute to the correction of errors but also to balance interests before such errors become final. Filing a complaint with the Mediator does not interrupt or suspend time limits for appeals (Art 7 (2) OA). It is **free of charge**.

V. Powers

V.1. Powers in Relation to Administrative Organs

The Mediator can **demand any documents or files** concerning a case under review from any institution subject to his control. Secrecy obligations or confidentiality may be opposed to him in case of secrets pertaining to national defense, security of the state or foreign policy. Ministers and all public authorities have to **facilitate the accomplishment of the Mediator's function**. This includes the duty to answer questions and to follow requests to appear before him. The Ombudsman can ask inspection authorities to carry out any verification or investigation. Even the Vice-President of the Council of State and the First President of the State Audit Office have to undertake such investigations at the Mediator's request (Art 12 (3) OA).

In every ministry there is a "*correspondant ministériel*" as a privileged contact person for the Mediator.[205] In some of the ministries, like the Ministry of Finances, this contact person – appointed by the minister for a term of three years – also serves as internal mediator.[206]

The failing to follow the Mediator's request constitutes a **disciplinary offence**. If the superior authority does not set corresponding sanctions, the Mediator can initiate proceedings on its behalf. If the conduct should be relevant under the **criminal** code, he may only refer the case to the public prosecutor (Art 10 OA).

When the mediator considers a claim to be justified he shall make such **recommendations** as he deems necessary to settle the difficulties and recommend any solution likely to lead to an **equitable solution** for the complainant (*régler en équité la situation*). If the concerned authority does not inform the Mediator on the outcome of his intervention within the set time limit he may **publicly disclose his recommendations and proposals**. The body concerned may also disclose its reply and provide information of the measures taken in response.

If an authority has been obliged by a final court decision to undertake a certain measure but does not enforce it, the Mediator can then set a final time limit for compliance. Should the time limit be ignored, the matter will be subject of a **special report** and published in the official journal (Art 11 OA).

V.2. Powers in Relation to the Courts

The Mediator has no powers to control courts or the administration of justice. He is not allowed to intervene in judicial proceedings and may not question judicial decisions. However, in the case of an administrative authority involved in court proceedings he may issue recommendations to that authority in any stage of the proceedings.

---

[205] Art 1 Décret du 2 décembre 1998, circulaires du Premier ministre du 7 juillet 1986 et du 10 avril 1995.

[206] Décret n° 2002-612 du 26 avril 2002 instituant un Médiateur du ministère de l'économie, des finances et de l'industrie.

Provisions which would have brought an enlargement of competences of the Mediator towards courts were declared unconstitutional by the Constitutional Council in 2007 (infra VII.).

V.3. Powers in Relation to Legislative Organs

The Mediator has to present an **annual report** to President and Parliament which is published and presented by the Mediator in both chambers since 2000.[207] When it appears that the application of legislative or regulatory provisions would result in injustice (*situations inéquitables)* the Mediator has the express right to suggest any modifications he deems appropriate (Art 9 (3) OA). Such recommendations can be directed to Parliament or Government and can regularly be found in the annual reports. In cases of non execution of court decisions by public authorities, the Ombudsman can issue special reports (supra V.1.).

V.4. Special Functions and Powers in the Field of Human Rights

Since 1993, the Mediator is, by law, a member of the National Consultative Commission of Human Rights (*Commission Nationale Consultative des Droits de l'Homme*). This institution is accredited as NHRI with regard to the Paris Principles since 2001 (Status A). The designation of the Mediator as NPM in the light of the ongoing ratification of the OPCAT is currently under discussion (infra VII.).

VI. Practice

In 2005, the institution was occupied with 59,974 requests, out of which 32,227 were complaints. This was a 12% increase from the complaints filed in the previous year. The biggest share of complaints concerned social affairs and the judiciary, approximately 10% relate to disputes between former public servants and their authorities with regard to pension matters. There is no permanent control of certain areas *ex officio*.

In order to better inform the public about recent developments and projects, since 2004, the Mediator publishes a monthly bulletin (*Médiateur Actualités – Le Journal du Médiateur de le République*).

VII. Reform

After a critical report by the European Commissioner for Human Rights regarding the situation in French prisons and with regard to the ratification-process of the OPCAT a project to assign the Mediator with the powers and duties of an NPM is currently subject of ongoing debate. This reform shall also be done in order to implement a recommendation of the Parliamentary Assembly of the Council of Europe recommending a strengthening of the

---

[207] Loi 2000-321 du 12 avril 2000 relative aux droits des citoyens dans leurs relations avec les administrations.

role of Ombudspersons with regard to control of prisons and detention centres (Art 11.3, Recc 1747/2006 of 29/5/2006).

After a scandal within the justice system (so called *affaire Outreau*) and considering the ever increasing number of complaints concerning the judicial branch, reform plans to enlarge the Mediator's competences towards judicial bodies were elaborated and found their way into an amendment to the law. These measures were also to be taken in order to comply with the European Charter on the Statute for Judges[208] which requires member states to the Council of Europe to establish an independent, informal and directly accessible complaints mechanism. The respective legal act provided that any person involved in court proceedings could directly apply to the Mediator if he considered the behaviour of a judge to be relevant to disciplinary sanctions. To decide upon such complaints, the Mediator was required to consult with a five-member commission primarily consisting of non-judicial members. He then would subsequently refer the complaint to the Minister of Justice in order to request investigative measures and to apply to the disciplinary authority for judges. The Minister of Justice was supposed to inform the Mediator on measures taken. The Mediator had the possibility to publish a special report in the official journal on the case. The Constitutional Council considered these provisions to be in breach of the principle of separation of powers and independence of the judiciary. Thus, they never came into effect.[209]

VIII. Information

Law (in French only):
http://www.mediateur-republique.fr/fr-citoyen-01-02-03

Annual Report:
http://www.mediateur-republique.fr/fic_bdd/pdf_fr_fichier/1193822640_RA2006anglais.pdf

Internet:
http://www.mediateur-republique.fr

D. Défenseur des enfants –Defender of the Children

I. History and Legal Basis

A law providing for a separate institution for the protection of the rights of the child was enacted in 2000 (Loi 2000-196 du 6/3/2000, hereafter COA). The statute of the Defender is largely identical to that of the Mediator. Different competences derive from the specific duty of protecting the rights of the child as laid down in laws and international treaties.

---

[208] European Charter on the Statute for Judges DAJ/DOC (98) 23.

[209] Art 21 Loi organique relative au recrutement, à la formation et à l discipline des magistrats, Décision 2007-551 DC (1/3/2007).

II. Specific Features

In contrast to the Mediator, the Defender can receive complaints directly from children, their legal representatives or an NGO (public association) engaged in protection of children's rights. In addition, the Defender cannot only investigate public authorities or private institutions with a public service mission (supra C.II.), but also any natural or legal person incriminated of having violated a child's rights. However, the Defender has no competences towards institutions under the control of the Mediator – in contrast to the definition of his jurisdiction and purpose which include the supervision of public institutions. Only if he suspects gross deficiencies, he can refer the case to the Mediator.

The Defender may also demand information from private persons and can also issue recommendations to them, which he can publish in case of insufficient answering or consideration. The concerned person then has the right to present its opinion.

The Defender has the explicit right of making proposals concerning the improvement of the legal order with respect to guaranteeing the protection of children's rights and the implementation of international treaties (Art 3 COA). Among his duties is the obligation to inform the public of these rights and of ways of enforcing them. His annual report has to be presented to the President and to the Parliament on the Day of the Rights of the Child (November 20th; Art 5 COA).

III. Information

Law (in French):
http://www.defenseurdesenfants.fr/defens/loi0603.htm

Internet:
http://www.defenseurdesenfants.fr/

Georgia

Brigitte Kofler

A. Constitutional Background

The current Constitution of Georgia entered into force on 25 November 1995. There are two autonomous Republics within the state territory, Abkhazia and Ajara. The territory South Ossetia is formally part of Georgia but effectively ruled by a Russian-supported separatist government. According to the Constitution the territorial state structure of Georgia will be determined by constitutional law after regaining jurisdiction over the entire country (Art 2 (3)). Currently, the country is subdivided into regions.

The Parliament of Georgia consists of 235 members elected for a term of four years (Art 49 (1)). The President of Georgia is the Head of State (Art 69 (1)). Like members of Parliament the President is elected by the people directly for a term of five years. The same person may serve as President for two consecutive terms (Art 70).

The highest court in criminal and civil law matters is the Supreme Court of Georgia. In addition a Constitutional Court was established in 1996 which is, *inter alia,* competent to decide on the constitutionality of laws and other legal acts. The President also considers disputes on competence between state bodies, on the constitutionality of referenda and elections and on a claim of a citizen on the constitutionality of normative acts with respect to human rights. The Constitutional Court commences proceedings in response to a constitutional claim or a submission of the President of Georgia, the Government, not less than one fifth of the members of Parliament, a court, the higher representative bodies of the Autonomous Republic of Abkhazia and the Autonomous Republic of Ajara, the Public Defender or a citizen (Art 89).

Chapter Two of the Constitution contains a list of fundamental rights. Georgia has been a member state to the Council of Europe since 27 April 1999 and has ratified the European Convention on Human Rights in May 1999.

B. Overview of Existing Ombudsman-Institutions

There is one **national parliamentary Ombudsman,** the so-called Public Defender of Georgia. No comparable institutions exist on a regional or local level. The national Ombudsman operates three **regional offices** (Q III).

C. Sakhalkho damtsvelis aparati – Public Defender of Georgia

I. History and Legal Basis

The Institution of the Public Defender of Georgia was established by law in 1996; the office was opened in September 1998. Art 43 (1) stipulates that the protection of human rights and fundamental freedoms within the territory of Georgia is to be supervised by the Public Defender of Georgia who is to be elected for a term of five years by an absolute majority of the members of Parliament. More detailed provisions concerning the Ombudsman are laid down in the *Law of the Public Defender of Georgia* (hereinafter OA).

II. Organisation

The Ombudsman of Georgia is a **monocratic** body. The Ombudsman appoints one **Deputy** who heads the Office of the Ombudsman (Art 26 (2) OA). The Office is divided in three departments, *Monitoring and Investigation*, *Policy, Information and Education* and *Administrative and Financial Management*. Furthermore, there are five centres dealing with special issues such as Children's Rights, Women's Rights or Patient's Rights. They are part of the Ombudsman office but currently only work on the basis of projects which are financed by donations (*v* Annual Report 2004, 101). Currently, a staff of 60 are employed at the office (Q II). Estimate costs related to Ombudsman's organisation and activity are stipulated by a separate article of the State Budget of Georgia. The Ombudsman is to submit a draft of the estimated costs (Art 35 (2) OA).

III. Legal Status

The Ombudsman is **elected** for a term of 5 years by an absolute majority of Parliament. The President of Georgia, parliamentary fractions and at least a group of the 10 MPs who are not member of any fraction may appoint candidates for the office of the Ombudsman (Art 6 (2) OA). There are no **qualification requirements** except for the citizenship of Georgia since the Ombudsman Act expressly stipulates that any citizen may be elected Ombudsman (Art 6 (1) OA).

The Ombudsman **independently** exercises the powers. Any influence on or interference with the activity is prohibited and subject to prosecution (Art 4 OA). The Ombudsman is **inviolable** and is not subject to prosecution, arrestment or imprisonment (*v* Art 5 (2) OA).

The post is **incompatible** with the membership in any representative state body or body of local administration as well as with any state office and any paid activity other than scientific, educational and creative work. Furthermore, the Ombudsman may not be a member of any political party or take part in any political activity (Art 8 (1) OA).

The **term of office,** in principle, is five years (Art 6 (2) OA) and may be extended once (Art 7 (3) OA).

Except for the expiry of the term of office, the position ends on the loss of citizenship, conviction, finding of incapacity, missing or deceased by a court, retirement or death. Any of the said facts is to be reported to Parliament. If the Ombudsman is not able to perform the duties for four consecutive months or is holding or held a position or carries (carried) out an activity incompatible with the position, there is to be a resolution of Parliament passed by an absolute majority (Art 10 OA).

IV. Scope of Control

The **scope** of the Ombudsman's control extends to the activities of state bodies, local administrations, officials and legal entities (Art 3 (2) OA). In this regard there are no exceptions. His **control criteria** are the Constitution of Georgia and the laws as well as universally recognised principles and norms of international law, international treaties and covenants concluded and signed by Georgia (Art 3 (2) OA).

The Ombudsman considers the complaints and appeals of citizens and those of aliens as well as stateless persons and NGOs (Art 13 OA). Complaints, appeals and messages lodged with the Ombudsman by persons being arrested or imprisoned are confidential. They may not be unsealed or subject to censorship but are to be delivered to the Ombudsman without any delay (Art 15 OA). After receiving a complaint or appeal the Ombudsman decides independently whether to start an investigation. Hence, there is **no duty** to conduct an investigation (Art 17 (1) OA).

A complaint may only be investigated when the person lodging the complaint calls in question the final decision of a higher body, administration or court or when the complaint regards the violation of human rights and freedoms within the framework of a case (Art 14 (1) OA).

The claimant and the state body or an official or legal entity about whose action or deed the complaint has been lodged, is to be informed about the Ombudsman's decision (Art 17 (2) OA). The complaint and appeal are exempted from state taxes and the assistance of the Ombudsman rendered to persons concerned is free of charge (Art 16 OA). The Ombudsman is to inform the claimant about the results of the investigation (Art 17 (3) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

While carrying out an investigation, the Ombudsman is to be granted unimpeded access to any body subject to control including places of imprisonment before trial and other places of confinement. The Ombudsman may demand and receive from the mentioned bodies and officials as well as non-governmental institutions any information, document or other material required and has the right to receive a relevant explanation from any official (Art 18 a, b and c OA). Such information is to be submitted within 15 days on receipt of the demand (Art 23 (3) OA). Furthermore, the Ombudsman

has access to final criminal, civil and administrative court decisions (Art 18 d and e OA). Information containing state, commercial or other secrets is nevertheless to be submitted to the Ombudsman (Art 20 OA). Obstructing the activity of the Ombudsman constitutes an administrative offence (Art 5 (7) OA).

On the conclusion of an investigation, the Ombudsman may send **recommendations** to the bodies concerned (Art 21 b OA). The state body, official or legal entity which receives such recommendations or suggestions is to consider them within a month and, subsequently, is to inform the Ombudsman about the results of those considerations (Art 24 OA). The non-execution of a proposal is to be reflected in the annual report (Art 25 (1) OA). Furthermore, the Ombudsman may recommend to the competent bodies to bring **disciplinary or administrative charges** or institute **criminal proceedings** against persons whose actions caused violation of the human rights (Art 21 c and d OA). The Ombudsman may also inform the mass media about the results of the investigations and publish the decisions in the annual report as well as in special reports (Art 21 f and g OA). In case of major violations of human rights the Ombudsman may appeal to the President of Georgia in writing if other means are not sufficient (Art 21 h OA).

V.2. Powers in Relation to the Courts

The Ombudsman is to examine an appeal or complaint concerning the final decision of a court when the appeal or complaint regards the violation of human rights and freedoms (Art 14 (1) OA). If the Ombudsman considers that a violation of human rights in the course of these legal proceedings could have had substantial impact on the final verdict of the court, recommendations may be directed to the relevant judicial bodies to reconsider the relevant final court decision (Art 21 (5) OA). The effectiveness of the Ombudsman in such a situation remains unclear especially the question whether the legal force of a judgment can be revoked.

V.3. Powers in Relation to Legislative Organs

The Ombudsman may participate in parliamentary debates (Q II). The Ombudsman may not bring a formal legislative initiative before Parliament but may submit **proposals concerning the improvement of legislation** in order to secure human rights and freedoms (Art 21 a OA). In addition, the Ombudsman is entitled to **appeal to the Constitutional Court** when, in spite of the electorate's requirement, there is no referendum held or should the Ombudsman consider that the carrying out of the referendum contradicts the Constitution or if any normative act or any of its provisions violates human rights and the Constitution (Art 21 i OA). In case of a major violation of human rights and freedoms and the means of response available to the Ombudsman are not sufficient, the Ombudsman may present this insufficiency at the Parliamentary Session (Art 21 h OA). Moreover, in such extraordinary cases, the Ombudsman may appeal to Parliament with the request of creating

an interim parliamentary committee to investigate these violations (Art 21 j OA).

The Ombudsman is to submit an **annual report** to Parliament concerning the state of protection of human rights and freedoms in Georgia and also issue **special reports** on the situation of protection of human rights and freedoms. The annual report is published in the official gazette. Special reports may be published after a decision of the Ombudsman (see Art 22 OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Ombudsman's **mission** is to supervise the protection of human rights and freedoms on the territory of Georgia, elicit facts of violation of human rights and freedoms, and assist in the rehabilitation of those rights (*v* Art 3 OA). A further task of the Ombudsman is the **information and education** of the population in the field of human rights (Art 3 (3) OA). The institution is not accredited as National Human Rights Institution pursuant to the UN Paris Principles.

VI. Practice

In 2006 the Ombudsman received 2,254 complaints (Q III, 2). The annual report 2004 contains 15 chapters dealing with human rights issues such as torture, the judicial system, the situation in prisons and other centres of detention, freedom of religion or minority rights (Annual Report 2004). There is a **continual monitoring** of prisons, police detention centres, juvenile prisons, children's homes and psychiatric hospitals (*v* Art 19 OA). The situation in prisons is considered to be problematic since there are instances of gross ill-treatment and impunity of the responsible officials (Annual Report 2004, 29).

VII. Reform

The major structural problem is the frequent delay of authorities in answering the questions and requests of the Ombudsman. In addition, the Ombudsman criticizes that photos or videos are not permitted when inspecting prisons or other centres of confinement (Q II). Due to the huge workload of the courts there are severe problems with the duration of court proceedings (Annual Report 2005, 82). Further, there are severe problems concerning the execution of court judgments against the state. The Ombudsman's Annual report 2004 contains a **list of proposals for reform** including stronger reference to the institution in the Constitution of Georgia, an extension of powers and more financial resources. This political influence could be diminished, which is currently apparently still possible and harms the institution's reputation among the population (Annual Report 2004, 96).

VIII. Information

Constitution:
http://www.parliament.ge/files/68_1944_216422_konst.pdf (31.10.2007)

Ombudsman-Act:
http://www.ioi-europe.org (31.10.2007)

Annual Reports:
Annual Report 2004, http://www.ombudsman.ge/download/annrep04E.pdf (31.10.2007)

Annual Report 2005 (Second Half):
http://www.ombudsman.ge/files/234_9_Secondhalfof2005.pdf (31.10.2007)

Germany

Brigitte Kofler

A. Constitutional Background

The current Constitution of Germany, the *Grundgesetz*, entered into force in 1949 (Act of 23 May 1949, BGBl I 1949/1). Pursuant to Art 20 the Federal Republic of Germany is a democratic and social federal state. The federal state is composed of 16 *Länder,* which have certain competences in legislation, administration and the judiciary. The Federal Parliament, the *Deutscher Bundestag* is elected by the people for a term of four years (Art 39). The *Länder* are represented in the Federal Council, the *Bundesrat*, which consists of members of the *Länder* Governments, which appoint and recall them (Art 50 and 51). The Federal President, the Head of State, is elected by the Federal Convention, made up of the *Bundestag* and the *Bundesrat*, for a term of five years (Art 54). The Federal Government consists of the Federal Chancellor and the Federal Ministers (Art 62). The Federal Chancellor is being elected by the *Bundestag* upon a proposal of the Federal President.

Since 1951 the *Bundesverfassungsgericht* exists as a Supreme Constitutional Court. It rules on the interpretation of the Constitution, disagreements or uncertainties respecting the formal or substantive compatibility of federal law or state law with the Basic Law or compatibility of state law with other federal laws, as well as on constitutional complaints, which may be filed by any person alleging that one of the basic rights has been infringed (Art 93 (1)). Furthermore, there are Constitutional Courts in the *Länder* which are competent to decide disputes arising out of the interpretation of the Constitutions of the *Länder*. In addition, regional Administrative Courts exist since 1949 and also a Federal Administrative Court, the *Bundesverwaltungsgericht,* was established as a Supreme Administrative Court in 1952. The German administrative courts provide legal protection against acts of administrative organs excepting issues concerning social insurance and tax which are dealt with by special courts. As in civil jurisprudence, there are three instances.

The Basic Law contains a list of fundamental rights in Part I. Germany is an original member of the Council of Europe and ratified the European Convention on Human Rights in 1952. Within the national legal system the Convention has the status of a simple federal law (Art 59 (2)).

B. Overview of Existing Ombudsman-Institutions

Germany has a strong tradition of Petition Committees on the federal as well as on the *Länder* level. The idea of ombudsing, on the other hand, is not really widespread. The petition system is based on Art 17 which states that

every person has the right individually or jointly with others to address written requests or complaints to competent authorities and to the legislature. While on the federal level there is no ombudsman-institution with general scope of control at all, though there exists the *Wehrbeauftragter* as a special Ombudsman for the military forces, the Petition Committee of the German *Bundestag* exists since 1949. Besides, every state has its own Petition Committee attached to its *Landtag*. The first ombudsman-institution in Germany was created on the regional level in the *Land* Rhineland-Palatinate. There are presently further regional ombudsmen, the so-called *Bürgerbeauftragte,* in Mecklenburg-Western Pomerania and Thuringia as well as a specialised *Bürgerbeauftragter* for social issues in Schleswig-Holstein. The Ombudsmen in the *Länder* are to support the respective Petition Committees in their work.

C. Petitionsausschusses des Deutschen Bundestages – Petitions Committee

I. History and Legal Basis

The Petitions Committee started its work in November 1949 after it had been given a constitutional basis by the new German Constitution. Art 45c states that the *Bundestag* shall appoint a Petitions Committee to deal with requests and complaints addressed to the *Bundestag*. Further legal provisions about the Committee can be found in §§ 108 to 112 of the by-laws of the German *Bundestag* (*Geschäftsordnung des Deutschen Bundestags*; Act of 2 July 1980, BGBl I 1980/1237 as of Act of 26 September 2006, BGBl I 2006/2210; hereinafter By-Laws) and the Act on the Powers of the Petition Committee of the German *Bundestag* (*Gesetz über die Befugnisse des Petitionsausschusses des Deutschen Bundestags*; Act of 19 July 1975, BGBl I 1975/1921 as of Act of 5 May 2004, BGBl I 2004/718; hereinafter OA). In addition, there are Rules of Procedure of the Petitions Committee (*Verfahrensgrundsätze des Petitionsausschusses über die Behandlung von Bitten und Beschwerden;* hereinafter Rules of Procedure). The right to petition primarily constitutes of a **political right** of a citizen to contact and address proposals to their representatives. Hence, the concept of a Petition Committee differs from that of the typical ombudsman-institution.

II. Organisation

The Petitions Committee is one of the Committees of the German *Bundestag*. Presently, it consists of 25 members and 25 deputy members. A staff of about 89 are employed in the Committee's office.

III. Legal Status

The members of the Petition Committee are **deputies** of the *Bundestag*. They are delegated to the Committee by the factions in *Bundestag*. There is a Chairperson who is elected by simple majority. The only **qualification re-**

quirement is the status of a deputy in the *Bundestag*. Membership in the Petitions Committee is **incompatible** with other state office. There is no legally determined term of office. As a rule the members are appointed for one legislative period of four years in *Bundestag*. Every Committee member is independent and may not be instructed by any authority. Every member may be recalled from this post by the respective faction. In addition, every member loses the membership by resignation or loss of mandate as a deputy or on an early ending of the legislative period in the *Bundestag*. As a deputy to the *Bundestag* every member of the Committee enjoys **immunity**.

IV. Scope of Control

The main **subjects** of the Committee's supervision are the Federal Government, federal authorities and other institutions discharging public functions (5. [2] Rules of Procedure; see also 5. [3], [4] Rules of Procedure). Furthermore, the control extends to entities which are subject to the Federal Government's supervision (§ 2 OA). Furthermore, the Petitions Committee deals with petitions which fall within the *Bundestag's* own area of competence, particularly federal legislation (5. [1] Rules of Procedure). The Head of State, the judiciary (see 5. [5] Rules of procedure) and notably also the correctional system, which belongs to the competences of the *Länder*, are excluded from the Committee's control. The Petitions Committee has to notify the Parliamentary Commissioner for the Armed Forces, the *Wehrbeauftragter*, of any petition which concerns a member of the Federal Armed Forces (Annex to 7.6 Rules of Procedure).

The **control criteria** applied are legality as well as principles of good administration (Q II).

There is no monitoring ***ex officio***; hence the Committee may only initiate investigations upon a citizen's request or complaint. According to Art 17 of the Constitution every person may submit a petition to the Committee. Since the right to petition is limited for members of the Armed Forces, the institution of the *Wehrbeauftragter* was created as an equivalent. An application to the Petitions Committee is to be filed in writing; there are no further **formal requirements** (4. Rules of Procedure). The President of the *Bundestag* refers petitions to the Petitions Committee (§ 109 of the by-laws). The Petition Committee Service (*Ausschussdienst*) then prepares the petitions for the Committee. Certain petitions, especially illegible letters or having an unclear or ambiguous content, need not be prepared (see 7. Rules of Procedure). The Committee Service draws up **proposals** for the further handling of the complaint and then transmits it to the rapporteurs (7.12 Rules of Procedure). The competent rapporteur examines the proposal and tables motions concerning the further treatment of petitions in the Committee (8.1 Rules of Procedure). The Petitions Committee then decides about the **recommendation** of a resolution for the *Bundestag* (8.1. Rules of Procedure).

A petition to the Petition's Committee need not be preceded by appeals to other authorities.

The petitioners are to be informed of the manner in which their petitions have been dealt with including the reasons (§ 112 (3) by-laws).

V. Powers

V.1. Powers in Relation to Administrative Organs

The courts and administrative organs are to render administrative assistance to the Petitions Committee (§ 7 OA). In the course of an investigation the federal authorities are to submit files to the Committee, provide it with information and grant its members and staff access to their premises (§ 1 OA). A refusal may be permissible if the matter concerned is to be kept secret pursuant to some legal requirements or other compelling reasons for secrecy (§ 3 (1) OA). Where such requests are made direct to federal authorities or to federal corporate bodies, institutions and foundations under public law, the relevant member of the Federal Government is to be informed (§ 110 (2) by-laws). The Petitions Committee has the right to hear the petitioner, witnesses and experts (§ 4 OA) and also in these cases is to inform the competent member of the Federal Government (§ 110 (3) by-laws). The Petitions Committee may request that an individual appear in person before it and may enforce such a request.

After the investigation the Petitions Committee Service prepares proposals for the further handling of the petition which are to be examined and decided upon by the Petitions Committee within three weeks (8.1. Rules of Procedure). In particular, the *Bundestag* may refer the issue to the Federal Government for remedial action or re-examination or as background material or as a simple referral, or the *Bundestag* may forward it to the parliamentary groups for their information (7.14. Rules of Procedure). The Federal Government is to reply within six weeks. However, the act does not state any sanctions against the authorities in case of non-compliance with this deadline (see 9.2.1 Rules of Procedure). If a recommendation is published, the data protection regulations apply. In theory, disciplinary or penal charges may be brought against an official, but, in practice, the Committee never does (Q II).

V.2. Powers in Relation to the Courts

As the administrative organs, the courts are also to render **administrative assistance** to the Petitions Committee (§ 7 OA). Petitions concerning judicial proceedings may only be considered if they concern the role of a federal public body as a party to the proceedings, legislative amendments are requested to prevent courts from ruling in a certain way or the competent authority is requested not to execute a judgment which has been rendered in its favour (5. [5] Rules of Procedure).

In any case, petitions which would make it necessary to interfere with independence of the judiciary may not be dealt with by the Committee (5. [5] Rules of Procedure).

V.3. Powers in Relation to Legislative Organs

Since the members of the Petitions Committee are simultaneously deputies to the *Bundestag*, they have a right to participate in and address parliamentary sessions. **Legislative initiatives** are possible together with other deputies. Furthermore, the Petitions Committee may in a resolution of referral encourage the factions do so. A **report** on the petitions dealt with by the Petitions Committee is to be submitted to the *Bundestag* in the form of a list together with recommendations. The report should be submitted monthly. In addition, the Petitions Committee is to present to the *Bundestag* an annual written report on its work (Art 112 (1) by-laws). The report is printed, distributed and placed on the agenda of the *Bundestag*. The rapporteur may give supplementary oral explanations. A debate about it is held only if a parliamentary group or five per cent of the members of the *Bundestag* present so demand (Art 112 (2) by-laws). The Petitions Committee may request the **comments** of specialised committees of the *Bundestag* if a petition relates to a subject under debate in these committees (§ 109 by-laws).

V.4. Special Functions and Powers in the Field of Human Rights

The control of the protection of human rights is regarded as part of the Committee's mission (Q II). One major preventive function lies with the Committee's public relation work in the context of human rights (Q II).

VI. Practice

During the year 2006 the Petitions Committee received about 16,000 requests and complaints. The focus of its work lies with social issues, traffic, internal and budgetary issues as well as protection of the environment. There is no continual monitoring ***ex officio***. About four times a year consultation hours, the so called *Bürgersprechstunden* are held (Q III). The logic of its recommendation, rapid proceedings and critical analysis of the answers rendered by the authorities monitored are deemed to be decisive factors for the efficiency of the Committee's work (Q II).

VII. Reform

Amendments to or extensions of the powers of the Committee are not deemed to be necessary for the time being (Q II).

VIII. Information

Constitution:
Grundgesetz,
http://www.bundestag.de/parlament/funktion/gesetze/grundgesetz
(31.10.2007)

Ombudsman Act:
Gesetz über die Befugnisse des Petitionsausschusses & Verfahrensgrundsätze,
Quelle: http://www.bundestag.de/ausschuesse/a02/grundsaetze (31.10.2007)

Annual Report:
Tätigkeitsberichte 2005–2007,
http://www.bundestag.de/ausschuesse/a02/jahresberichte/index.html
(31.10.2007)

D. Bürgerbeauftragter des Landes Rheinland-Pfalz – Ombudsman of Rhineland-Palatinate

I. History and Legal Basis

The regional Ombudsman of Rhineland-Palatinate, the *Bürgerbeauftragter des Landes Rheinland-Pfalz,* was legally established on 3 May 1974 and commenced activities in the same year. The institution was modelled on the institution of the *Wehrbeauftragter*. The constitutional basis of the Ombudsman is Art 11 of the Regional Constitution of Rhineland-Palatinate, the *Landesverfassung Rheinland-Pfalz*. More detailed provisions on the Ombudsman are laid down in the regional Act on the Ombudsman, the *Landesgesetz über den Bürgerbeauftragten des Landes Rheinland Pfalz* of 3 May 1974 (hereinafter OA RP).

The institution's **task** is to strengthen the position of the citizens in their relation to administrative organs (§ 1 (1) OA RP). Petitions directed at the regional Parliament or the regional Petitions Committee are to be forwarded to the Ombudsman (§ 1 (3) OA RP). The Ombudsman is regarded as a permanent representative of the Petitions Committee.[210]

II. Organisation

The Ombudsman of Rheinland Pfalz is a **monocratic** body. There is **one deputy**. Currently, the Ombudsman's office employs a staff of 15.

III. Legal Status

The Ombudsman is elected upon proposal of one or more factions of the regional Parliament, the *Landtag*, by an absolute majority of votes (§ 9 (1) OA RP).

There are **no special qualification requirements**, but each candidate must be over 35 years (§ 9 (2) OA RP).The office of the Ombudsman is **incompatible** with any post in Government, the federal or regional legislative assembly or any state office in general. In addition, the Ombudsman may

[210] *Schäfer*, Datenhandbuch zur Geschichte des Landtags Rheinland Pfalz 1947–2003, von Hase & Koehler, Mainz, 2005, 487.

not engage in any professional activity or hold a managing position in any enterprise (§ 10 (4) OA RP).

The **term of office** is eight years and the incumbent may be re-elected (§ 9 (3) OA RP).

The Ombudsman is **independent** and not bound by instructions. The **salary** corresponds to the salary of an Under-Secretary of State (§ 14 (1) OA RP).

The office of the Ombudsman terminates on lose of eligibility, at the end of the term of office, on death or resignation, inability to fulfil the duties, or on dismissal by Parliament (§ 10 (3) OA RP). There needs to be a two-thirds majority in Parliament for the **dismissal** of the Ombudsman. However, the act does not state reasons for the dismissal. The Ombudsman does **not enjoy immunity**.

IV. Scope of Control

All institutions which are **subject** to monitoring by the regional Parliament of Rhineland-Palatinate are also subject to the Ombudsman's supervision (§1 (2) OA RP). This comprises the regional Government, all regional authorities as well as all entities under public law which are subject to the supervision of the *Land* (§ 4 OAQ RP). In principle, the courts and the prosecution authorities are exempted from the Ombudsman's control (cf § 3 (1) OA RP). However, they can be monitored if the complaint concerns delays in proceedings.

The Ombudsman's **control criteria** are legality and the usefulness (*Zweckmäßigkeit*) of administrative actions or omissions (§ 1 (2) OA RP).

An investigation may be initiated by any natural or legal person and also by the Ombudsman *ex officio* (§ 1 (2) and § 2 (1) OA RP). Complaints filed by prisoners or persons who have been deprived of their liberty in any other way are to be forwarded to the Ombudsman without censure (§2 (2) OA RP). In principle, the Ombudsman is obligated to investigate every complaint, however, may abstain from an investigation if the complaint is unclear or ambiguous or, in relation to a previous complaint, does not state any new information (§ 3 (2) OA RP). In such cases the Ombudsman is to inform the complainant and the Petitions Committee (§ 3 (3) OA RP). The act neither states formal requirements nor deadlines for the complaint. A complaint to the Ombudsman is **free of charge**.

On the conclusion of an investigation, the Ombudsman is to inform the complainant in writing (§ 5 (5) OA RP). Even after leaving office, the Ombudsman is subject to the provisions of secrecy (§ 8 OA RP).

V. Powers

V.1. Powers in Relation to Administrative Organs

All entities subject to the Ombudsman's supervision are obligated to render **assistance** (§ 6 OA RP). During an investigation, the Ombudsman may re-

quest oral and written explanations from these institutions and has access to all files and premises (§ 4 OA RP). However, there are no means to enforce this duty of co-operation.

In general, the Ombudsman works towards an **amicable settlement** of the complaints received (§ 5 (1) OA RP).

At the end of an investigation a **recommendation** may be issued and forwarded to the respective institution and the competent minister (§ 5 (1) OA RP). The institution concerned is to report within a reasonable period on the measures taken, progress or outcome of the issue (§ 5 (2) OA RP). If no amicable solution is reached, the Ombudsman may report to the Petitions Committee (§ 5 (3) OA RP).

V.2. Powers in Relation to the Courts

The Ombudsman may not investigate complaints if this would interfere in pending court proceedings or review a court judgment. However, the Ombudsman is entitled to investigate the dealings of the institutions and agencies subject to the control of the office also as parties of judicial proceedings (§ 3 (2) b OA RP). Yet he is to decline the investigation of a complaint if the complaint aims at re-opening judicial proceedings or changing a judicial decision in force (§ 3 (1) c OA RP).

V.3. Powers in Relation to Legislative Organs

The Ombudsman is entitled to participate and address in the sessions of the Petitions Committee, or if the Committee or the regional Parliament requests (§ 7 (1) and 2 OA RP). The Ombudsman does not give recommendations for statutory amendments (Q I). Each year, the Ombudsman issues a **report** about the activity which is to be published and discussed in the regional Parliament (§ 7 (3) OA RP), and, in addition, is to report about single cases upon request of the Petitions Committee, a faction or one-fifth of the members of Parliament (§ 7 (4) OA RP).

V.4. Special Functions and Powers in the Field of Human Rights

The Ombudsman of Rhineland-Palatinate regards the protection of human rights as an important task of the institution but has **no special powers** in this field. If there is an imminent threat of a violation of human rights no direct action may be taken excepting to inform the supervisory authority (Q II).

VI. Practice

In 2006 the Ombudsman received a total of 3,659 written and oral complaints (Q III) while in 2005 there had only been 2,768 new cases. According to the annual report, more that 73% of the complaints were resolved in 2005. The **focus** of the supervision concerns social issues, especially social welfare, issues concerning the administration of the judiciary as well as immigration

law (*v* Annual Report 2004). There is **no continual monitoring** *ex officio*. The Ombudsman regularly holds **consultation days** in district and city centres of the *Land* Rhineland-Palatinate.

VII. Reform

According to the Ombudsman there sometimes are problems with delayed or incomplete statements of bodies under the control of the office. In such cases the Ombudsman usually approaches the supervisory authority or Parliament and, therefore, does not consider an extension of the powers necessary.

VIII. Information

Ombudsman Act:
Landesgesetz über den Bürgerbeauftragten des Landes Rheinland Pfalz, http://www.landtag.rlp.de/Internet-DE/nav/899/89972561-e747-701b-e592-655c07caec24.htm (31.10.2007)

Annual Report:
Annual Reports 1996-2007, http://www.landtag.rlp.de/Internet-DE/nav/899/89972561-e747-701b-e592-655c07caec24.htm (31.10.2007)

E. Bürgerbeauftragter Thüringen – Ombudsman of Thuringia

I. History and Legal Basis

The Ombudsman of Thuringia, the *Thüringer Bürgerbeauftragter,* has its legal basis in the Ombudsman Act, the *Thüringer Bürgerbeauftragtengesetz*, of 25 May 2000 (hereinafter OA Thür). The office deals with concerns of citizens (this includes wishes, requests and proposals; § 1 (1) OA Thür) which are not to be qualified as petitions in the meaning of Art 14 Constitution of Thuringia (*v* § 1 (2) OA Thür). Concerns of citizens which at the same time are petitions may be dealt with by the Ombudsman who is to forward them to the Petitions Committee if no amicable solution is possible. In addition, the Ombudsman is to support the Petitions Committee in the fulfilment of its tasks (§ 1 (3) OG Thür).

II. Specific Features

The Ombudsman is **elected** by the regional Parliament of Thuringia, the *Landtag*, upon proposal of the regional Government by absolute majority of votes (§ 9 (1) OA Thür). Upon proposal of the Ombudsman the President of the regional Parliament appoints **one deputy** (§ 13 (3) OA Thür). The Ombudsman's **term of office** is six years; re-appointment is possible (§ 9 (2) OA Thür).

All regional authorities of Thuringia, including the regional Government and all entities under public law which are subject to the supervision of the *Land* as well as all natural and legal persons which exercise a public activity under the supervision of the *Land* are subject to the Ombudsman's control (§ 3 OA Thür). The courts do not fall under this control except for issues concerning the administration of the judiciary (*v* § 4 (1) OA Thür). All these institutions are obligated to support the Ombudsman by providing information and access to files and public buildings (§ 3 (2) OG Thür). The Ombudsman is to afford the authority the opportunity to resolve the complaint and may for this purpose issue a **motivated statement** (*mit Gründen versehene Stellungnahme*). The authority is to inform the Ombudsman about the progress or the outcome of the issue (§ 3 (2) OG Thür). Furthermore, the Ombudsman is to inform the respective supreme regional authority about the requests and recommendations, and the respective answers and statements of the authorities (§ 3 (4) OG Thür). The **focus** of the work concerns labour, health and social issues as well as local issues (*v* Annual Report 2005).

III. Information

Ombudsman Act:
Thüringer Gesetz über den Bürgerbeauftragten,
http://www.thueringen.de/de/bueb/info/recht/ (31.10.2007)

Annual Report:
Tätigkeitsberichte 2001–2006,
http://www.thueringen.de/de/bueb/bericht/ (31.10.2007)

E. Bürgerbeauftragter Mecklenburg-Vorpommern – Ombudsman of Mecklenburg-Western Pomerania

I. History and Legal Basis

The regional Ombudsman of Mecklenburg-Western Pomerania, the *Bürgerbeauftragter Mecklenburg Vorpommern,* was established in 1995. According to Art 36 of the regional Constitution of Mecklenburg- Western Pomerania the office of the Ombudsman is independent. More detailed provisions about the institution are laid down in the Act on the Handling of Proposals, Requests and Complaints of Citizens and on the Ombudsman of Mecklenburg-Western Pomerania (*Gesetz zur Behandlung von Vorschlägen, Bitten und Beschwerden der Bürger sowie über den Bürgerbeauftragten des Landes Mecklenburg-Vorpommern* of 5 April 1995; hereinafter OA MVP).

II. Specific Features

The Ombudsman of Mecklenburg-Western Pomerania is elected by the regional Parliament, the *Landtag,* upon proposal of the factions in Parliament by absolute majority for a term of six years and may be re-elected once (§ 6 (2) OA MVP).

The Ombudsman may start an investigation upon requests of a citizen, the regional Parliament, the Petitions Committee, the regional Government or *ex officio* (§ 6 (2) OA MVP). There are comprehensive mutual duties of information and co-operation between the regional Parliament (notably the Petitions Committee) and the Ombudsman. The regional Government as well as all entities concerned with regional public administration are **subject** to the Ombudsman's control (*v* § 2 (1) a OA MVP). The courts do not fall under the Ombudsman's control excepting the administration of the judiciary (*v* § 2 (1) b–d OA MVP). The entities subject to the Ombudsman's control are to furnish files upon request, grant access to their premises, provide all information requested and supporting any way during the investigations (§ 3 (1) OA MVP). If necessary, the Ombudsman may contact expert witnesses and make inspections *in situ* (§ 4 (2) and (3) OA MVP). In the course of an investigation the Ombudsman is to afford the institution concerned with the possibility to give a statement while also trying to reach a solution of the affair. The Ombudsman may either address the authority concerned directly, which then is to inform the office of the measures taken and the progress made within one month, or may render a **recommendation** to the regional Government. If the addressee does not comply with the recommendation, the addressee is to state the reasons (§ 7 OA MVP).

In 2005 the Ombudsman received 1,579 complaints. The **focus** of this work is issues of social security, public services and infrastructure (*v* Annual Report 2005). At least twice a year the Ombudsman holds a **consultation day** in every city and district within the remit.

III. Information

Ombudsman Act:
Gesetz zur Behandlung von Vorschlägen, Bitten und Beschwerden der Bürger sowie über den Bürgerbeauftragten des Landes Mecklenburg-Vorpommern, http://mv.juris.de/mv/gesamt/PetBueG_MV.htm (31.10.2007)

Annual Report:
Annual Reports 1995–2006, http://www.buergerbeauftragte-mv.de (31.10.2007)

Greece

Brigitte Kofler

A. Constitutional Background

The current Constitution of Greece entered into force on 9 June 1975 and was newly proclaimed on 21 April 2001. According to Art 1 (1) Greece is a Parliamentary Republic. The state is divided into 13 administrative regions. The municipalities have the right of self-government. Parliament consists of one chamber. Members are elected by the people for a term of four years (Art 51 (3) and 53 (1)). The Head of State is the President who is elected by Parliament for a term of five years (Art 30 (1), 32 and 33).

The court system is separated into administrative, civil and criminal courts (Art 93). The court of last resort in civil and criminal law matters is the Supreme Court, and in administrative matters the Council of State. In addition, there is a Court of Audit (Art 98) but no Constitutional Court. In fact, every court in Greece is competent to declare a law unconstitutional and, therefore, refuse to apply it in a specific case. The Special Highest Court has certain competences of a Constitutional Court and may notably render a judgment whether on the content of a statute enacted by Parliament is contrary to the Constitution or on the interpretation of provisions of such statute when conflicting judgments have been rendered by the Supreme Administrative Court, the Supreme Civil and Criminal Court or the Court of Audit (Art 100 (1)). Besides, the Special Highest Court can examine the validity of parliamentary elections (Art 58) and of referenda (Art 58, 44 II).

Greece is a founding member of the Council of Europe and ratified the European Convention on Human Rights in 1974. Under the title "Individual and Social Rights" in Part 2 of the Constitution, there is a list of fundamental rights. Greek courts and administrative organs recognise a "right to good administration" which may be claimed in court or in a complaint to the Ombudsman (Q III).

B. Overview of Existing Ombudsman-Institutions

There is one **national parliamentary Ombudsman**, the *Synigoros tou Politi*. No comparable institutions exist on regional or local level.

C. Συνήγορος του Πολίτη – Greek Ombudsman

I. History and Legal Basis

Since 1991 (Laws No. 1735/87 and 1892/90), there have been *Public Sector Controllers* which were part of the Ministry of Public Administration. The

institution of the Ombudsman as it exists today was established on 18 April 1997. The first Ombudsman took up office on 1 October 1998.

The **constitutional provisions** which constitute the basis of the Ombudsman-Institution are Art 101a and 103 (9). Detailed provisions on the Ombudsman are laid down in Law No. 3094 of 22 May 2003 (hereinafter OA) and in Presidential Decree No. 273 (hereinafter Decree). Furthermore, the Ombudsman's control was extended to children's rights, health service providers and, by way of implementation of the EC-Directives 2000/43 and 2000/78, to issues of discrimination on grounds of race, ethnic origin, religion, age or sexual orientation.

II. Organisation

The Ombudsman is a **monocratic body.** The Ombudsman is assisted by five Deputy Ombudsmen, one of whom is specifically appointed as Deputy Ombudsman for children. All Deputy Ombudsmen are to be individuals of recognised standing, with superior scientific qualifications and broad social acceptance (Art 1 (2) OA). The Deputy Ombudsmen are appointed by decision of the Minister of Interior, Public Administration and Decentralisation on the recommendation of the Ombudsman. The Ombudsman delegates authority to the Deputy Ombudsmen and supervises and coordinates their work (Art 1 (2), Art 2 (1) and Art 3 (5) OA). The Ombudsman is to appoint one Deputy Ombudsman as substitute (Art 2 (2) OA).

Their term of office in principle depends on the Ombudsman's term of office. However, they may be relieved of their duties by decision of the competent minister, on the recommendation of the Ombudsman, for physical or mental incapacity to perform their duties or inadequacy in executing their duties (Art 2 (3) OA). Presently, 181 people are on staff in the Ombudsman's office. The Office is organised in five departments: Human Rights, Social Welfare, Quality of Life and State-Citizen Relations as well as Children Rights. Every department is headed by one of the deputies (see Annual Report Summary 2006, 6).

III. Legal Status

The Ombudsman is appointed after a ruling of the Board of Parliament Chairmen, with unanimity if possible, or with the increased plebiscite of four-fifths of members (Art 101a (2) Const). The Board of Parliament Chairmen consists of the Speaker of Parliament, the Deputy Speakers of Parliament, former Speakers of Parliament, Presidents of Standing Committees, the President of the Special Standing Committee on Institutions and Transparency, the Presidents of Parliamentary Committees and a representative of independent MPs (Art 13f Parliament's Regulation, www.parliament.gr/english). The law does not state any specific **qualifications** for the Ombudsman. However, usually the same criteria as for the deputies are applied (*v* II.), especially that the candidate enjoys broad social acceptance.

The office is incompatible with any professional activity (Q I). For Deputy Ombudsmen, the exercise of any other public office is suspended by law as well as the exercise of any other duties in any position in the public sector and legal entities of general government. Furthermore, they must not have any other professional activity but may work part-time as members of the teaching staff of higher educational institutions (Art 2 (4) OA).

The Ombudsman's **term** of office is four years (Q I).

Pursuant to the status as a member of an "independent authority" according to Art 101a of the Constitution, the Ombudsman is provided with personal and operational independence (Art 101a (1) of the Constitution and Art 1 (1) OA). The Ombudsman's **salary** is determined by a separate law (Q III).

The Ombudsman may be removed from office if physically or mentally incapable of performing the duties (Art 2 (3) OA). The majority required for such a dismissal remains unclear.

The Ombudsman and Deputies must not be held responsible, prosecuted or subjected to inquiry for any opinion expressed or act committed in the discharge of their duties. Prosecution is permissible only following an accusation for slander, libel or violation of confidentiality (Art 1 (2) OA).

IV. Scope of Control

The Ombudsman's **mission** is to mediate between citizens and public entities with the view to protecting citizens' rights, combating maladministration and ensuring respect of legality. Further, the Ombudsman has the task to defend and promote children's rights (Art 1 (1) OA).

The Ombudsman's control extends to issues involving services of the public sector, local and regional authorities and all other public bodies, state private law entities, public corporations, local government enterprises and undertakings whose management is directly or indirectly determined by the state by means of an administrative decision or as a shareholder. For the protection of children's rights the Ombudsman also has control over matters involving private individuals, physical or legal persons who violate children's rights (Art 3 (1) OA). Banks and the Athens Stock Exchange are **exempted** from the control. Furthermore, there is no control over government ministers and deputy ministers for acts pertaining to their political function, religious public law bodies, judicial authorities, military services with regard to issues of national defense and security, the National Intelligence Service, the services of the Ministry of Foreign Affairs for matters related to the conduct of the country's foreign policy or international relations and the Legal Council of State and independent authorities with regard to their main function. In general, the Ombudsman may not investigate cases that concern state security. Moreover, issues pertaining to the service status of public officials also do not fall under the control (Art 3 (2) OA).

The **control criteria** of the Ombudsman are the laws of Greece including the principle of good administration, which in Greece is regarded as a general

principal of law. In particular, the Ombudsman investigates cases in which an individual or collective public body by an act or omission infringes upon a right or interest protected by the Constitution and the legislation, refuses to fulfil a specific obligation imposed by a final court decision, refuses to fulfil a specific obligation imposed by a legal provision or by an individual administrative act, or commits or omits a due legal act in violation of the principles of fair administration and transparency, or in abuse of power (Art 3 (3) OA).

The Ombudsman undertakes the investigation following a complaint or on the initiative of the office (Art 4 (1) and (2) OA). The complaint is to be signed and submitted by any directly affected person or legal entity or union of persons (Art 4 (1) OA). In principle, the Ombudsman is obligated to start an investigation upon a complaint.

The complaint is to be lodged within six months from the date on which the applicant has been fully informed of the acts or omissions for which being appealed to the Ombudsman. The submission of a complaint does not suspend the deadlines defined by law for recourse to legal action or remedies and does not depend on any parallel application for legal redress or process of higher appeal (Art 4 (4) OA).

In the event that a special administrative appeal has been lodged, the Ombudsman may not investigate the case until the competent body has reached a decision or a period of three months has elapsed since the submission of the administrative appeal. The Ombudsman may, before dealing with the case, ask the interested parts to make an administrative appeal (Art 4 (4) OA).

Filing a complaint with the Ombudsman is **free of charge**.

The Ombudsman may not investigate cases in which the administrative act has generated rights or created a favourable situation for third parties that may only be reversed by a court decision unless there is manifest illegality or the main object of the case is related to the protection of the environment (Art 4 (3) OA). The Ombudsman's staff has a duty of confidentiality (Art 4 (9) OA). In all cases, the Ombudsman is to inform the citizen concerned of the outcome of the case (Art 4 (8) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman may request public services to provide any information, document or other evidence relating to the case, examine individuals, conduct on-site investigations and order an expert's report. The fact that documents have been classified as secret may not be invoked unless they concern issues of national defense, state security and the country's international relations. All public services have an obligation to facilitate the investigations in every possible way. In case of non-cooperation with an investigation by a public service, the Ombudsman may issue a special report to the competent minister (Art 4 (5) OA).

On completion of the investigation the Ombudsman may draw up a report on the findings to be communicated to the relevant minister and authorities, and is to mediate in every expedient way to resolve the citizen's problem. In the recommendations to public services, the Ombudsman may set a deadline within which the services have an obligation to inform about the actions taken in implementation of the recommendations or of the reasons for which they cannot accept them. The Ombudsman may make public the refusal to accept recommendations if the refusal is not sufficiently justified (Art 4 (6) OA). In very important cases, the Ombudsman may also issue a special report to the Prime Minister (Art 3 (5) OA). Similar rules apply for investigations concerning the violation of children's rights by private individuals (*v* Art 4 (5) and 7 OA). The refusal of a public official or administration member to cooperate with the Ombudsman during an investigation constitutes a disciplinary offence of breach of duty and, for administration members, a cause for dismissal. The Ombudsman may submit the report to the competent body and call for disciplinary action against the relevant individual. If no action is being taken, the Ombudsman may order the action (see in detail Art 4 (10) OA). If there is sufficient evidence that a public official, civil servant or member of an administration has committed a criminal act, the Ombudsman also is to communicate the report to the competent public prosecutor (Art 4 (11) OA).

V.2. Powers in Relation to the Courts

The Ombudsman may not investigate cases pending before a court or other judicial authority (Art 3 (4) OA), therefore, in principle, the Ombudsman has no competency in the field of the judiciary. However, if the intervention into an issue before the relevant judicial authority or other public service or body is deemed necessary with the view to protecting children's rights, the Ombudsman is to communicate the relevant report to them (Art 4 (11) OA).

V.3. Powers in Relation to Legislative Organs

The Ombudsman does not have a formal right to initiate legislation but may recommend any necessary legislative or regulatory amendment if the investigation of a number of complaints leads to the conclusion that there are common characteristics of non-effectiveness, maladministration or low quality of services provided to the citizen (Art 4 (6) Decree No. 273). Between 1998 and 2005 about 38% of the Ombudsman's proposals were followed. The Ombudsman is to submit an annual report to Parliament, which is presented and discussed during a special session in Parliament and subsequently published (Art 3 (5) OA). The Ombudsman may, during the course of the year, submit to the President of Parliament reports on issues of exceptional importance (Art 3 (5) OA and Art 7 (6) Decree).

V.4. Special Functions and Powers in the Field of Human Rights

Even though there is a human rights department within the Ombudsman office, all departments examine issues of violations of human rights within their remit. However, it is not the Ombudsman but the *National Commission for Human Rights* which has the status of a National Human Rights Institution pursuant to the UN Paris Principles. In the context of the task to protect children's rights, the Ombudsman is to send reports to the competent authorities or courts if these bodies should take action for the protection of the child (Art 4 (11) OG).

VI. Practice

In 2005, the office received 10,087 new complaints, and, as there were 3,183 cases outstanding from previous years, handled 13,270 cases (Annual Report 2005 Summary, 8). The focus of the activities concerns the municipalities, the Ministry of the Interior, Public Administration and Decentralisation, the prefectures (9%) and Social Security Organisation (Annual Report Summary 2005). In 2005, the Ombudsman decided to carry out *ex officio* investigations in five cases and reported notably about serious problems with hygiene and cleanliness in an alien detention area (Annual Report Summary 2005, 64). There is no continual monitoring *ex officio* but, during the year 2005, the Ombudsman conducted 54 on-site investigations, notably in hospitals and detention centres, to investigate complaints in this field (Annual Report Summary 2005, 63). Besides, the Ombudsman holds regular consultation days in the bigger cities of Greece.

VII. Reform

Problems occur with regard to delays in the exchange of documents with authorities and disputes about competences of the different authorities. In the opinion of the incumbent, the powers are sufficient especially since the implementation of the two EC Directives on Discrimination (Q II).

VIII. Information

Constitution:
http://www.parliament.gr/english/politeuma/syntagma.pdf (31.10.2007)

Ombudsman-Act:
Law No. 3094 "The Ombudsman and other provisions",
http://www.synigoros.gr/en_law.htm (31.10.2007)

Annual Report:
Annual Report 2005 – Summary,
http://www.synigoros.gr/reports/Annual_Report_2005.pdf (31.10.2007)

Hungary

Joachim Stern

A. Constitutional Background

The Hungarian Constitution of 1949 was significantly amended in 1989 (Act XX of 1949 as amended 1989/74, hereafter Const). It declares Hungary an independent, democratic, constitutional republic (Art 1, 2 Const). The members of the unicameral Parliament are elected by general suffrage for a term of four years (Art 20 Const). The Head of State is the President of the Republic (Art 29 Const). He is appointed by Parliament for a term of five years (Art 29a Const). Parliament elects a Prime Minister upon proposal of the President of the Republic (Art 33 (3) Const). The Prime Minister then proposes the other members of Government to the President (*v* Art 33 Const). The Public Prosecutor is independent from the Government. He is appointed by Parliament by a two thirds majority for a term of six years (Art 52 Const). Hungary is a unitary state.

The highest judicial organs are the Supreme Court of the Republic (Art 45 Const) and the Constitutional Court (*Alkotmánybírósága*). There is no Supreme Administrative Court. However, the ordinary Courts are divided into branches of civil, criminal and, since 1991, administrative disputes. The Constitutional Court exercises abstract control of norms *ex ante* as well as *ex post* and considers individual complaints. Any person may file such a complaint. There is no requirement that they be personally affected by the norm in question (*actio popularis*; Art 32a (1) Const).

The Hungarian Constitution contains a comprehensive charter of "Fundamental Rights and Duties" (Chap XII Const) which includes not only the classical liberal freedoms but also social rights such as the right to work, to spare time and paid vacation, as well as the right to the highest possible level of physical and mental health. With the exception of democratic rights on a national level, and the right to social security and education, these rights are formulated as generally applicable human rights.

Hungary has been a member of the Council of Europe since 1990. The ECHR was ratified in 1992. Formally its provisions are to be applied as regular national law, however, as it is a ratified international treaty, it may also be applied by the Constitutional Court in reviewing domestic laws.

B. Overview of Existing Ombudsman-Institutions

In Hungary there are **three parliamentarian ombudsman-institutions**, each with its own set of standards for investigation. The Parliamentary Commissioner for Civil Rights has the most comprehensive mandate (infra C.). The other two institutions have specialised powers: the Parliamen-

tary Commissioner for the Rights of National and Ethnic Minorities (infra D.) and the Parliamentary Commissioner for Data Protection (infra E.). The Commissioners are connected by a **common organisational structure**.

C. Állampolgári Jogok Országgyűlési Biztosa – Parliamentary Commissioner for Civil Rights

I. History and Legal Basis

The revision of the Constitution in 1989 laid down the constitutional basis for the creation of ombudsman-institutions. Art 32 (B) expressly provides for a Parliamentary Commissioner of Civil Rights as well as a Commissioner for the Rights of National and Ethnic Minorities. This provision entered into force in 1990 but could not be applied until 1993, as the implementing statute failed to obtain the two thirds majority required to pass into law before (Art 32 (B)(7) Const). In 1995 the political authorities finally agreed on candidates for the Commissioner and his deputy, who were to take office on July 1st 1995. The Law on the Parliamentary Commissioner for Civil Rights is also the general legal basis for the other parliamentary ombudsman-institutions. It has been amended a total of twelve times. There is no comprehensively consolidated version available in English. Thus, quotations herein refer to the initial version if not stated otherwise (Law LIX 1993, hereafter OA).

II. Organisation

The institution of the Parliamentary Commissioner for Civil Rights is **monocratically organised**. The Commissioner has one "**general deputy**", who represents the Commissioner in his absence and is required to fulfil the same election criteria as the Commissioner himself. Where both the Commissioner and his deputy are unable to exercise their office, the powers and duties are to be exercised by either of the specialised Commissioners as designated by the Ombudsman.

The institution of the Commissioner for Civil Rights currently employs 50 people. The **common office** of all three ombudsman-institutions employs an additional 37 people. The Commissioner makes a proposal to Parliament regarding the institution's **budget**, with the Ministry of Finances also involved in the process.

III. Legal Status

The Commissioner for Civil Rights is **appointed** by Parliament with a two-thirds majority vote (Art 19 (3)(k) Const, Art 4 (1) OA). The President of the Republic has to propose a candidate who must then be heard by the Committee on Constitution, Legislation and Justice, as well as the Committee on Human Rights, Minorities and Religious Affairs. If the vote fails, the President must nominate another candidate within 30 days (Art 4 (4) OA).

Requirements for the office are Hungarian citizenship, graduation from a law faculty and a clean criminal record. Furthermore the candidate must be a lawyer with at least ten years professional practice and considerable experience in the conduct, supervision or academic theory of the protection of constitutional rights and must be "highly respected" (Art 3 (1), (2) OA). Moreover, during the four years preceding the proposal for election, the candidate must not have been a member of Parliament, President of the Republic, member of the Constitutional Court, a member of the Government, Secretary or Deputy Secretary of State, a member of a local government council, Commissioner of the Republic (i.e. local administrative representative), notary, Public Prosecutor, professional member of the armed forces or the police, or employee of a political party (Art 3 (3) OA).

The **term of office** is six years and may be renewed once (Art 4 (5) OA).

The office of the Commissioner is **incompatible** with "any other state, local government, social or political office or mandate". Furthermore the incumbent may not engage in any other paid employment, and he may not accept any remuneration for his other activities – except for scientific, educational, artistic activities, activities falling under the protection of copyright, or proof reader's and editor's activities. The Ombudsman may not be in a leading or supervisory position of a business (*economical association*). Beyond activities falling within his sphere of authority, the ombudsman may not pursue any political activity or make any political declarations (Art 5 OA). If Parliament holds that these rules have been violated, the incumbent is temporarily suspended from office (Art 6, Art 15 (4) OA). If he does not discontinue the relevant activity within ten days, Parliament must issue a resolution declaring the office forfeit.

For this purpose, as with a removal from office, the law requires a two-thirds majority. Parliament may also remove the Ombudsman from office for other reasons. The law differentiates between a *discharge* and a *removal*: Parliament may **discharge** the incumbent if he is unable to fulfil his duties for more than ninety days through no fault of his own. The Ombudsman shall then be entitled to three months special remuneration (Art 15 (5) OA). A **removal** may take place where the incumbent does not fulfil his duties through his own fault, commits a criminal offence as established in a final judgment, or becomes "unworthy of his office" in any other way. While the motion for discharge may be advanced by any member of Parliament, the removal depends upon a motion by the Parliamentary Committee which deals with immunity and conflicts of interests (Art 15 (6) OA).

The office will otherwise **end** with expiry of the term, by death or by resignation (Art 15 (1), (2) OA).

The Commissioner enjoys **immunity** for actions undertaken and opinions expressed in the course of the exercise of his mandate. Originally regulated in detail by law (Art 11–14 OA), the current version of the Law on the Parliamentary Commissioner for Civil Rights refers to the respective provisions for members of Parliament (§ 11 OA as amended 18/11/2006). The Commissioner is **independent** in the exercise of his functions (Art 8 OA)

and responsible exclusively to Parliament, as is his deputy (Art 2 (1) OA). He has right to the same **remuneration** as a minister; the deputy's salary equals that of a Secretary of State (Art 9 (1) OA).

IV. Scope of Control

The **mandate** of the Commissioner for Civil Rights is to investigate cases involving the infringement of constitutional rights and to put into place general or specific measures to remedy such infringements (Art 32 (B)1 Const, Art 1 OA).

Subject to his control are public administrative authorities or any body exercising a function of public administration as well as any other body acting "in the jurisdiction of public administration". The Law expressly lists the armed forces, law enforcement organs,[211] national security services, authorities of inquiry, local governments and minority local governments as well as public bodies with obligatory membership, public notaries and "county or autonomous brokers" (Art 16, 29 (1) OA as amended 20/12/2001). Also originally included in this list were "organs of justice except for courts" and "organs deciding with binding force in legal disputes other than courts". However, these provisions were declared unconstitutional in 2001.[212]

Explicitly outside the jurisdiction of the Ombudsman are the Parliament, the President of the Republic, the Constitutional Court, the State Audit Office, courts and the Public Prosecutor's office except for the department of investigation (Art 29 (2) OA as amended 20/12/2001). Further restrictions on the Ombudsman's jurisdiction derive from limits regarding his powers of investigation (infra V.1.).

The **criteria for control** are constitutional rights (Art 16 (1) OA). In practice, rights laid down in other documents such as the ECHR are also applied (Q III). These criteria do not include a general right to investigate whether principles of good administration have been violated. However, the **right to complain** belongs to anybody who, in his own judgment, *suffered injury* in consequence of the proceedings of any authority or is in direct danger of suffering such an injury. Therefore, principles of good administration are relevant in relation to the implementation of human rights and other fundamental rights. Before a complaint can be made, all other available administrative and legal remedies must be exhausted. Complaints to the Commissioner for Civil Rights are therefore **subsidiary**. The Ombudsman can investigate infringements of constitutional rights and may take remedial measures on his **own initiative**. It is arguable that in these cases the preconditions for filing a complaint must still be fulfilled, and particularly that all other remedies must have been exhausted.[213] However, this seems to be inconsis-

---

[211] The original term "police or policing organs" has been replaced by this broader definition.

[212] Constitutional Court 7/2001 (III.4).

[213] *Tilk*, The Appearance of the Ombudsman's Institution in the Republic of Hungary, in *Chronowski (ed)*, Adamante Notare (2005), 202.

tent with the constitution, which provides very generally that the Commissioner shall investigate cases involving the infringement of constitutional rights which come to his attention (Art 32 (B)(1) Const). Members of Parliament may direct a question to the Ombudsman on matters which fall within their respective sphere of authority (Art 27 Const). There are **no formal requirements** regarding the format of complaints.

The Commissioner is under a **duty to investigate** but may refrain from investigating a petition if the abuse is "of small importance" (Art 17 (1), (2) OA). Evidently unfounded petitions, as well as petitions submitted repeatedly *shall* be rejected by the Ombudsman. Complaints filed anonymously or not by the person affected *may* be rejected (Art 19 (2) OA).

If a non-appealable decision has been given in the matter, a petition to the Ombudsman can only be made within one year of the communication of the decision. In any other case the only **time limit** is that complaints may only refer to proceedings instituted after the 1989 constitutional amendments (Art 17 (3), (4) OA). The complainant is to be **informed** as to the outcome of an investigation. His identity is to be kept secret if so he desires. No one shall be put at a disadvantage as a result of an appeal to the Commissioner (Art 17 (4) OA as amended 20/12/2001).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman may **request** data and information from any authority regarding the conduct of its proceedings, including failures to instigate proceedings. He may **inspect the documents** and request that either the documents or copies thereof be sent to him (Art 18 (2) OA). In principle, he may not be refused access to state **secrets** since he is bound by the same rules of confidentiality as the authority under inspection. However, he has no access to central documents of the armed forces and forces of national security as listed in a schedule to the law. If the Commissioner deems access to such documents necessary he may only demand that the responsible minister carry out the investigations for him (Art 18 (5), (6), (8) OA, concerning the respective powers of the Commissioner for Data Protection see infra E.). If knowledge of documents of the police forces could "endanger the success of law enforcement operations", a special permit by the head of the national police is to be obtained. If the latter refuses the permit, the Ombudsman may again turn to the responsible minister (Art 18 (7) OA).

The Commissioner may request a **written explanation, declaration or opinion** from any organ or its employees (Art 18 (4) OA). He may interview the official in charge of the matter in question or any employee of the relevant organ, and may request that an inquiry be conducted by the head of the organ, the head of its supervisory organ, or the head of an organ otherwise entitled to conduct such an inquiry. Officials have the right to refuse to make a statement under conditions parallel to those laid down in the Code of Civil

Procedures (Art 18 (3), (9) OA). Any request of the Commissioner is to be complied with within 15 days (Art 18 (10) OA as amended on 20/12/2001).

In the investigation of a complaint the Ombudsman may have **access to the premises** of an authority. However, access to areas serving the armed forces, the services of national security, the police and policing organs is subject to regulation by the appropriate minister. Such regulation must not operate to impede the Commissioner's control (Art 18 (1) OA).

If the Ombudsman comes to the conclusion that a violation of constitutional rights has taken place, he may make a **proposal for remedial action** to the head of the organ concerned or to its supervisory organ. If he makes the proposal to the supervisory organ, the organ concerned must be informed simultaneously. Within 30 days of the proposal being given, the organ is to notify the Ombudsman of its position regarding the proposal and of the measures taken in relation thereto. If the proposal was directed to the organ responsible for the violation and that organ refuses to comply with the Ombudsman's proposal, the organ shall itself inform its superior authority, which must then reply to the Ombudsman within 30 days (Art 21, 20 OA). If the superior authority also fails to comply with the proposal, the case shall be included in the annual report and the Commissioner may request that the case be investigated by Parliament (Art 26 (1) OA).

Upon a well-founded suspicion of **administrative or disciplinary misconduct** or of a **criminal offence,** the Ombudsman may "initiate" proceedings with the competent authority to call the official to account. The respective authority is to inform the Commissioner within 60 days of its position on the matter; whenever the authority consequently introduces proceedings it shall inform the Commissioner of the outcome within 30 days after their completion.

The Commissioner for Civil Rights has numerous powers of **appeal to the Constitutional Court**: He can introduce a motion to examine *ex post* the constitutionality of a legal rule or any other legal instrument of state administration or to determine their compatibility with an international agreement. He can also introduce a motion for the judgment of a constitutional complaint regarding the infringement of constitutional rights; a motion to terminate an unconstitutional omission; and a motion for the interpretation of constitutional provisions (Art 22 OA, § 1 Act on the Constitutional Court[214]; see also infra V.3.).

V.2. Powers in Relation to the Courts

The Commissioner cannot exercise control over the courts – neither with respect to the contents of their decisions nor with respect to rules of procedure (supra IV.). This exemption also includes the so-called administration of justice.

---

[214] Act XXXII of 1989 on the Constitutional Court, http://www.mkab.hu/content/en/encont5b.htm (31/10/2007).

V.3. Powers in Relation to Legislative Organs

The Commissioner must present an **annual report** to Parliament by the end of the first quarter of the calendar year. The report shall include a summary of his activities but also a general overview of the situation regarding the protection of constitutional rights in official proceedings. The report shall be published in the Hungarian Official Gazette after a resolution is passed on it by Parliament (Art 32 (B)6 Const, Art 27 OA). The Commissioner has the power to **attend parliamentary sessions** in any matter and to take the floor. Parliament may also oblige him to be present at a sitting (Art 45 (1), (5) Standing Orders of Parliament[215]).

If the authority concerned does not comply with the Ombudsman's proposal (see supra V.1.), the Commissioner may request Parliament to **investigate the case**. If in his opinion the abuse is extremely serious or affects a large group of natural persons[216], he may request that Parliament include the issue on its agenda for debate (Art 26 (1) OA). If the abuse emerged in connection with the armed forces, the services of national security or the police, and its disclosure would affect a state secret or secret of the services, the Ombudsman shall submit the case in a report classified as secret to the competent committee of Parliament. The committee shall decide in a confidential sitting whether to put the issue on its agenda (Art 26 (3) OA).

If, in the view of the Ombudsman, an abuse relating to constitutional rights is the result of "superfluous, not unambiguous" legislative or administrative provisions or caused by the absence of adequate legal regulation on the given issue, he may propose the amendment, repeal or issue of a legal rule to the relevant authority in order to avoid the abuse in the future. The organ to which such a request is issued is to notify the ombudsman of its view and of the measures to be implemented within sixty days (Art 25 OA). Laws in conflict with the Constitution or ratified international treaties may be appealed to the Constitutional Court (see supra V.1.).

V.4. Special Functions and Powers in the Field of Human Rights

All of the powers and functions of the Commissioner for Civil Rights have a direct link to the protection of fundamental rights. The institution is not accredited with the International Coordinating Committee as NHRI according to the Paris Principles. Hungary has not yet signed the OPCAT.

VI. Practice

In the year 2005, 4,769 petitions were received by the Commissioner's office, containing a total of 6,407 complaints. 6,689 matters, including some dating

---

[215] Resolution 46/1994 (IX.30) on the standing orders of the Parliament of the Republic of Hungary, http://www.mkogy.hu/hazszabaly/resolution.htm (31/10/2007).

[216] The original term of "citizen" has been replaced by the term "natural persons" in preparation of Hungary's accession to the EU: Art 26(1), (3) OA as amended on 1/5/2004.

from previous years, were able to be dealt with. 4,836 were rejected, a further 608 terminated with no further action. In about half of the 1,193 cases investigated some violation of rights was established. 286 recommendations were issued – 118 to the authority concerned, 60 to the superior authority. In 94 cases, Parliament or a responsible administrative authority were approached with a request to amend legislation or ordinances.

Complaints mostly concerned health insurance, pensions insurance and labour related matters (11.2%), criminal proceedings (10.3%), and cases relating to construction, premises and housing (8.8%). A significant increase in the number of complaints concerning providers of public services was noticed. The Commissioner does not exercise regular control of certain sensitive areas *ex officio*. However, some on-site inspections were conducted on the Commissioner's own initiative.

VII. Reform

The most important problem that the institution notes is a lack of funds, which impedes the Commissioner's ability to launch investigations on his own initiative. The financial problems are considered to be rooted in the Government's role in approving the budget.

VIII. Information

Constitution:
http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=94900020.tv&dbnum=62

Law:
http://www.anticorruption.bg/ombudsman/eng/readnews.php?id=6063&lang=en&t_style=tex&l_style=default

Internet:
http://www.obh.hu

C. Nemzeti és Etnikai Kisebbségi Jogok Biztosa – Parlamentary Commissioner for the Rights of National and Ethnic Minorities

I. History and Legal Basis

The institution of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities was written into the Constitution at the same time as the Commissioner for Civil Rights (Art 32 B(2) Const). While the Act on the Commissioner for Civil Rights also serves as the general legal basis for this institution (Art 2 (5) OA), the Act on the Rights of National and Ethnic Minorities lays down several specific provisions (Act LXXVII of 1993; hereafter MinOA). The Act was passed in 1993 with the required majority of two thirds of the votes (Art 68 Const). It both defines the rights of

minorities and declares the Commissioner for Minority Rights as the Commissioner competent for controlling the implementation of those rights (Art 20 MinOA). The term "minority" is defined as Hungarian Citizens who associate themselves with an ethnic or national minority but expressly excludes "persons of no fixed abode" (Art 1, Art 2 MinOA). The institution began operations in September 1995 (AR 1995).

II. Specific Features

The Commissioner for Minority Rights is also elected by Parliament. The President is to request the opinion of national minority self-governments before proposing a candidate (Art 20 (2) MinOA). The Commissioner has no deputy; in his absence his duties are to be performed by the Commissioner for Civil Rights or his deputy (Art 2 (4) OA). Differences between the duties of the Commissioner for Minority Rights and the Commissioner for Civil Rights can mainly be traced to specific **criteria of control** which consist of the minority rights laid down in the act: individual minority rights include the right to self-definition, equal opportunities, freedom from discrimination, the right to participate in public life, the right to respect minority traditions and to educate and be educated in the mother tongue (Art 7–14 MinOA). Collective rights include the right to self administration, to representation within the legislature, as well as autonomy in matters of education and culture (Art 15–20 MinOA, see also Art 68 Const).[217] The Commissioner also examines cases of alleged violations of other fundamental rights which are linked to the fact that the person belongs to a minority. He has the same rights as the Commissioner for Civil Rights.

In the first ten years of its existence the institution received 4,991 complaints with numbers rising in recent years. The Commissioner on Minorities currently employs 18 people.[218]

III. Information

Neither the Law nor annual reports are currently available in English on the institution's website.

Internet:
http://www.kisebbsegiombudsman.hu/

---

[217] Further rights of minorities are laid down in the Act on Local Self-Government 65/1990, in the Act on Public Education 79/1993 and in the Act on Radio and Television 1/1996.

[218] CAT/C/55/Add.10, 15-16/11/2006, 23.

E. Adatvédelmi Biztos – Parliamentary Commissioner for Data Protection and Freedom of Information

I. History and Legal Basis

In contrast to his colleagues, the Parliamentary Commissioner for Data Protection and Freedom of Information is not explicitly provided for in the Constitution. The institution has its basis in the general right of Parliament to appoint Commissioners for the protection of special constitutional rights Art 32B(4) Const). Its legal basis is the Act on Protection of Personal Data and Disclosure of Data of Public Interest (Act LXIII 1992, 17/11/1992 as amended 2003; hereafter DatOA). The first Commissioner was elected simultaneously with the other Parliamentary Commissioners in 1995.

II. Specific Features

While the Law on the Parliamentary Commissioner for Civil Rights also serves as a general basis for the Data Protection Commissioner (Art 23 (2), 24 A(1) DatOA), the Act on Protection of Personal Data contains several very specific provisions. The particularities of his role are in part due to data protection being a cross-sectional matter which also constrains private entities and in part due to the characteristics of the institution itself: The Commissioner is simultaneously serving as administrative authority, responsible for maintaining the Data Protection Register.

Special requirements for the appointment of the Commissioner demand that the candidate have "experience in conducting and supervising proceedings involving data protection or in related sciences" (Art 23 (1) DatOA). He shall act upon complaints or on his own initiative – the matter in question cannot be subject to proceedings in court (Art 24 (a), (b) DatOA). The law also provides the Ombudsman with the function of monitoring general conditions regarding the protection of personal data and the disclosure of data of public interest. This is also the definition of his criteria of control.

The Data Protection Ombudsman may request anybody who processes data (a so called "controller") to furnish him with information on any matter, and may inspect any documents and records likely to bear personal data or data of public interest. He may enter any premises in which data is processed (Art 26 (1), (2) DatOA). State and official secrets shall not prevent him from exercising his rights, but he is also bound by provisions on secrecy (Art 26 (4) DatOA). If he is opposed to any classification of data as "secret" or "restricted" he can **request** the person processing the data to change the classification within 30 days unless international agreements require the data to be so classified. In other cases as well, he does not proceed with recommendations like his colleagues but with "requests". If such a request is not complied with, the Commissioner can **order** the authority to correct the unlawful processing of the data or the blocking, deletion or destruction thereof. Such an order can be appealed in court within 30 days. The court proceeds under the Civil Procedure Act which also regulates lawsuits against public administrative authorities. Until a final court decision is reached, the

data concerned may not be deleted or destroyed; the processing of data, however, shall be suspended and the data blocked (Art 25, Art 26 DatOA).

In addition, the Commissioner also keeps the Data Protection Register. Anybody processing data is to notify the Commissioner beforehand and request to be registered (Art 28, exceptions Art 30 DatOA).

The Data Protection Commissioner has the explicit power to issue proposals for the adoption or amendment of legislation on data processing or on public access to data of public interest, and to give an opinion on such draft legislation (Art 25 (1) DatOA). An additional function of the office is to watch over the freedom of opinion (Art 24 (f) DatOA). The organ represents Hungary in joint data protection supervisory authorities of the European Union (Art 24 (g) DatOA). The office currently employs around 40 people.

III. Information

Legal Basis:
http://abiweb.obh.hu/dpc/index.php?menu=gyoker/relevant/national/1992_LXIII

Annual reports are not available in English.

Internet:
http://abiweb.obh.hu/dpc/index.htm

Iceland

Joachim Stern

A. Constitutional Background

The original Constitution of Iceland dates back to 1944 and has been amended several times since then (Constitution of 17/6/1944 as amended 24/6/1999, hereafter Const). It declares Iceland a republic with a parliamentarian government (Art 1 Const). Iceland is a unitary state, divided into 21 regions as administrative subunits. The Parliament, *Althing*, consists of 63 members who are elected by the people for a four year term (Art 31 Const). The Head of State is the President who is also elected by the people for four years (Art 4ff Const). The President is charged with appointing and discharging ministers, however he must respect the parliamentarian majority in this process. The Prime Minister presides over ministerial meetings (Art 15ff Const).

The judiciary consists of two stages. The Supreme Court (*Hæstiréttur*) has jurisdiction as a court of second and last instance in matters of ordinary jurisdiction. In the first instance there are eight District Courts which also have jurisdiction over administrative acts (Act on the Judiciary No. 15, 25/3/1998). There is also a Labour Court and a Court of Impeachment. As Iceland has no Constitutional Court it is up to the ordinary courts to decide upon the constitutionality of laws and other acts.

The final chapter of the Constitution (Chap 7) contains a catalogue of fundamental rights.

Iceland joined the Council of Europe in 1950 and ratified the ECHR in 1953.

B. Overview of Existing Ombudsman-Institutions

The Parliamentarian Ombudsman (*Umboðsmaður Alþingis*) is Iceland's national Ombudsman with general jurisdiction. Currently no similar institutions on either a regional or local level exist (Q 3). In 2006, the Ombudsman for Children (*Umboðsmaður barna*) was established in law. However, the incumbent is appointed by the Prime Minister.

C. Umboðsmaður Alþingis – Office of the Ombudsman

I. History and Legal Basis

The office of the Parliamentarian Ombudsman was created in 1987 by an Act of Parliament (Law No. 13/1987). In 1997 an entirely new law was adopted which extended the Ombudsman's jurisdiction to local authorities and now forms the institution's legal basis (Act on the Althing Ombudsman

No. 85/1997, hereafter OA). The institution of the Parliamentarian Ombudsman is not embodied in the Constitution.

II. Organisation

The office of the Icelandic Ombudsman is a **monocratically organised** institution. There is no permanent deputy to the incumbent. However, if the Ombudsman is temporarily absent, the Speaker of *Althing* appoints a substitute to act as a replacement (Art 1 (3) OA). The Ombudsman engages his own staff within the limit set by the fiscal appropriation in force. With the same provision, the Ombudsman is authorised to engage people to work on specific activities. The accounts of the Ombudsman are audited by an independent chartered auditor appointed by the Speaker of *Althing*. Currently the institution employs eleven people (Q II).

III. Legal Status

The Ombudsman is elected by the *Althing*. The law does not require a qualified majority for this process (Art 1 OA). The candidate may not be a member of the *Althing* and must fulfil the same legal **requirements** as for the office of a Supreme Court Justice. The applicant must therefore be at least 35 years of age, hold Icelandic citizenship, possess the "necessary mental and physical capacity", have completed a graduation examination in law or have graduated from a university with an educational program deemed equivalent thereto. Additionally he shall not have committed "any criminal act considered to be infamous in public opinion, or evinced any conduct detrimental to the trust that persons holding judicial office generally must enjoy." The candidate to the office must also be "legally competent to manage his or her personal and financial affairs, and has never been deprived of the control of his or her finances". He must have legal experience of at least three years and be deemed capable to hold the office in the light of his career and knowledge of law (Chap 2 Sec 4 Act on the Judiciary, No. 15, 25/3/1998).

The position is generally **incompatible** with paid employment on behalf of public administrative bodies or private enterprises although the Speaker of the *Althing* may approve such activities by giving expressed consent (Art 14 OA).

The term in office is four years; the law does not provide for any limitations as to the possibility of a re-election (Art 1 (1) OA). In the case of permanent absence as well as the death of an incumbent the *Althing* shall elect a new Ombudsman. At any time and for no specific reason the *Althing* may remove the incumbent from his office with a respective vote of at least two thirds of the members of Parliament (Art 1 (1) OA).

In the discharge of his functions the Ombudsman is not bound to take instruction from any one, the *Althing* included, and thus is regarded as **independent** (Art 2 (2) OA).

The Ombudsman's salary is decided upon by the Presidium of the *Althing*. In other respects, the Ombudsman enjoys the same emoluments as

Justices of the Supreme Court (Art 13 OA). In 2005 the salary for this position was 7.45% lower than that of the Prime Minister (Q III).

The Ombudsman does not enjoy immunity from criminal prosecution. However, if a civil case is brought against him on the grounds of decisions made in the course of the position the Ombudsman may make a request to the judge that the case be dismissed (Art 16 OA).

IV. Scope of Control

The **role of the Ombudsman** is "to monitor, on behalf of *Althing* and in such manner as is further stated in this Act, the administration of the State and local authorities, and to safeguard the rights of the citizens vis-à-vis the authorities" (Art 2 (1) OA).

The **jurisdiction** of the Ombudsman encompasses local and state administration. It also covers the activities of private parties insofar as they have been vested by law with public authority to make decisions as to individuals' rights and obligations (Art 2, 3 OA). Exempted from his control are the proceedings of the *Althing* and its bodies as well as the courts of law. Decisions and other acts of authorities which can be appealed against in court cannot be at the base of a complaint to the Ombudsman. However, he might take up such cases on his own initiative (Art 3 OA).

The Ombudsman's **criteria to be applied to a control** include the rights of the citizens, the entire body of law and the principles of equality and good administrative practice (Art 2 OA).

Any person who feels unjustly treated by an organ under the Ombudsman's control can **complain** thereof to the Ombudsman (Art 4 (1) OA). A person who has been deprived of his liberty has the right to lodge a formal complaint with the Ombudsman in a sealed envelope (Art 4 (3) OA, see also Art 37 (2) Act on the Execution of Court Decisions, No. 49/2005). The Ombudsman may also decide to take up a matter for investigation on his own initiative and subject the activities and procedures of an authority to a general examination (Art 5 OA).

Complaints are to be expressed in writing and must state the name and address of the complainant. This formal statement should describe the decision or conduct being complained of as well as reference to the relevant authorities which give rise to the complaint. This should also be accompanied by all relevant and available evidence as to the details of the case. Complainants can apply to the Ombudsman within a year of the conclusion of the administrative act in question (Art 6 OA), and are subsidiary: if the case can be appealed to a higher authority this authority must be approached beforehand. The complaint process is free of charge.

If the Ombudsman "feels that a complaint does not provide grounds enough for a closer investigation or that it does not fulfil the conditions of this Act as to admission," he shall notify the complainant: "That is the end of the matter as far as the Ombudsman is concerned" (Art 10 (1) OA). As such there is **no** further **duty to investigate** the case. If the Ombudsman decides

to carry out an investigation, he shall notify the authority who is the subject of the complaint unless the integrity of the investigation is likely to be compromised by such (Art 9 OA). The Ombudsman has an obligation to keep facts **confidential** which come to his attention, if legitimate public or private interests so require (Art 8 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

In the course of conducting investigations the Ombudsman may demand from authorities any such information and written explanations as he may require for official purposes. This includes reports, documents, minutes, and all other items with a relevant link to the case. He may summon state officials and local administrators for hearings for the purposes of oral testimony and to provide explanations regarding the specifics of individual cases. All other people connected to the case can be summoned before a district judge "to give evidence on particulars which the Ombudsman deems to be significant, pursuant to procedural law" (Art 7 (5) OA).

The Ombudsman shall have **free access to all premises** of the authorities in order to carry out investigations and shall be given all necessary assistance by the officials concerned. However, the Ombudsman cannot demand information which concerns state security or such foreign affairs which are confidential, except with the permission of the relevant cabinet minister. The Ombudsman is at liberty to engage the help of specialists when called for and "to secure such specialised data as he needs" (Art 7 OA).

If the Ombudsman concludes that an action of a public authority conflicts with the law or is otherwise contrary to good administrative practice, he may issue an "**opinion**" on the case. At the same time a recommendation on how to address the issue may be presented (Art 10 (b) OA). Where a complaint involves a legal dispute which should, in principle, be decided by the courts of law the Ombudsman may conclude the matter by pointing this out. If he deems it important that the case should be put to the courts of law he may recommend to the Minister of Justice that free legal aid be accorded (Art 10 (c), (d) OA).

Where the Ombudsman becomes aware of a breach in office, punishable by law, he may notify the appropriate authority thereof (Art 10 (e) OA). The Ombudsman has discretion to decide whether to issue a communiqué on a case and in what form. Any such communiqué has to state what the public authority submitted in its defense.

V.2. Powers in Relation to the Courts

Courts of law do not fall within the Ombudsman's jurisdiction. Therefore, the Ombudsman has no powers in relation to the judiciary as such or the administration of justice.

V.3. Powers in Relation to Legislative Organs

The Ombudsman has to present an annual report to the *Althing*, which must be published before September 1st of each year (Art 12 (1) OA). If the Ombudsman becomes aware of "major errors or transgressions" on the part of a public authority, he may submit a special report to *Althing* or the relevant cabinet minister. In cases involving local officials the Ombudsman may submit a special report to the authority concerned (Art 12 (2) OA).

Where the Ombudsman detects legal flaws in current legislation or public rules he shall notify *Althing*, the relevant cabinet minister or the local authority concerned (Art 11 OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Ombudsman has no special powers or obligations in the field of human rights protection. The institution is not accredited with the International Coordination Committee as NHRI according to the Paris Principles. Iceland has signed the OPCAT in 2003 but has not ratified it so far.

VI. Practice

In 2006, the Ombudsman received 272 complaints (Q III). A substantial number of these complaints concerned questions from public employees relating to their employment (Q I). There is no permanent control of certain administrative fields *ex officio*.

VII. Reform

The Ombudsman is in favour of an enlargement of the office's jurisdiction to include privatised companies as well as the administration of justice (Q II).

VIII. Information

Law:
http://www.umbodsmaduralthingis.is/english_log.asp

Annual Reports are only available in Icelandic.

Internet:
http://www.umbodsmaduralthingis.is

Ireland

Brigitte Kofler

A. Constitutional Background

The Constitution of Ireland was adopted by referendum on 1 July 1937 (as amended on 24 June 2004). According to Art 5, Ireland is a sovereign, independent and democratic state. Parliament, the *Oireachtas*, consists of the President and two Houses, a House of Representatives, the *Dáil Éireann*, and a Senate, the *Seanad Éireann* (Art 15 (1) and (2)). The Head of State is the President of Ireland who is elected directly by the people for a period of seven years (Art 12). Upon nomination of *Dáil Éireann*, the President appoints the *Taoiseach*, the Prime Minister (Art 13 (1)). A Council of State aids and counsels the President (Art 31).

The court system comprises courts of first instance and a Supreme Court. The courts of first instance include the High Court, circuit courts and district courts. Besides civil and criminal matters, the High Court's jurisdiction also extends to the question of the constitutionality of laws (Art 34 (2) and (3)). The Supreme Court has appellate jurisdiction from all decisions of the High Court and, in specific cases, also of other courts (Art 34 (4)). The President may refer any bill to the Supreme Court for a decision on the question as to whether its provisions are repugnant to the Constitution (Art 26).

Articles 40 to 44 contain a list of fundamental rights. Ireland is one of the founding members of the Council of Europe and ratified the European Convention on Human Rights in 1952. According to the Irish *European Convention on Human Rights Act 2003* a court in interpreting and applying any statutory provision or rule of law shall in so far as is possible do so in a manner compatible with the state's obligations under the Convention provisions (Art 2 (1) *European Convention on Human Rights Act 2003*).

B. Overview of Existing Ombudsman-Institutions

There is one **national parliamentary Ombudsman** with general scope of control and a parliamentary *Ombudsman for Children* who specialises in children's rights. Furthermore, several non-parliamentary ombudsman-institutions exist: the Ombudsman of the Defense Forces, a Financial Services Ombudsman and a Pensions Ombudsman as well as a Language Commissioner and an Equality Tribunal dealing with discrimination issues. No ombudsman-institutions have to date been established on the regional or local level.

C. Oifig an Ombudsman – Office of the Ombudsman

I. History and Legal Basis

The creation of an ombudsman-institution in Ireland was for the first time proposed in a report published in 1977 by an All-Party Committee of Parliament which was concerned about the need to strengthen administrative accountability (Q 1).

The institution of the Ombudsman is not mentioned in the Constitution. Its **primary legislation** is the *Ombudsman Act 1980* (Act of 14 July 1980 as amended by the Ombudsman [Defense Forces] Act 2004). The Ombudsman took up office on 2 January 1984. A number of amendments to the Ombudsman Act as well as provisions in other laws on the one hand extended the Ombudsman's control, for example, to public bodies in the health service (see *Ombudsman Act [First Schedule] [Amendment] Order 1984*; *Health Act 2004*) and complaints relating to accessibility for people with disabilities (see *Disability Act 2004*). On the other hand, the control was restricted in several areas, for example, removing the right to investigate complaints falling under the control of the Ombudsman for Children or the Defense Forces (Q III).

In 2003 the current incumbent was also appointed Information Commissioner, an authority under the *Freedom of Information Act* (*Freedom of Information Act 1997* as amended *Freedom of Information Act 2003*). In this context, the Ombudsman is to control legislative and administrative organs with respect to the publication of information and foster an attitude of openness among public bodies.

II. Organisation

The Irish Ombudsman is a **monocratic body**. There are **no deputies**. At present, a staff of 44 are employed at the Ombudsman's Office (Q II). Any expenses incurred in the administration of the Ombudsman Act are to such extent as sanctioned by the Minister for Finance to be paid out of moneys provided by the *Oireachtas* (*v* § 11 OA).

III. Legal Status

The Ombudsman is appointed by the President upon a resolution passed by both houses of Parliament (*v* § 2 (2) OA).

A person is not to be more than 61 years of age upon first being appointed to the office (§ 2 (7) OA). The office is **incompatible** with any other office or employment in respect of which emoluments are payable or with being a member of the Reserve Defense Force (§ 2 (6) OA). When an incumbent is nominated either as a candidate for parliamentary elections or becomes a member of Parliament, the office of an Ombudsman is to be relinquished (§ 2 (5) OA).

The Ombudsman is **independent** in the performance of the functions (§ 4 (1) OA), however, may not investigate an issue if the competent minister so requests in writing (§ 5 (3) OA).

The **term** of office is six years and the Ombudsman may be re-appointed for a second or subsequent term (§ 2 (4) OA). The holder of the office receives the same **remuneration** as a judge of the High Court (§ 3 (1) OA). This means that the salary is about the same as a minister's salary (Q III).

The Ombudsman may request to be **relieved** of office by the President (§ 2 (3) a OA). Upon resolutions passed by Parliament calling for the dismissal, the incumbent may also be **removed** from office in case of stated misbehaviour, incapacity or bankruptcy. In any case an incumbent shall vacate the office on attaining the age of 67 years (§ 2 (3) c OA).

IV. Scope of Control

The Ombudsman may investigate any action taken in the performance of administrative functions by or on behalf of a Department of State or other person specified in Part I of the First Schedule to the Ombudsman Act (§ 4 (2) OA). Schedule I includes a list of state administration bodies. However, many areas of administration are exempted from the Ombudsman's control, notably the police, prisons and issues regarding aliens. The Ministry of Justice is, in principle, subject to the Ombudsman's control but the courts are expressly excluded (First Schedule Part II). Furthermore, the Ombudsman may not, except when special circumstances make it proper to do so, investigate complaints relating to or affecting national security or military activity, or issues concerning employment in the civil service (see § 5 (1) b, c and d OA). Schedule 2 to the Ombudsman Act lists further institutions which are not subject to the control of the Ombudsman, most notably all local authorities. The Ombudsman for Children Act 2002 states that issues which fall under the Ombudsman for Children's Rights jurisdiction may not be investigated by the Ombudsman. A comparable provision is also included in the Ombudsman (Defense Forces) Act 2004.

The Ombudsman's **control criterion** is good administration. The Ombudsman may start an investigation if it appears that the action was or may have been taken without proper authority, on irrelevant grounds, as the result of negligence or carelessness, based on erroneous or incomplete information or based on an undesirable administrative practice, or was improperly discriminatory or otherwise contrary to fair or sound administration (§ 4 (2) b OA).

The Ombudsman investigates actions upon a complaint or if it appears that an investigation into the action would be warranted (§ 4 (3) OA). In practice, the Ombudsman seldom takes action on the initiative of the office. In determining whether to initiate, continue or discontinue an investigation, the office of the Ombudsman, in principle, acts in accordance with its own discretion (§ 4 (8) OA). However, where a minister so requests, the Ombudsman may not investigate or shall cease to investigate any action specified in the request (§ 5 (3) OA).

There are **no formal requirements** for a complaint, but it need be filed within 12 months from the time of the action or the time the person making

the complaint became aware of the action (§ 5 (1) f OA). The Ombudsman may investigate the action nevertheless if it appears that special circumstances make it proper to do so.

The Ombudsman may not commence investigations if the person affected by the action has initiated in civil proceedings (§ 5 (1) a OA). Filing a complaint is **free of charge**.

The Ombudsman may decide not to carry out an investigation or discontinue an investigation if deciding that the complaint is trivial or vexatious, the person making the complaint has an insufficient interest in the matter or has not taken reasonable steps to seek redress in respect of the subject matter of the complaint, or has not yet been refused redress (§ 5 (5) OA). Where the Ombudsman proposes to carry out an investigation, the affected authority or person is to be afforded an opportunity to comment on the action and the complaint (§ 8 (2) OA).

The Ombudsman's actions may be challenged by way of **judicial review** in relation to the findings or the way an investigation was conducted. This has never happened (Q II).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman may require any person to furnish information, documents or things and, where appropriate, to appear for that purpose (§ 7 (1) a OA). No person may obstruct or hinder the Ombudsman in the performance of the duties or do any other thing which would, if the Ombudsman were a court be **contempt** of such court (§ 7 (3) OA). The Ombudsman is entitled to investigate on site and also has access to premises and rooms of administrative organs (Q II).

The Ombudsman is to send a **statement** in writing of the results of the investigation to the department or person concerned and any other person to whom is considered appropriate (§ 6 (2) OA). If it appears that the action adversely affected a person, the Ombudsman may **recommend** that the matter be further considered, that measures are taken to remedy, mitigate or alter the adverse affect of the action, or that the reasons for taking the action are submitted. Additionally, the department or person may be given a deadline to respond.

If the measures taken or proposed appear to be unsatisfactory, the Ombudsman may cause a **special report** on the case to be included in an annual report (§ 6 (5) OA).

V.2. Powers in Relation to the Courts

The judiciary as a whole is excluded from the Ombudsman's control (IV.). In this field, a dedicated Court Service was set up in Ireland under the Courts Service Act 1998 to support and manage the courts service and it has introduced various initiatives to speed up judicial proceedings (*Court Service Act 2003*; Q III).

V.3. Powers in Relation to Legislative Organs

Several times when flaws or inequities have been highlighted in cases that the Ombudsman reported about, legislature has acted to change the law. However, the Ombudsman cannot formally propose changes to laws (Q II).

When requested to do so the Ombudsman may appear before Sub-Committees of Parliament (Q II). An annual report is to be submitted to each House of Parliament and other reports may from time to time be issued (§ 6 (5) OA). The annual reports give details of the most significant cases dealt with during the year. They also outline any general concerns which the Ombudsman has in relation to cases or administrative issues. Furthermore, business planning activities, statistic data as well as concerns regarding a lack of co-operation from public bodies are mentioned (Q II).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is not explicitly mentioned as a task of the Ombudsman. However, in carrying out investigations the Ombudsman may consider human rights (Q II). There is a separate National Human Rights Institution, meeting the criteria of the UN Paris Principles, the *Human Rights Commission Act* (as amended by the *Human Rights Commission [Amendment] Act 2001*). This Commission may *inter alia* conduct enquiries on its own initiative to strengthen, protect and uphold human rights in the state (Art 8 and 9 *Human Rights Commission Act*).

VI. Practice

During the year 2006 the Ombudsman received a total of 3,293 complaints and was competent to deal with 2,283 cases. Furthermore, there were more then 8,100 informal enquiries (Q III). Many complaints refer to social issues such as pensions, unemployment aid or social aid. There is **no continual *ex officio* monitoring**. One day per month the Ombudsman's staff attend at a number of Citizens Information Centres at Corck, Limerick, Galway and Coolock. In addition to this there are one or two day visits annually to other regional centres (Q III).

VII. Reform

The most frequent **practical problems** in the view of the institution are delays and lack of cooperation on the part of some public bodies in their dealings with the office of the Ombudsman. Furthermore, in the opinion of the Ombudsman more public bodies and areas of administration should be brought under the control (Q II).

VIII. Information

Constitution:
http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20IrelandNov2004.pdf (31.10.2007)

Ombudsman-Act:
Ombudsman Act 1980,
http://www.irishstatutebook.ie/1980/en/act/pub/0026/ (31.10.2007)

Annual Report:
Annual Report 2005,
http://ombudsman.gov.ie/en/Publications/AnnualReports/AnnualReportoftheOmbudsman2005 (31.10.2007)

Israel

Brigitte Kofler

A. Constitutional Background

In Israel, there is no single constitutional document. Since the Constituent Assembly could not agree on the text of a Constitution, the *Harari-Proposal* was adopted in 1950. Parliament, the *Knesset*, started to legislate so-called "Basic Laws" on various subjects. According to the *Harari-Proposal* all the basic laws are to become chapters of the future Constitution which will be brought together in a single document. Currently, there are eleven Basic Laws. The question whether there is supremacy of the Basic Laws over other laws is unresolved since Basic Laws and "simple" laws are adopted by absolute majority of votes. In recent years, the Supreme Court seems to assume that there is a primacy of the Basic Laws over other general legal acts.

The legislative power lies with the *Knesset*, whose 120 deputies are elected by the people in general elections for a term of four years. The supreme body of the executive branch is the Government, which is headed by the Prime Minster as *primus inter pares*. The President is the Head of State and is also elected by the people in direct elections for a term of five years.

According to the Basic Law: The Judiciary (1984), the general court system, is comprised of three instances: Magistrates' Courts, District Courts, and the Supreme Court. The Supreme Court primarily is the highest court of appeal for decisions of the ordinary courts. The District Court and the Supreme Court also adjudicate administrative matters. There is no special Constitutional Court.

Two Basic Laws deal with fundamental and human rights, the Basic Law of Human Dignity and Freedom (1992) and the Basic Law of Freedom of Occupation (1994). Israel is not a member of the Council of Europe and has not ratified the European Convention on Human Rights.

B. Overview of Existing Ombudsman-Institutions

Israel's Ombudsman, the *State Comptroller and Ombudsman*, is a **national, parliamentary ombudsman-institution** with the core mission of auditing the economy, property, finances, obligations and administration of the state (Art 2 (a) Basic Law: The State Comptroller). In addition, since 1971, the Ombudsman is competent to deal with complaints of individuals against acts of state administration (see C.IV.). In this capacity the State Comptroller bears the title "Ombudsman" (Art 4 Basic Law: The State Comptroller). The seat of the institution is Jerusalem. The institution has several field offices, but only one specialised Ombudsman field bureau in Tel Aviv. There are plans to establish offices of the Ombudsman in Nazareth and Beer Sheva.

Furthermore, local Ombudsmen exist in the cities of Haifa, Netanya, Jerusalem, Herzliya and Tel Aviv. Also, a *Commissioner for Complaints against Judges* has been established within the Ministry of Justice.

C. Mevaker HaMedina – Netziv Tlunot HaTzibur – Office of the State Comptroller and Ombudsman

I. History and Legal Basis

The institution of the State Comptroller exists since 1949 (Act of 18 May 1949). By amendment of the State Comptroller Law (hereinafter OA) in 1971 the tasks of an Ombudsman were additionally conferred upon the State Comptroller. The Ombudsman's department within the State Comptroller's office opened in 1971. In 1988 the **Basic Law: The State Comptroller** was enacted (Act of 15 February 1988; hereinafter BL).

II. Organisation

The Ombudsman is a **monocratic** body. An **Acting Comptroller** is to be appointed if the State Comptroller is not able to fulfil the functions (14 BL). Upon the proposal of the Ombudsman the State Audit Affairs Committee appoints a Director of the Office of the Ombudsman who is directly responsible to the Ombudsman (32a OA). The office of the State Comptroller and Ombudsman currently have a staff of 350 auditors in the department of the State Comptroller and 60 lawyers in the Ombudsman's department. The institution's **budget** is determined by the Appropriations Committee of the *Knesset* upon recommendation of the Ombudsman (Art 10 BL).

III. Legal Status

The Ombudsman is **elected** by the *Knesset* by absolute majority of votes at a session convened exclusively for that purpose (Art 7 (a) BL, Art 1 (a) OA) and is to carry out the activities in contact with the State Audit Affairs Committee of the *Knesset*. The Ombudsman reports to this Committee on the activities whenever necessary or is asked to do so by the Committee (Art 6 (a) OA).

Any Israeli citizen residing in Israel is **eligible** to serve as Ombudsman (Art 8 OA). In practice, judges are appointed as Ombudsman. During the office such an appointee may not continue to work as a judge.

In carrying out the functions, the Ombudsman is **accountable** only to the *Knesset* (Art 6 BL). During the term of office, the Ombudsman may not actively engage in politics and may neither be a member of the Knesset or a local council, nor be a member of the management of a body of persons carrying on business for purposes of profit or hold any other office or engage in any business, trade or profession. Furthermore, the Ombudsman may not participate in any entity which has a close affiliation to the state and may not acquire or use any state property or accept state benefits in addition to the

remuneration (Art 7 (1) OA). For three years from leaving office, the Ombudsman may not be a member of the management of an audited body carrying on business for purposes of profit (Art 7 (b) OA).

The **salary** of the Ombudsman is determined the *Knesset* or an authorised committee of the *Knesset* (Art 11 BL).

The Ombudsman's **term of office** is seven years. The Ombudsman may not be reappointed (Art 7 (b) and (c) BL). The appointment ends early upon resignation or death and upon removal from office (Art 8 OA). Removal from office may only occur by a two-thirds majority of votes in Parliament on grounds of behaviour unbefitting the position (Art 8 (a) OA, 13 BL). The incumbent is to be given an opportunity to be heard (Art 8 (b) OA).

IV. Scope of Control

The Ombudsman's control basically extends to government offices as well as to state enterprises and institutions, persons or bodies holding, managing or controlling state property, local authorities and entities in the management of which the Government has a share or which have been made subject to audit (*v* in detail Art 36 and 9 OA). The most important **exceptions** include the President of the State and the Government as well as complaints by persons serving in the defense service, as police or prison officers or complaints of other state employees relating to their service (Art 38 OA). Furthermore, complaints against judicial or quasi-judicial acts and complaints as to matters pending before a court or tribunal or in which a court or tribunal has made a decision with regard to the substance are not subject to the Ombudsman's control (Art 38 (4) and (5) OA).

The Ombudsman's **control criteria** are legality and the principles of good administration. The Ombudsman may examine complaints about acts being contrary to law, without lawful authority, contrary to good administration or involving a too inflexible attitude or flagrant injustice (Art 37 OA).

Any person concerned may submit a complaint to the Ombudsman and members of the *Knesset* may also make complaints regarding other persons (*v* Art 37 (2) OA). The Ombudsman may not investigate cases *ex officio* (Art 33 OA). A complaint by a detainee is to be forwarded unopened to the Ombudsman (35 OA).

In principle, the Ombudsman is legally obligated to carry out an investigation but may abstain from investigating a complaint which was filed in bad faith or for which another body is competent. If an investigation is not opened, the complainant is to be notified in writing stating reasons (Art 40 OA). In principle, a complaint is to be filed within a year from the date of the act to which it relates or the date on which such act became known to the complainant (Art 39 (2) OA). The Ombudsman has discretion whether to investigate a complaint in a matter in which an appeal can be, or could have been filed (Art 39 (1) OA). Filing a complaint with the State Comptroller is **free of charge**.

The Ombudsman is to bring the complaint to the knowledge of the person or body complained against and, if such person is an employee, also to the knowledge of the superior and to give them a suitable opportunity to answer it (41 (b) OA). The Ombudsman may discontinue the investigation of a complaint if satisfied that one of the grounds justifying the non-opening of an investigation exists, the matter to which the complaint relates has been rectified or the complainant has withdrawn the complaint (Art 42 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman has the same investigative powers as Commissions of Inquiry under the Commissions of Inquiry Act (Art 26 OA). *Inter alia* the Ombudsman may hear the complainant, the person or body complained against and any other person (Art 41 (c) OA). Furthermore, any person or body may be required to provide information or documents likely, in the opinion of the Ombudsman, to assist in the investigation of the complaint (Art 41 (d) OA).

If the complaint is found not justified, the Ombudsman is to notify the complainant, the person or body complained against and, if deemed necessary, the superior stating reasons (Art 43 (c) OA).

The Ombudsman may also set out a **summary of the findings**, and may point out the need to rectify a defect revealed by the investigation and how and by what time it is to be rectified (Art 43 (a) OA). The person or body complained of or the superior is to inform the Ombudsman of the steps which have been taken otherwise the matter may be brought to the knowledge of the minister concerned or the State Audit Affairs Committee (Art 43 (b) OA).

Where the investigation of the complaint gives rise to the suspicion that a **criminal offence** has been committed, the Ombudsman is to bring the matter to the knowledge of the Attorney General and may also do so where the investigation of a complaint gives rise to the suspicion that a **disciplinary offence** has been committed. The Attorney General is to inform the Ombudsman within six months from the day that the matter was submitted of the manner in which it has been dealt with (Art 43 (d) OA).

The Ombudsman may further **intervene *ex ante*** if an employee in the public sector is in danger of losing the job because the employee has revealed information about corruption (Art 45 A OA). In such cases, the Ombudsman may issue a ruling which is legally binding and may thus order that an employee be reinstated (Art 45 C (c) OA).

V.2. Powers in Relation to the Courts

The courts are only subject to the Ombudsman's control in so far as the administration of the judiciary is concerned. In this field the Ombudsman has the same competences as in relation to administrative organs (*v* V.1.; *e contrario* from Art 38 (4) and (5) OA).

V.3. Powers in Relation to Legislative Organs

The Ombudsman may informally recommend changes and amendments to laws. At the beginning of each year, a **report** on the activities including a general survey and an account of the handling of selected complaints is to be submitted to the *Knesset* (Art 46 (1) OA). In addition, **special reports** may be submitted to the *Knesset* (Art 46 (b) OA). After having being laid before the *Knesset* the reports may be published (Art 46 (d) OA).

On the occasion of taking office the Ombudsman may address the *Knesset* (Art 4 OA).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is regarded as an important task of the Ombudsman; however, the Ombudsman does not possess any specific powers in this regard (Q II). There is no National Human Rights Institution according to the UN Paris Principles in Israel.

VI. Practice

In 2004 the Ombudsman received 6,840 complaints. This is a considerable **increase** to the previous year when about 6,100 complaints were received. When also taking into account remaining complaints from the previous year, the Ombudsman investigated more than 8,000 cases in 2004 (Annual Report 2004, 21). The **focus** of the work concerned social and health issues, housing and the activity of local communities. There is **no continual monitoring** *ex officio*.

VII. Reform

No reform plans are known to date.

VIII. Information

Ombudsman Act:
http://www.mevaker.gov.il/serve/site/english/emevaker.asp (31.10.2007)

Annual Report:
Annual Report 2004,
http://www.mevaker.gov.il/serve/site/docs/nataz31e.doc (31.10.2007)

Italy

Brigitte Kofler

A. Constitutional Background

The current Constitution of Italy entered into force on 27 December 1947 (as amended on 30 March 2003). Art 1 states that Italy is a Democratic Republic composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State (Art 114). Some regions (including Friuli-Venezia Giulia, Trentino-Alto Adige/Südtirol and Valle d'Aosta/Vallée d'Aoste) have special autonomy (*v* Art 116). Parliament consists of the Chamber of Deputies and the Senate of the Republic (Art 55). The Head of State is the President of the Republic who is elected by Parliament in joint session of members for a term of seven years (Art 83 and 85). The Government is made up of the President of the Council and the ministers who together form the Council of Ministers (Art 92).

There is a Supreme Court for civil and criminal matters as well as the Council of State as supreme body dealing with administrative matters (*v* Art 103). Also, a Constitutional Court exists which is competent to decide on the constitutionality of laws and enactments having the force of laws, conflicts arising from allocation of powers to the state or the regions as well as accusations made against the President of the Republic (Art 134).

Part 1 contains a list of fundamental rights. Italy is a founding member of the Council of Europe and has ratified the European Convention on Human Rights in October 1955. The Convention has the status of a simple law.

B. Overview of Existing Ombudsman-Institutions

There is **no national, parliamentary Ombudsman** in Italy but in most regions regional Ombudsmen exist, the so-called *Difensori Civici*. Their existence is not mentioned in the federal Constitution, but they were established by laws of the regional Parliaments. In addition, Art 16 of the National Law No. 127 of 15 May 1997 (as amended Law No. 191 of 16 June 1998) states that regional Ombudsmen may monitor those national administrative organs which are decentralised and operate in the respective regions. Issues concerning national defense, public security and the judiciary are excluded (C.IV.).

The first regional Ombudsman of Italy was legally established in the region of Tuscany in 1974 (*Legge Regionale* of 21 January 1971, Law No. 8/1971) and opened the office in 1975. Currently, ombudsmen exist in the regions of Bolzano, Basilicata, Sicilia, Emilia-Romagna, Friuli-Venezia Giulia, Lazio, Liguria, Lombardia, Marche, Piemonte, Sardegna, Toscana,

Abruzza, Campania, Valle d' Aosta, Trento and Veneto.[219] In 1994 these institutions founded the National Conference of Ombudsmen which has its seat in Rome (*Conferenza Nazionale dei Difensori Civici*; Annual Report 2005, Annex 5).

Besides, Art 11 of *Decreto Legislativo Testo Unico delle Leggi Sull'Ordinamento degli enti Locali* (Decree No. 267/2000) permits the establishment of local ombudsman-institutions on the community level. In some regions many local Ombudsmen were introduced (for example, Tuscany) yet, in some regions, local Ombudsmen do not exist at all (for example, Valle d'Aosta). Some regional Ombudsman Acts confer upon the regional Ombudsman the task to coordinate the activity with the local Ombudsmen. For this purpose conferences of all Ombudsmen within certain regions are held regularly (eg Art 3 (3) Toscana *Legge Regionale "Nuova disciplina del Difensore Civico"* Law No. 4 of 13 January 1994; Art 2 (4) Trento *Legge Provinciale* Law No. 28 of 20 December 1982, as of 7 March 1997).

If no institutions are established on the local level, the Ombudsman of the respective region may be declared competent to control local communities within the region.

Due to the large number of regional ombudsman-institutions whose legal basis is very similar the Ombudsman of Bolzano-Südtirol is presented here as an example.

C. Difensore Civico della Provincia autonoma di Bolzano-Alto Adige – Volksanwaltschaft der Autonomen Provinz Bozen-Südtirol – Ombudsman of the Autonomous Province of Bolzano-South Tyrol

I. History and Legal Basis

The first Ombudsman in South Tyrol was appointed in 1985. The legal basis is the **Regional Law** No. 14 of 10 July 1996, *Volksanwaltschaft der Autonomen Provinz Südtirol* (hereinafter OA). Further powers of the Ombudsman concerning health care institutions are laid down in Art 15 Regional Law No. 33 of 18 August 1988. Besides, most local communities have not established their own ombudsman-institution, but entrusted the regional Ombudsman to also monitor their authorities as a community Ombudsman (IV.).[220]

II. Organisation

The Ombudsman of South Tyrol is a **monocratic body**. No deputies are appointed but the Ombudsman may assign special tasks concerning the health care system, environmental protection and child and youth issues to certain employees to ensure more effective control (§ 2 (3) OA). Currently, five lawyers and two assistants are on staff at the Ombudsman's office.

---

[219] See list on the homepage of the European Ombudsman, www.euro-ombudsman.eu.int.

[220] http://www.landtag-bz.org/volksanwaltschaft/zustaendigkeit.htm (31.10.2007).

III. Legal Status

The Ombudsman of South Tyrol is appointed by the President of the regional Parliament after **election** in Parliament by a two-thirds majority (which is reduced to a simple majority in the third ballot; § 6 (1) OA).

The **qualification requirements** are extensive knowledge and experience in the field of law and administration (§ 6 (2) OA).

The office of the Ombudsman is **incompatible** with the status of a deputy in any parliamentary body, any administrative office as well as any office in an enterprise contracting with an entity subject to the Ombudsman's control. On intending to candidate for a parliamentary election, the Ombudsman is to resign at least six months before the respective election date (§ 7 (3) OA). Furthermore, any work, whether dependent or independent, as well as any trading activity is prohibited (§ 7 OA).

The **term of office** depends on the parliamentary term and is, in principle, five years (§ 8 (1) OA).

The appointment of an incumbent may be revoked by the President of Parliament upon a resolution of Parliament passed by a two-third majority if severe cause in connection with the exercise of office exist (§ 8 (2) OA). The Ombudsman is independent in exercise of the duties (§ 2 (5) OA) but does **not enjoy immunity** from a legal process.

IV. Scope of Control

All regional authorities and entities to which such authorities have assigned certain powers are **subject** to the Ombudsman's control. The Ombudsman may also conclude agreements with communities by which the communities agree to be subject to this control (§ 2 (2) OA; Annual Report 2005, 66). In addition, the Ombudsman is entitled to control the regional health service (Art 15 Regional Law No. 33 of 18 August 1988). If the Ombudsman becomes aware of instances of maladministration outside this remit of the office, the competent authority is to be notified (§ 3 (5) OA).

The Ombudsman's **control criterion** is good administration by identifying delays, irregularities and defects within administration as well as their causes and propose solutions to the supreme bodies of the respective authorities (§ 2 (2) OA).

The Ombudsman may **initiate** an investigation upon a complaint from an interested person or *ex officio* (§ 2 (1) OA). There are **no formal requirements** and **no deadlines** to file a complaint. Ongoing appeals in court proceedings or administrative proceedings do no bar the Ombudsman from taking action nor may the respective authority decline cooperation in such cases (§ 3 (3) OA). However, before filing a complaint the person concerned is to inquire at the authority about the status of the matter. Only if no reply is received within twenty days, may the Ombudsman be asked for assistance (§ 3 (1) OA).

Filing a complaint is **free of charge**.

V. Powers

V.1. Powers in Relation to Administrative Organs

The most important investigative power of the Ombudsman is the right to obtain copies of documents from the agencies subject to the control and have unrestricted access to all relevant records and files. Furthermore, the Ombudsman may obtain expert opinions on relevant issues (§ 2 (4) OA).

When the Ombudsman receives a complaint, the authority concerned is to be notified and the competent official is asked to re-examine the matter within five days (§ 3 (3) OA). If no amicable solution to the case can be reached, the Ombudsman may address a **recommendation** to the entity involved.[221]

Whenever officials hamper the Ombudsman's activity, the competent **disciplinary body** may be notified. The disciplinary body is to inform the Ombudsman about the measures taken (§ 3 (4) OA).

A copy of the **activity report** is to be sent to the provincial governor (*Landeshauptmann*), the mayors, the District Presidents (*Präsidenten der Bezirksgemeinschaften*) and the Directors General of the Sanitary Institutions (§ 5 (2) OA).

V.2. Powers in Relation to the Courts

Since the Italian judiciary is operating on the federal level, the courts are naturally exempt from the regional Ombudsmen's control. Hence, it is noteworthy that by federal law *Legge-quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate* (Art 36 (2) Law No. 104/1992) the Ombudsman has been conferred the right to support handicapped people in proceedings before courts. However, this provision is of little relevance in practice since the law does not state any obligation of courts or prosecutors to inform the Ombudsman about proceedings in which handicapped people are involved.

V.3. Powers in Relation to Legislative Organs

The Ombudsman does not have a formal right to initiate legislation but may **propose changes to laws**. An annual **activity report** is to be presented to the regional Parliament including, if any, proposals for a more efficient and impartial administration (§ 5 (1) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is regarded as one of the **tasks** of the Ombudsman. However, there are no specific powers in this field. The national Commission for Human Rights, the *Commissione per i Diritti Umani,* is accredited as National Human Rights Institution pursuant to the **UN Paris Principles**.

---

[221] Information Brochure of the Ombudsman, http://www.landtag-bz.org/volksanwaltschaft/berichte/broschuere/broschuere_volksanwaltschaft.pdf.

VI. Practice

In 2005 the Ombudsman managed 2,610 new complaints and requests (Annual Report 2005, 5), 78% of which could be settled in a positive way for the complainant (Annual Report 2005, 6). As far as regional administration is concerned most complaints refer to work, living and health issues (Annual Report 2005, 18). There is **no continual monitoring** *ex officio*. The Ombudsman and staff hold regular **consultation days** in the towns of Bruneck, Brixen, Sterzing, Meran, Schlanders, Neumarkt, St. Ulrich and St. Martin in Thurn. Twice a month the Ombudsman writes an article in a regional newspaper presenting an interesting case thus providing the citizens with better insight into the work.

VII. Reform

No reform plans are known to date.

VIII. Information

Constitution:
http://english.camera.it/cost_reg_funz/662/documentotesto.asp (31.10.2007)

Ombudsman-Act:
http://www.landtag-bz.org/volksanwaltschaft/rechtsgrundlagen.htm
(31.10.2007)

Annual Report 2005:
http://www.landtag-bz.org/volksanwaltschaft/berichte/bericht_2005.pdf
(31.10.2007)

Kazakhstan

Joachim Stern

A. Constitutional Background

According to the 1995 Constitution, which was amended in 1998, the Republic of Kazakhstan is a democratic, secular, legal and social state (Constitution of 30/8/1995 as amended by Act 284 of 7/10/1998, hereafter Const). The Head of State is directly elected by the people for a term of seven years. Although the Constitution provides that no person may serve more than two terms, the current President was re-elected in 2005, after having already served for 16 years (Art 42 (4) Const).

Parliament consists of two chambers. The 77 members of the Lower House (*Majilis*) are elected by the people every five years. The 39 members of the Upper House (*Senate*) are elected by representatives of the local government bodies, with partial elections taking place every third year. The President has the right to appoint seven of the Senators himself. Parliament can be dissolved by the President for a number of reasons. The Head of State also has extensive rights to enact general norms in the form of presidential decrees.

The Government is appointed by the President, who also has the power of dismissal. Administrative supervisors of the regions and cities are also appointed by the President.

Kazakhstan has a Supreme Court with 44 judges and a Constitutional Council with seven members, of which three are chosen by the President, and two by each of the Chambers of Parliament. The Constitutional Council can be called upon by the President, the Chairmen of the Chambers of Parliament or one fifth of their members, by courts and by the Prime Minister. It decides on the constitutionality of elections, laws and international treaties before their ratification, and is responsible for interpreting the Constitution. In 2003, administrative courts were established by presidential decree.

The Constitution contains numerous fundamental rights and freedoms, though these are subject to extensive reservations. Ratified international treaties have priority over conflicting national law (Art 4 (3) Const). Kazakhstan is not a member to the Council of Europe.

B. Overview of Existing Ombudsman-Institutions

The Commissioner for Human Rights – *Upolnomocheniy po pravam cheloveka* – is a national ombudsman-institution with a general mandate. There are no similar bodies at a regional or local level.

C. *Уполномоченный по правам человека* – Commissioner for Human Rights

I. History and Legal Basis

Since the adoption of the 1995 Constitution, plans had been underway to create an ombudsman-institution. The projects faced widespread opposition within the public institutions. Legislation drafted with the support of the OSCE and the UNDP was rejected by Parliament. Finally, President Nazarbaev used his right to create general norms and passed the statute of the Human Rights Commissioner as a **decree** (Decree 947, 19/9/2002; hereafter Dec). Shortly afterwards he appointed the first Commissioner, who took office in December 2002. In 2004 the President expanded the Ombudsman's competences vis-à-vis the courts of law and in relation to Parliament.[222] The exact date of the amendment is unknown, although the amended text is included in the available English translation (§ 15 (2-1)–§ 15 (2-4)). The content of a further amendment passed in 2006 is not accessible. The institution is neither embodied in the Constitution nor in an Act of Parliament.

II. Organisation

The Human Rights Commissioner is a **monocratically organised** institution. The Commissioner has **no deputies**. His work is supported by the *National Center for Human Rights*, a state office which operates solely as the office of the Ombudsman and whose Head is appointed by the Ombudsman. The Center currently employs 14 people.

III. Legal Status

The Human Rights Commissioner is appointed by the President. For this purpose, the Head of State provides a list of candidates, and after consultation with the Committees of Parliament he makes his final decision (§ 8 Dec). The Commissioner is sworn in by the President in the presence of the Chairmen of the Chambers of Parliament (§ 12 Dec).

Requirements for nomination to the post are Kazakh citizenship, a "university degree in law or other education in humanities", and at least three years of experience in legal work or in "the field of protection of the rights and freedoms of an individual and a citizen" (§ 7 Dec). The **term in office** is five years (§ 10 Dec), the same person may not be appointed for more than two consecutive terms (§ 11 Dec).

The Commissioner shall be **independent** in discharging his duties (§ 4 Dec).

The office is **incompatible** with membership in political parties or other public associations. The Ombudsman shall, more generally, not undertake

---

[222] Kazakhstan Embassy to the US: News Bulletin 55, Dec 10, 2004: http://www.kazakhembus.com/121004.html (31/10/2007).

any political activities (§ 5 (2), (3) Dec). Other professional activities are also considered incompatible with his post (Q I).

Early **removal** by the President is possible in a number of situations. These include the state of health of the Commissioner, if this affects the execution of his professional duties and this is confirmed by a medical opinion, a court decision finding incapacity or restricted capacity on the part of the Commissioner, or if the Commissioner is subject to "forced medical measures". Furthermore, the entering into force of a conviction, the loss of Kazakh citizenship, or the departure from Kazakhstan to take up permanent residence abroad are reasons to remove the Ombudsman from his position. Other criteria are based on less objective circumstances: the Commissioner can be dismissed if he disregards duties or restrictions established by the statute, in the case of gross abuse of official duties, or "of misdeeds inconsistent with the post and undermining the authority of the state". Also, the Commissioner may be removed by reason of his appointment or election to another post (§ 14 Dec). The President has the authority to decide whether any of these criteria apply and to consequently remove the incumbent Commissioner (§ 8 (2) Dec).

The Human Rights Commissioner is **not immune** from prosecution. There are no provisions regarding his salary in the decree. The amount thereof and how it is determined are thus unknown.

IV. Scope of Control

It is the Ombudsman's **mandate** to supervise the observance of the rights and freedoms of individuals and citizens and to take the necessary steps within his competence for the restitution of the violated rights and freedoms of individuals and citizens (§ 1 Dec). **Subject to his control** are "actions and decisions of officials and organisations", meaning public authorities (§ 17 Dec, Q I; cf § 22 (3) Dec, which lists "state agencies, other organisations and their staff"). **Exempted** from his control are the President of the Republic of Kazakhstan, Parliament and its members, Government, the Constitutional Council, the Prosecutor General, the Central Electoral Commission and the Courts of the Republic (§ 18 Dec).

The **standards for a control** are defined as the rights and freedoms guaranteed by the Constitution, legislative acts and international treaties of the Republic of Kazakhstan (§ 17 Dec). Also, "lawful interests of citizens" are listed as values to be protected. The Commissioner can thus also investigate alleged cases of maladministration (§ 22 (2) Dec).

The Ombudsman may act upon complaints of citizens of the Republic of Kazakhstan, foreign citizens or stateless persons (§ 17 Dec). The Ombudsman can also act on his own initiative "if he has become aware of such violations from official sources or mass media" (§ 16 Dec).

Complaints must be signed by the person whose rights and freedoms have been violated or by that person's statutory representative. The application must contain the "first name, last name, patronymic and the place of

residence or work, describe the essence of decisions or actions (or acts of omission) which have violated or are viewed by the applicant as violating his rights and freedoms" (§ 28 Dec). Other documents and materials must be included in the complaint to substantiate the applicant's assertions. Even though there is no time limit on complaints laid down in the act, the office does not act upon issues which date back more than one year (Q I).

The right to raise a complaint with the Commissioner is **not expressly subsidiary**. However, the Ombudsman may refuse to act upon a matter by explaining alternative means and methods which may be adopted by the applicant to protect his rights and freedoms, or by submitting the complaint to the appropriate bodies (§ 29 Dec). The Commissioner is to treat complaints "in due time and procedure" (§ 22 (3) Dec) and is to be "responsive and polite". He shall "not perform any actions, which obstruct the realisation of the rights of the applicant" (§ 22 (5)–(7) Dec). Raising a complaint with the Commissioner is free of charge (Q I).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Commissioner for Human Rights can **request information** regarding complaints from any authority subject to his control (§ 15 (1) Dec) and has the right to meet with the leaders of state agencies and other officials upon demand (§ 15 (2) Dec). He may enter and stay on the territory and in the premises of authorities under his control, including military units as well as detention areas and meet and speak with persons confined therein (§ 15 (5) Dec). Officials cannot refuse information by objecting that they are bound to secrecy (*arg. e. contr.* § 22 (4) Dec).

If the Commissioner concludes that rights and freedoms have been violated, he may send **recommendations** to the responsible official regarding the measures to be taken to remedy the violation (§ 25 Dec). The official is to consider the recommendation and inform the Commissioner of the results. A rejection of the recommendation must be well founded (§ 26 Dec). A copy of the recommendation is to be sent to the applicant (§ 27 Dec).

The Ombudsman has the right to apply to authorised state agencies to initiate **disciplinary, administrative or criminal proceedings** in respect of an official who has violated rights and freedoms of an individual or citizen. He can also recommend that they undertake measures for compensation of material and moral damages (§ 15 (6) Dec). He has the right to publish the findings of his investigations in the mass-media.

V.2. Powers in Relation to the Courts

Courts of law are generally excluded from the Commissioner's jurisdiction (§ 18 Dec). However, the Ombudsman may take part in court hearings involving the protection of violated rights (§ 15 (2-1) Dec), and he may appeal to a court or a public prosecutor to "examine a decision, a verdict, a definition of record by a court, which has entered in force" (§ 15 (2-2) Dec). These

rights are subject to regulations by law. No further information could be obtained regarding the exercise of these rights.

V.3. Powers in Relation to Legislative Organs

Since 2004, the Commissioner can appeal to the Houses of Parliament to carry out parliamentary hearings on matters involving the violation of rights and freedoms (§ 15 (2-4) Dec). Parliament has the freedom to decide whether or not to hold such hearings (Q II).

The Commissioner submits his annual "**activity report**" not to Parliament but to the President of the Republic. Only in those cases which he considers to be of major public importance does he have a right to communicate not only directly to the Government and the President but also to Parliament (Art 21 OA).

The Commissioner shall "contribute to an improvement of the legislation of the Republic of Kazakhstan relating to human rights and freedoms, manner and methodology of their protection and to bringing such legislation into conformity with the universally recognised principles and norms of international law". No specific powers are linked to this obligation (Art 19 Dec).

V.4. Special Functions and Powers in the Field of Human Rights

The Human Rights Commissioner has the right to take part in the activities of international and non-governmental human rights organisations. He shall "facilitate legal education in the field of human rights and freedoms, be involved in development of curricula and raising the level of public knowledge and awareness on legislation and international instruments on human rights" (Art 20 Dec). In order to expand his own expertise in the field of human rights, he may recruit on a contractual basis organisations and specialists to assist in questions concerning the implementation of rights and freedoms of individuals and citizens (Art 15 (3) Dec). The institution claims to conform to the Paris Principles on the status of NHRIs. However, it is not accredited as NHRI with the International Coordination Committee.

VI. Practice

As no annual report in English is available, not much can be said about the practical experience and work of the institution. According to the Ombudsman, prisons, children's homes, psychiatric institutions, homes for elderly people or for people with disabilities, as well as military units are permanently controlled *ex officio*. Complaints primarily concern criminal investigations, the enforcement of court sentences and matters relating to working and housing conditions. Special reports have been presented concerning the rights of people with disabilities and the rights of the child. The production of a report on the situation of refugees was announced in 2006.

VII. Reform

The institution itself considers its lack of financial resources and personnel to be its main difficulty. The European Parliament more generally criticises the institution's failure to conform to the Paris Principles. It is concerned that the Human Rights Commissioner of Kazakhstan was established solely on the basis of a presidential decree and demands that the institution be properly established by an Act of Parliament, as well as the expansion of its powers.[223] The Ombudsman has asked the Council of Europe's Venice Commission to evaluate the statute of the institution with regard to possible amendments.[224]

VIII. Information

Decree:
http://www.venice.coe.int/docs/2007/CDL(2007)054-e.asp

Internet:
http://www.ombudsman.kz/

[223] European Parliament Resolution on Kazakhstan OJ C 43 E/368 of 19/2/2004.
[224] Opinion 425/2007 of 5/6/2007, CDL-AD(2007)020.

Kyrgyzstan

Brigitte Kofler

A. Constitutional Background

The Republic of Kyrgyzstan currently undergoes serious conflicts about its Constitution. The Constitutional Document of 1993 has been amended several times, notably twice in 2006, with the last amendment strengthening the position of Parliament in relation to the President. This last amendment and the previous amendment of November 2006 were declared void by the Constitutional Court and the former version of 2003 was in force again. Now, there are intentions to hold a referendum on an all-new Constitution.

Kyrgyzstan is not a member to the Council of Europe.

B. Overview of Existing Ombudsman-Institutions

In Kyrgyzstan, there is **one national, parliamentary ombudsman-institution**, the *Akyikatchy*. No comparable regional or local institutions exist. However, the national Ombudsman has several regional offices.

C. *Новости Института Отвудсмена (АКЫЙКАТЧЫ)* – Ombudsman (Akyakatchy)

I. History and Legal Basis

The office of an Ombudsman is mentioned in Art 40 (2) of the current Constitution. The predecessor of the Kyrgyz Ombudsman was a "Commission for Human Rights" which had been established by presidential decree in 1998 and consisted of high officials, politicians, representatives of NGOs, lawyers and journalists. In the context of the national initiative "*human rights 2002–2010*" the wish for a national ombudsman-institution was expressed and so the Act of the Ombudsman was passed which entered into force on 2 August 2002 (hereinafter OA). The first incumbent was elected on 21 November 2002.

Further legal provisions concerning the Ombudsman are found in the Penal Code, which contains sanctions for the impediment of the activities of the Ombudsman (Art 146 (1) Penal Code) and in the Law on the Enforcement of Sentences where the right of the Ombudsman to visit prisoners is laid down. Furthermore, the Ombudsman may deal with complaints concerning sexual discrimination under the Gender-Equality Act (*v* Annual Report 2003, Chapter 1).

II. Organisation

The Kyrgyz Ombudsman is a **monocratic** body. Deputies, not more than three, may be appointed by Parliament (Art 4 (15) OA). The Ombudsman's activities and office are in principle financed from the state **budget** (Art 16 (1) OA) but funding from other states and international organisations is possible as well (Art 16 (4) OA). The annual budget of the Republic contains a separate item for financing activities of the Ombudsman and the actual amount allocated to the Ombudsman is determined by Parliament upon proposal of the Ombudsman (Art 16 (2) OA).

III. Legal Status

The Ombudsman is elected by Parliament by secret vote with simple majority of votes (Art 4 (4) and (6)). The President, factions of deputies, groups of deputies of at least 7 persons who are not members of any faction, as well as political parties and civil associations are entitled to make nominations for the position of Ombudsman. The Committee for Human Rights is to draw up a reasonable opinion on every nominee (Art 4 (3) OA).

There are **no special qualification requirements** for the office. In fact, any citizen who has not been convicted of a crime may be elected as Ombudsman (Art 4 (1) and (2) OA).

The Ombudsman is **independent** by law from any body of the public administration or officials. Interference into the activities or any influence upon the Ombudsman (*Akyikatchy*) is prohibited.

The Ombudsman enjoys **immunity** throughout the whole term in office and 24 months after its expiration (Art 6 (3) OA). The office of the Ombudsman is **incompatible** with any political activity, public office, and professional, commercial or labour activity (Art 6 (7) OA). These provisions also apply to the Ombudsman's deputies.

The Ombudsman's **term of office** is five years (Art 4 (13) OA). One and the same person may not serve for more than two terms running (Art 4 (14) OA).

The salary is the same **remuneration** as for the Speaker of the Legislative Assembly of Parliament (Art 15 OA).

The term of office may be terminated early on resignation, conviction, breaches of oath, violations of the provisions concerning incompatibility or in cases of unfaithful, unprofessional or non impartial performance of the duties. This early dismissal is to be approved by Parliament by three-fourths majority (*v* Art 7 OA).

IV. Scope of Control

The Ombudsman's **task** is to monitor the respect for constitutional human and civil rights and freedoms in the territory of the Kyrgyz Republic (Art 1 OA).

The **control** extends to all bodies of the public administration and local government and officials of these bodies (Art 2 OA).

The **control criteria** are human rights and freedoms (Art 2, 10 (2) OA) and guidance from the Constitution, the laws of the Kyrgyz Republic, international agreements and treaties ratified by the Kyrgyz Republic as well as universally recognised principles and standards of international law (Art 1 OA). The protection of human rights is, hence, the core duty of the Kyrgyz Ombudsman.

The Ombudsman considers petitions and grievances of citizens of the Kyrgyz Republic, foreign citizens in the territory of the Kyrgyz Republic as well as stateless persons or their representatives and NGOs (Art 10 (1) OA). In addition, investigations ***ex officio* may be initiated**. The Ombudsman may refuse to consider a complaint but needs to give reasons for this decision (Art 10 (13) OA). Petitions are to be submitted **in writing** within **one year** after the discovery of a breach of rights. Under exceptional circumstances this deadline may be extended (Art 10 (9) OA). Petitions, grievances and letters sent to the Ombudsman by persons detained in the penitentiary facilities, pretrial detention facilities and in other places of restricted freedom are to be kept confidential and may neither be previewed nor censored. Such messages are to be immediately delivered to the Ombudsman. Conversations may neither be monitored nor subject to interference (Art 10 (7) and (8) OA).

The Ombudsman may consider only such complaints relating to decisions that have entered into force (Art 10 (2) OA) and may not consider cases which are subject to legal proceedings and is to terminate any action if a petitioner submits the complaint or appeal to a court. However, the Ombudsman may make sure that the respective administrative body considers properly submitted petitions and appeals within a certain period of time (Art 10 (4) OA).

Services by the Ombudsman are **free of charge** (Art 10 (12) OA).

The Ombudsman is to inform the state body whose action has been complaint of and allow them to submit a written report within 15 days (Art 10 (6) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

During an investigation the Ombudsman has access to state premises including penitentiaries and military facilities as well as access to any document required (Art 8 (5), (6), (7) and (10) OA) and may interview officials and request expert opinions (Art 8 (8) and (17) OA). If there are any obstacles to the performance of the duties, the Ombudsman may mention such incidents in a special report or in a respective part of the annual report and, furthermore, may appeal to the Prosecutor General to take appropriate measures.

In case of identification of any violations of rights and freedoms the Ombudsman is to forward acts of response to the respective bodies, which are to take appropriate measures (Art 8 (14) OA).

Furthermore, the Ombudsman is entitled to appeal to the court for protection of rights of persons who are not able to do the same for reasons of health or otherwise, and to attend trials in person or through a representative (Art 8 (12) OA).

The Ombudsman may at any time attend meetings of the Government, the Board of the Office of the Prosecutor General and other boards (Art 8 (2) OA). Besides, members of these bodies are to receive the incumbent without delay (Art 8 (1) OA).

V.2. Powers in Relation to the Courts

The Ombudsman may **attend sessions** of the Constitutional Court, the Supreme Court and the Supreme Court of Arbitration of the Kyrgyz Republic as well as sessions of courts of any instance (Art 8 (2) and (11) OA). Also Art 8 (16) OA states that the Ombudsman may "monitor any branch of power in respect to cases where final decisions have already been made". The extent of this power remains unclear.

V.3. Powers in Relation to Legislative Organs

The Ombudsman may attend at any time sessions of Parliament (Art 8 (2) OA) and may also appeal to the Constitutional Court for a statement concerning the compliance of laws of the Kyrgyz Republic, other normative and legislative acts, acts of the Republic and the Government concerning human and civil rights. In addition, the Ombudsman may appeal to Parliament with a petition concerning the official interpretation of the Constitution and other legislation.

Before 1 April of each year an **annual report** is to be presented on the situation of human and civil rights and freedoms to Parliament (Art 11 (1) OA). In this report the number and the nature of complaints received are to be indicated including a description of cases of common interest and lists of those cases which allowed an identification of draw backs within the system of legislation, the administrative regulations or the administrative practice. Further, **special reports** may be prepared concerning such cases (Art 11 (2) OA). If necessary the Ombudsman may also present special reports to Parliament concerning special issues of human and civil rights and freedoms (Art 11 (8) OA) and is to present the information personally at the sessions of Parliament (Art 11 (7) OA). In general, the Ombudsman Act at several points provides for the involvement of the Second Chamber of Parliament (for example, confirmation of the annual report). However, since a constitutional amendment in 2003, Parliament consists only of one chamber.

V.4. Special Functions and Powers in the Field of Human Rights

Since the protection of human rights is considered to be the major task of the Ombudsman all said powers relate to this task. Furthermore, the Ombudsman is to provide assistance in harmonising the legislation of the Kyrgyz Republic on human rights with the Constitution and international standards

in this field (Art 3 (4) OA) and is also to work on the improvement and further development of the international cooperation in the area of protection of human rights (Art 3 (5) OA). One special goal of the Ombudsman is to distribute legal information among the population (Art 3 (7) OA). Currently the Ombudsman is not accredited as a National Human Rights Institution according to the **UN Paris Principles**.

VI. Practice

According to the Ombudsman's Annual Report 2005, 62,012 written and oral complaints and petitions were received (compared to only 15,740 in the previous year). There is no available information about the most important issues of the work.

VII. Reform

Information about any reform plans is not available to date.

VIII. Information

Constitution:
http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Foreigners_and_citizens/Nationality/Documents/National_legislation (31.10.2007)

Ombudsman-Act:
http://www.ioi-europe.org/index2.html (31.10.2007)

Latvia

Joachim Stern

A. Constitutional Background

The Latvian Constitution of 1922 was re-enacted after the country declared independence in 1990. This Constitution was supplemented by various elements taken from modern constitutions. It entered into force by decision of Parliament in 1993 (Constitution of 15/2/1922 as amended 8/5/2003, hereafter Const). The Constitution declares Latvia a democratic republic (Art 1 Const). The unicameral Parliament (*Saeima*) consists of 100 members who are elected by general, equal and direct vote of the people, based on proportional representation, and serve for a term of four years (Art 5–6 Const). The Head of State is the President, who is elected by the *Saeima*, also for a term of four years and a maximum of eight consecutive years (Art 35–36 Const). The Government (Cabinet) is composed of the Prime Minister and the ministers chosen by the Prime Minister. Administrative institutions are under the authority of the Cabinet (Art 55–56 Const).

The Supreme Court is the final court of appeal in civil and criminal matters. In 2004, a Supreme Administrative Court was established. Since 1996 there has also been a Constitutional Court which examines the compatibility of general laws with the Constitution and ratified international treaties as well as the compatibility of international treaties with the Constitution. Moreover, the Court has the power to review whether other general normative acts are consistent with legal norms of higher force including ratified international treaties, and the compliance of other acts of the President or the Government with the legal system. However, "administrative acts" of Government are excluded from the Court's jurisdiction. An application for review may be submitted by the President of the Republic, a minimum of 20 members of Parliament, the Government, the Prosecutor General, the Council of State Control (Public Audit), a municipal council, and courts when reviewing a case (see infra V.3. for the right of the Ombudsman, Art 85 Const, § 17 (1) Constitutional Court Law[225]). In 2001, the right to appeal to the Constitutional Court was also given to individuals whose fundamental constitutional rights have been violated. Previously, individuals could only complain through the National Human Rights Bureau – the Ombudsman's predecessor.

Since 1998, the Constitution contains a charter of "Fundamental Human Rights" (Chapter VIII Const). As in other Baltic countries the application of political rights to citizens seems problematic, as approximately 20% of the

[225] Law of 11/09/1997 as amended 30/11/2000.

population is stateless and almost as many of the resident population are foreign citizens.[226]

Latvia has been a member of the Council of Europe since 1995. The ECHR was ratified in 1997.

B. Overview of Existing Ombudsman-Institutions

The *Tiesībsargs* – "Legal Protection" – is Latvia's national parliamentary ombudsman-institution with a general mandate. No similar bodies exist on a regional or local level.

C. Tiesībsargs – Legal Protection

I. History and Legal Basis

The legal basis for the Latvian Ombudsman was laid down by an **Act of Parliament** on April 6, 2006, which entered into force in January 2007 (Ombudsman Law, Official Journal of 25/4/2006, hereafter OA). Lacking the required consent of the political parties it was not until March 2007 that the first Ombudsman could be appointed. The institution is the legal successor to the Latvian National Human Rights Office, which had been established in 1996.[227] The main difference between the institutions lies with the criteria of control which for the Ombudsman now include principles of good administration. However, compared to its predecessor, the institution lacks certain powers such as the right to summon people. The institution is **not embodied in the Constitution**.

II. Organisation

The Latvian Ombudsman is a **monocratically organised** institution. The Ombudsman himself appoints a **deputy**, who performs the Ombudsman's duties in his absence and who shall continue to lead the office in cases of suspension or removal of the Ombudsman, until the election of a new Ombudsman (Sec 16 OA). In 2006, the institution's predecessor employed 23 people. The Ombudsman may establish advisory councils, as well as working groups for the development of specific projects or the preparation of cases (Sec 14 OA). The Ombudsman's office is financed by the state **budget**. The budget may be proposed by the Ombudsman and is not to be amended without his consent "until the submission of a draft budget law" (Sec 19 OA). The real governmental influence on the financing of the institution is unclear.

---

[226] *Schmidt,* Das politische System Lettlands, in *Ismayr (ed.)*, Die politischen Systeme Osteuropas, 2nd ed. 2004, 116.

[227] Official Journal 221 of 17/12/1996.

III. Legal Status

The Ombudsman is **appointed** by the *Saeima* by a simple majority. Candidates for the position must be nominated by at least five members of the Parliament. **Requirements** for appointment are an "unimpeachable reputation", a minimum age of 30, higher education, as well as knowledge and work experience in the field of law enforcement. The Ombudsman must be a Latvian citizen and may not hold dual citizenship. Additionally, he must also be entitled to receive a special permit for access to official secrets. The practical effect of this provision could not be established.

The only activity explicitly **incompatible** with the office is membership of a political party (Sec 4 (2) OA, see below for other reasons for removal).

The **term of office** is four years with no limits on re-election (Art 7 OA). The Ombudsman shall be **independent** in his activities and shall be governed exclusively by the law. No one has the right to influence the Ombudsman in the performance of his functions (Sec 4 (1) OA). To ensure adherence to these principles the Ombudsman enjoys wide-ranging **immunities**. He may not be subjected to criminal prosecution, detention, search, arrest, forced conveyance or other restrictions on his freedom, or the imposition of administrative sanctions without the consent of the *Saeima* (Sec 4 (3) OA). However, if Parliament approves criminal prosecution, the Ombudsman is automatically suspended from office until he is acquitted by a court or until prosecution is otherwise terminated (Sec 8 OA). In the case of a conviction the Ombudsman is automatically removed from office. The incumbent may also be **removed** from office by the *Saeima* if he is unable to perform his duties due to his state of health, if he "has allowed a shameful act that is incompatible with the status of the Ombudsman", if he fails to perform his duties without a justified reason, or if he has been elected or appointed to another office. A minimum of five members of Parliament is required to propose such a removal, with the *Saeima* then making the final decision. No special majority is required for the voting (Sec 10 OA).

The **salary** of the Ombudsman is determined by law and amounts to 6.75 times the average annual wage of persons working in the public sector. The deputy has the right to a salary equal to 5.5 times this average wage (Sec 17 OA).

IV. Scope of Control

The **purpose** of the Ombudsman is to promote the protection of human rights and to facilitate that the state authority is exercised legally, efficiently and in conformity with the principles of good administration (Sec 1 OA).

The Ombudsman has **jurisdiction** over any body or person that classifies as "a body of a public person, an institution or an official, as well as a person that implements the tasks of state administration" (Sec 2 (2) OA). There are no exceptions. The Ombudsman shall also "resolve disputes in respect of human rights between private individuals" (Sec 12 (5) OA).

The **criteria** which may be applied by the Ombudsman are the rights and lawful interests of private individuals, expressly including human rights, the principles of equality and anti-discrimination, as well as the principles of good administration and efficiency.

Any private individual has the **right to apply** to the Ombudsman's Office with a submission, complaint or proposal. Correspondence with persons who are in the military service, in out-of-family care, or in instructional or closed-type institutions shall not be subject to examination and must be delivered to the Ombudsman without delay (Sec 23 (4), 23 (5) OA). Complainants or anybody who cooperates with the Ombudsman must not be directly or indirectly subject to adverse consequences or sanctions (Sec 23 (3) OA). The Ombudsman has the right to undertake a "verification procedure" on his **own initiative** (Sec 13 (6) OA). Submissions, complaints and proposals **shall be examined** as long as they fall within the functions of the Ombudsman and there is a possibility that the relevant issue may be resolved (Sec 24 (1), (2) OA). The right to complain is not subject to any time limits or requirements as to form. Other means of appeal do not have to be exhausted, thus the right is **not subsidiary**. It is considered unquestionable that the Ombudsman's services are to be free of charge.

An investigation undertaken by the Ombudsman should be concluded within three months. If the procedure is complicated or other objective reasons so demand, the deadline may be extended to a maximum of two years (Sec 24 (4) OA). The verification procedure does not suspend the validity of "regulatory enactments, court judgments, administrative or other individual acts" or extend procedural time limits (Sec 24 (3) OA). The Ombudsman's Office shall not disclose information regarding the complainant or other persons, if this information would jeopardise the rights of such persons. However, the public prosecutor (*performer of criminal procedures*) has the right to request such information (Sec 23 (6) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman has the **right to request and receive** any documents necessary for a verification procedure, as well as explanations and other information from any institution free of charge (Sec 13 (1)). Private individuals may also be requested to present such information (Sec 13 (5) OA). All institutions subject to his control may be visited in order to obtain information. The legislation expressly provides that "closed-type institutions" can be visited at any time and without a special permit, with the right to move freely within the territory of the institution, to visit all premises and to meet in private with persons held there (Sec 13 (2), (3) OA). The Ombudsman may hear the opinion of a child without the presence of his parents, guardians or other persons, if the child so wishes (Sec 13 (4) OA). He has the right to request and receive opinions of specialists (Sec 13 (7) OA). During an investigation he shall promote conciliation between the parties (Sec 24 (6) OA).

After having concluded his verification of the case, the Ombudsman may provide the authority with **recommendations and opinions** regarding the lawfulness and effectiveness of their activities and their compliance with the principle of good administration (Sec 12 (4) OA). There is no duty on the part of the authority to act upon the Ombudsman's recommendation. If the authority decides to let the matter rest, the Ombudsman can initiate proceedings at the Constitutional Court. However, the Court does not have the jurisdiction to apply the principles of good administration (infra V.3.). The Ombudsman also has the power to appeal to other courts (infra V.2.). In deciding whether to instigate court proceedings, the Ombudsman can "consult other competent institutions" (Sec 13 (11) OA). The Ombudsman may present a special report on any matter to Parliament and its committees, as well as to the President, the Cabinet, state administrative institutions and international organisations (Sec 15 (2) OA).

V.2. Powers in Relation to the Courts

It could not be established whether courts themselves are subject to the Ombudsman's control. The provisions in the legislation which relate to courts include the Ombudsman's power to defend the rights and interests of a private individual in court if this is in the public interest (Sec 13 (9) OA). Furthermore, he may apply to a court "in such civil cases, where the nature of the action is related to a violation of the prohibition of differential treatment" (Sec 13 (10) OA).

V.3. Powers in Relation to Legislative Organs

The Ombudsman must present an **annual report** to the *Saeima* and to the President regarding his activities (Sec 15 (1) OA). **Special reports** can be issued anytime and directed to the *Saeima*, its committees, the Cabinet, state administrative institutions as well as international organisations. Provisions concerning the debate of these reports or the participation of the Ombudsman in parliamentary sessions could not be found in the Ombudsman Law nor in the Rules of Parliamentary Procedure.[228]

One function of the Ombudsman is to **discover deficiencies in legislation** dealing with human rights and principles of good administration, as well as deficiencies in the application of such legislation. The law provides very generally that the Ombudsman shall "promote the rectification of such deficiencies" and "provide the *Saeima*, the Cabinet, local governments or other institutions with recommendations in respect of the issuance of or amendments to the legislation" (Sec 11 (4), 12 (8) OA). If such proposals are not complied with, the Ombudsman has the right to apply to the Constitutional Court. The Statute of the Constitutional Court provides that such an application may relate to the compatibility of international treaties with the Constitution, the compatibility of general laws with the Constitution or rati-

[228] Rules of Parliamentary Procedure of 18/08/1994 as amended 02/03/2006 http://www.saeima.lv/Likumdosana_eng/likumdosana_kart_rullis.html (16/8/2007).

fied international treaties, the compliance of other general normative acts with legal norms of higher force including ratified international treaties, and compliance of other acts of the President or the Government with the legal system (Art 16 (4), 17 (1) leg cit).

V.4. Special Functions and Powers in the Field of Human Rights

The Act on the Ombudsman defines the functions of the office. They include the protection of rights and lawful interests of private individuals, ensuring compliance with the principles of equal treatment and the prevention of any kind of discrimination. The Ombudsman shall also promote public awareness and understanding of human rights, mechanisms for the protection of such rights, as well as public awareness of his own activities (Sect 11 OA) and he shall be available for consultation regarding human rights issues. Furthermore, he shall conduct research and analysis in the field of human rights (Sect 12 (9), (10) OA).

The Act on the Ombudsman lists EU-directives concerning Anti-Discrimination that were supposed to have been transposed into the national legal order by the Act. However, no concrete powers in this regard are provided for.

Latvia has not yet signed the OPCAT. The institution is not accredited as NHRI according to the Paris Principles.

VI. Practice

The Office of the Ombudsman dealt with 2,861 complaints in the first half of 2007. Among these were 1,188 written and 1,673 oral complaints and petitions. The principle concerns addressed were the right to a dwelling and conflicts between landlords and tenants (422 cases), followed by cases concerning the right to a fair trial (275 cases). The institution was also occupied with cases regarding failures to adhere to principles of good administration, as well as cases involving the right to work, social security issues, the right to property, anti-discrimination, the right to privacy and family life as well as the rights of the child. "A lot of applications" were also received from penal institutions claiming violation of the prohibition of torture and inhuman and degrading treatment.[229]

VII. Reform

No plans to reform the office could be found, due to the short period of existence of the institution.

VIII. Information

Law:
http://www.ioi-europe.org/legalbases/latvia.pdf

[229] http://www.vcb.lv/eng/default.php?open=jaunumi&this=160707.297 (16/8/2007).

Internet:
Homepage of the predecessor with partial information in English about the new institution:
http://www.vcb.lv/eng/

Future homepage:
http://www.tiesibsargs.lv

Liechtenstein

Brigitte Kofler

A. Constitutional Background

Liechtenstein, with only about 32,000 inhabitants, like Andorra, Monaco, San Marino and the Vatican, belongs to the smallest states in Europe. The Constitution of 1921 was materially revised in 2003 (Law No. 1921/15 as of Law No. 2003/186). The Principality of Liechtenstein is a constitutional, hereditary monarchy on a democratic and parliamentary basis (Art 2). Parliament, the *Landtag*, consists of 25 members who are elected by the people for a term of four years according to the system of proportional representation (Art 46 and 47). The Reigning Prince is the Head of State (Art 7). Government, the *Kollegialregierung*, consists of the Prime Minister and four other ministers who are appointed by the Reigning Prince upon the proposal of Parliament (Art 79).

The court system is organised on three levels. A *Landgericht* decides minor civil cases and criminal offences, the *Obergericht* in civil law matters and the *Kriminalgericht* in major criminal matters, and then the *Oberster Gerichtshof* decides as a court of last resort. In administrative proceedings agencies, commissions or local councils decide in first instance. Their decisions may be appealed to the Government or special complaint-commissions. An administrative court of appeal, the *Verwaltungsgerichtshof,* hears appeals against government actions (Art 102). The Constitutional Court, the *Staatsgerichtshof*, has jurisdiction to review the constitutionality of laws and international treaties and the legality of Government ordinances and also acts as an electoral tribunal and a disciplinary court for ministers, and decides in conflicts of jurisdiction between the courts and the administrative organs. Furthermore, the Constitutional Court decides on individual complaints when the complainant claims that there has been a violation of a constitutional right by a final decision or order issued by a public authority (Art 15 (1) Constitutional Court Act of 27 November 2003).

Part IV contains a list of fundamental rights. Liechtenstein is a member of the Council of Europe since 1978 and has ratified the European Convention on Human Rights in 1982. The status of the Convention within the national legal system of Liechtenstein is above the ordinary laws but below the Constitution.[230]

---

[230] *Polakiewicz*, Die Verpflichtungen der Staaten aus den Urteilen des Europäischen Gerichtshofs für Menschenrechte, Springer, Berlin, 2003, 301.

B. Overview of Existing Ombudsman-Institutions

In Liechtenstein **no national parliamentary ombudsman-institution** has been established. However, there is one comparable office, the *Beratungs- und Beschwerdestelle*, which is also a member of several international Ombudsman organisations, notably the IOI.

C. Beratungs- und Beschwerdestelle – Office of Advice and Complaints

I. History and Legal Basis

The *Beratungs- und Beschwerdestelle* was legally established by **administrative ordinance** on 23 March 1976. The motive for its creation was the wish to establish an office which deals with issues of maladministration and offers advice to citizens in their dealings with administrative organs. However, the said ordinance was repealed by a governmental decision in 1999 (Decision of 1 September 1999, RA 99/2337-0366) and since then the *Beratungs- und Beschwerdestelle* has been operating without any legal basis as a part of the *Regierungskanzlei*, the office of Government (Q III).

II. Organisation

The *Beratungs- und Beschwerdestelle* is no independent agency but part of the Government Office, the *Regierungskanzlei*. One person is assigned to the post of the head of the *Beratungs- und Beschwerdestelle* by **decision of Government**. The head of the office has the status of an official, whose appointment is not limited in time. There are neither specific **qualification requirements** nor provisions concerning **incompatibilities**.

III. Legal Status

As a part of the Government's office in Liechtenstein, the *Beratungs- und Beschwerdestelle* forms an integral part of Liechtenstein's state-administration. The authorities falling under its control have no legal obligation to provide the office with the information requested especially no right of access to documents. No links to the judiciary exist. The *Beratungs- und Beschwerdestelle* does not render an **annual report** to Parliament itself but a summary of its activities may be found in the report of the Governments' office.

IV. Scope of Control

The office's remit comprises all state authorities. However, there is no formal right to monitor these entities. In fact, the *Beratungs- und Beschwerdestelle* may only **consult** people on issues but in more complex cases notes about the complaint are taken up and forwarded to the competent authority.

The **initiative** lies with the citizens, the *Beratungs- und Beschwerdestelle* may not start an investigation *ex officio*. In principle, any person may file a

complaint, but the *Beratungs- und Beschwerdestelle* is not obligated to consider the complaint. There are **no formal requirements** and no deadlines to file a complaint. Letters from prison inmates are to be sent to the office unopened (Art 35 LGBl 2004 No. 310). Filing a complaint is **free of charge**.

V. Powers

The head of the *Beratungs- und Beschwerdestelle* does not have any investigative powers or other available means. There is neither a legal duty for the administrative organs to cooperate nor are there any enforcement powers. Since there is no right to request documents or interview officials, the incumbent may not do more than forward complaints or pose questions to the competent authority. In fact, only routine jobs may be dealt with but no entitlement to state that an authority's conduct amounts to an instance of maladministration or is against the law (Q III).

VI. Practice

During the year 2006 the office received only three enquiries and six oral complaints. Because of its integration into the Government's office no further statistical data exists for the *Beratungs- und Beschwerdestelle*. There is **no permanent control *ex officio***. Due to the very small number of complaints the efficiency of the office's activity cannot be assessed.

VII. Reform

No current reform efforts are known to date (Q III).

VIII. Information

Constitution:
www.recht.li

Lithuania

Joachim Stern

A. Constitutional Background

The Constitution of Lithuania is in force since 1992 (Constitution of 25/10/1992 as amended 20/3/2003, hereafter Const). It declares Lithuania an independent and democratic republic (Art 1 Const). The unicameral Parliament (*Seimas*) consists of 141 members, the "representatives of the people", who are elected on the basis of universal, equal, and direct suffrage by secret ballot for a four year term (Art 55 Const). Head of State is the President, who is also directly elected by the people (Art 77, 78 Const). Government is composed of the Prime Minister and the ministers (Art 91 Const). The Prime Minister is appointed by the President upon consent of the *Seimas* and is required to form the Government within 15 days (Art 92 Const).

Courts of general jurisdiction are the District Courts, Regional Courts, a Court of Appeal and the Supreme Court (*Aukščiausiasis Teismas*) as Court of Cassation. There are also five Administrative Courts and one Supreme Administrative Court (*Vyriausiasis Administracinis Teismas*). The Constitutional Court (*Konstitucinis Teismas*) decides whether the laws and other legal acts adopted by the *Seimas* are in conformity with the Constitution and whether legal acts adopted by the President and the Government do not violate the Constitution or laws (Art 102 Const). The Government, the President, courts, or at least one fifth of the members of Parliament have the right to address the Constitutional Court. Individuals are not entitled to file appeals to the Constitutional Court.

Lithuania is a member to the Council of Europe since 1993. The ECHR was ratified in 1995.

B. Overview of Existing Ombudsman-Institutions

The *Lietuvos Respublikos Seimo kontrolierių įstaiga* – verbatim The Controllers of the *Seimas* of the Republic of Lithuania – is a national ombudsman-institution with a general mandate. No similar bodies exist on regional or communal levels. Specialised parliamentarian ombudsman-institutions are the Ombudsman for Equal Opportunities, which was created in 1999 (infra D.), and the Ombudsperson for the Rights of the Child, which was established in 2000 (infra E.).

C. Seimo kontrolierių įstaiga – Seimas Ombudsmen's Office of the Republic of Lithuania

I. History and Legal Basis

Since its adoption in 1992, the Constitution provides that "Controllers of the *Seimas* shall examine complaints of citizens concerning the abuse of powers and bureaucracy by state and local government officers (with the exception of judges) and who shall have the right to submit proposals to the court to dismiss guilty officers from their posts. The concrete powers of the Controllers are to be established by law." In addition, the *Seimas* can establish other institutions of control by law (see infra D., E.; Art 73 Const).

In 1994, a Law about the Controllers was enacted. After election of the first incumbents the institution could take up its work in 1995 (I-363-11/1/1994). The law has been amended twice so far. As of 1998, the Controllers are no longer equal to Supreme Court Judges in terms of salary (Act VIII-950-3/12/1998). An amendment in 2004 included the protection of a person's right to good public administration among the purposes of the institution (Art 3 OA, IX-2544-25/11/2004, hereafter OA).

II. Organisation

The institution is composed of **five incumbents**. Two of them are appointed by the *Seimas* for the investigation of activities of officers of state institutions. The other three are assigned with the investigation of activities of officers of county governor administrations and municipal institutions and agencies (Art 7 (2) OA). The rights and duties of the incumbents are in principle the same. Upon the nomination of the *Seimas* Chairman, the *Seimas* appoints one of the *Seimas* Ombudsmen as Head of the Office (Art 28 (1), Art 25 (2) OA). The **Head of Office** exercises control over the institution's staff and administrates the budget. Other decisions – such as the division of spheres of activities – are rendered by the **Ombudsmen's Office Board**. This organ consists of all five Ombudsmen and renders its judgments through a majority of members with at least three of them required to be present for a decision to be valid (Art 26, 27 OA). The Ombudsmen shall act independently within their spheres of jurisdiction (Art 4 OA).

The office currently employs about 40 people. The law merely provides that the office shall be financed from the state budget (Art 24 OA).

III. Legal Status

The five Ombudsmen are **appointed by the *Seimas*** upon nomination of the Chairman of the *Seimas* with a simple majority for a **term of office** of five years. There are no restrictions related to the possibility of re-election. **Eligibility requirements** are Lithuanian citizenship, "high moral character", a BA and MA or an university degree in law and at least ten years of legal practice or teaching (Art 6 OA).

Other elective or appointed offices in state and municipal institutions and agencies, or employment in private legal entities are **incompatible** with the position. The Ombudsmen may not receive any remuneration other than their official salary, except for remuneration for scientific and pedagogical work in qualified teaching institutions or author's fees for creative work (Art 10 OA). A violation of these rules can be deemed as grounds for a parliamentary non-confidence vote, which can be passed with a simple majority of the members of the *Seimas* any time. The same majority may also **remove** an Ombudsman from his office when absent from work for more than 120 consecutive days or for more than 140 days within the last twelve months, or when he is incapable to perform his duties as established in the opinion of a medical commission. If a criminal conviction against the Ombudsman enters in force, the office ends automatically (Art 9 OA). The office can end prematurely upon death or resignation of the incumbent. Successors are elected for a new term of five years.

The Ombudsmen are **independent** from other institutions (Art 4 (2) OA) and accountable only to the *Seimas* (Art 4 (3) OA). The incumbents do **not enjoy immunity** from criminal prosecution. Their **income** is defined in the Law on the Salaries of State Politicians, Judges and State Officers and is lower than that of ministers or members of Parliament. At the end of their mandate the Controllers may choose to return to their previous position (Art 29 OA).

IV. Scope of Control

"The **purpose of activities** of the Seimas Ombudsmen is to protect a person's right to good public administration securing human rights and freedoms, to supervise fulfilment by state authorities of their duty to properly serve the people" (Art 3 OA).

Subject of control are state and municipal institution or agency employees, as well as any other person performing public administration functions, meaning persons invested with public powers (Art 2 (2) OA). The activities of the President of the Republic, members of the *Seimas*, the Prime Minister, the Government and municipal councils as a collegial institution, the State Controller (Public Audit), as well as judges of any court are explicitly **exempted** from the Ombudsmen's jurisdiction. The legality and validity of procedural decisions of prosecutors and pre-trial investigation officers is also outside the *Seimas* Ombudsmen's powers of investigation, unless complaints relate to the violation of human rights and freedoms (Art 12 (3) OA). Complaints arising from labour-law relations and concerning the legality and validity of court decisions, judgments and rulings are completely excluded from investigations by the Ombudsmen.

Even when a matter is outside the Ombudsmen's jurisdiction, they may give proposals or offer commentaries to appropriate institutions and agencies on the improvement of public administration in order to prevent violations of human rights and freedoms (Art 19 (1)(21) OA).

Criteria of control are human rights and freedoms as well as "freedom from bureaucracy": this is defined as action on the part of an officer when he "instead of dealing with the matter on the merits, observes unnecessary or invented formalities, unreasonably refuses to settle issues within the officer's jurisdiction or delays decision-making or carrying out of official duties or performs other malfeasance or misfeasance in office (refuses to inform a person of his rights, gives a deliberately misleading or improper advice, etc.)". This definition also includes the failure to properly implement laws or other legal acts (Art 12 (1), 2 (2) OA). Together this equates to a control which is based on the entire legal system including human rights as well as principles of good administration.

Any natural or legal person who thinks that his rights and freedoms have been violated has the **right to file a complaint** (Art 13 (1) OA). Petitions from prison-inmates are exempted from possible restrictions on their right to correspondence (Art 100 (2) Code on Punishment Enforcement (Q III)). Complaints have to include a series of **requirements** as to their contents and form. However, should a complaint lack some of these criteria, it may not be refused, unless this makes the complaint anonymous or impossible to remedy due to insufficient information (Art 14 OA). Complaints have to be filed within **one year** after the action that the complaint relates to and must be in writing. If these criteria are not fulfilled, the Ombudsmen can start an investigation on their own initiative (Art 13 (3) OA). Members of Parliament can forward petitions addressed to them to the Ombudsmen (Art 13 (2) OA).

If the Ombudsman competent to deal with the matter comes to the conclusion that the complaint lacks substance, is filed after the deadline, is outside the office's jurisdiction, has already been dealt with, is being dealt with at court, is subject to pre-trial investigations, or if the Ombudsman deems another institution or agency more expedient to deal with it, he can **refuse** to investigate the complaint. A decision to do so has to be taken within seven working days upon receipt of the complaint (Art 17 (2) OA). If a complainant abuses the right to apply to the *Seimas* Ombudsmen, correspondence with such a person may cease (Art 17 (3) OA).

The complaint has to be examined as soon as possible and within three months. The complainant has to be informed if this time limit will be exceeded and when the investigation has come to a conclusion (Art 18 OA). That a complaint is free of charge is not explicitly provided for in the law but regarded upon as self-evident.

V. Powers

V.1. Powers in Relation to Administrative Organs

When performing his duties, an Ombudsman has the right to the **provision of information, material and documents** required for the discharge of his functions. He is to be granted access to documents which constitute a state, professional, commercial or bank secret as well as documents which contain

information about personal data protected by law in the manner prescribed by law (Art 19 (1)(1) OA). Should it be necessary to enforce his rights, the **assistance of police officers** shall be enlisted and an appropriate statement of the seizure of documents be drawn up. The Ombudsmen can **enter** the premises of institutions and agencies at any time of the day if persons are kept in such premises for 24 hours or more, and unrestrictedly meet and interview persons present in the premises, however, officers of the institutions and agencies must accompany them (Art 19 (1)(2) OA).

The Ombudsmen may **interrogate anybody**, demand written or oral explanations from the officers whose activities are under investigation, and enlist the services of any public institution (Art 19 (1)(6) OA). Sessions of the Government and of other public authorities can be attended when issues under consideration relate to the activities of the *Seimas* Ombudsmen or to a matter currently under investigation by them (Art 19 (1)(5) OA).

If an authority fails to comply with the Ombudsmen's demand or if it otherwise interferes with their rights, the Ombudsmen can make a report to the authority which is competent for sanctioning the non-compliance with an administrative penalty (Art 19 (1)(9) OA). If the Ombudsmen suspect that criminal acts have been committed, they may then forward the relevant information to the prosecutor. The Ombudsmen may also apply to court for the dismissal of officers guilty of abuse of office or of bureaucracy or to the authority which is responsible for imposing disciplinary penalties upon the officer who is at fault (Art 19 (1)(13), (15) OA). A recommendation to the Chief Official Ethics Commission can be issued to evaluate whether or not the officer has violated the Law on Adjustment of Public and Private Interests in the Public Service (Art 20 OA). The period of complaint investigation suspends time limits for the enforcement of disciplinary penalties (Art 22 (2) OA). Ombudsmen may notify the *Seimas*, the President of the Republic or the Prime Minister of the violations committed by the ministers or other officers accountable to them (Art 19 (1)(19) OA).

The Ombudsmen may **recommend** to the competent authority to repeal, suspend or amend decisions (Art 19 (1)(14) OA) and propose that damages be paid to a person due to violations committed by an officer (Art 19 (1)(18) OA). The prosecutor can be asked to apply to the court according to the procedure prescribed by law for the protection of public interests (Art 19 (1)(16) OA).

All addressees have to examine the Ombudsmen's recommendations and supply information regarding their respective decisions (Art 19 (1)(17), Art 20 (1) OA). If not satisfied with the result, the Ombudsmen may apply to an administrative court with a request to "investigate conformity of an administrative regulatory enactment (or its part) with the law or government resolution" (Art 19 (1)(10) OA).

Concluding a case, the *Seimas* Ombudsmen shall draw up a **statement** concerning the circumstances disclosed and evidence collected in the course of an investigation as well as giving legal evaluation of the officer's activities. The statement shall be signed and presented to the complainant and to the

head of the institution or agency where the investigation has been conducted, to the officer whose actions have been investigated into, and – if necessary – the head of a superior institution or agency as well as other institutions or agencies (Art 21 OA).

V.2. Powers in Relation to the Courts

As a principle, activities of judges are exempted from the Ombudsmen's control (Art 12 (2) OA). However, in order to prevent violations of human rights and freedoms, the Ombudsmen can give proposals or offer commentaries to appropriate institutions and agencies (Art 19 (1)(21) OA). Actions of prosecutors and pre-trial investigation officers can only be examined if they violate human rights and freedoms (Art 12 (3) OA).

V.3. Powers in Relation to Legislative Organs

The Ombudsmen have to present an annual report every year by March 15th. The report has to be considered in the *Seimas* and shall be published on the website of the Ombudsmen's office (Art 11 OA). In addition, in-between these annual reports, the Ombudsmen may inform the *Seimas* and others about gross violations of law, or of deficiencies, contradictions of gaps in laws and other legal acts (Art 19 (1)(7) OA). Whenever the Ombudsmen find that laws of other statutory acts restrict human rights and freedoms, they may propose an amendment of such acts (Art 19 (1)(8) OA). The Ombudsmen cannot apply to the Constitutional Court with regards to the conformity of legal acts with the Constitution and laws of the Republic but can merely propose the *Seimas* to do so (Art 19 (1)(11) OA, Art 102 Const).

V.4. Special Functions and Powers in the Field of Human Rights

The powers of the Ombudsmen vis-à-vis organs of the judiciary are human-rights-specific (supra V.2.), as is the right to propose legislative amendments (supra V.3.). In order to prevent violations of human rights and freedoms, an Ombudsman may give proposals or offer commentaries on the improvement of public administration to "appropriate institutions and agencies" even if not within his jurisdiction (Art 19 (1)(21) OA). The mass media shall regularly be informed about their actions.

The institution is not accredited as NHRI according to the Paris Principles. Its designation as NPM in the light of the ratification of the OPCAT is currently under discussion.

VI. Practice

In 2005, the institution received 2,158 complaints, of which 547 were refused. Out of the remaining cases, 27% were declared as founded, 57% as unfounded. In 16% of the cases a solution to the problem was found during the investigative procedures. 13 investigations were started on the Ombudsmen's

own initiative, in eight of these cases the Ombudsmen found their action warranted.

With 21%, complaints concerning the penal administration headed the statistics, an additional 4% concerned conditions in other detention establishments. 12% concerned the actions of police officers, 10% activities of prosecutor's offices, another 7% actions of pre-trial investigation officials. Selected prisons and military units have been inspected *ex officio*.

The Ombudsmen are obliged to regularly inform the public about their activities and issued 56 press releases.

VII. Reform

The institution is largely satisfied with its competences, however, it criticises the poor implementation of its recommendations. The incumbents are currently striving for an amendment to the law in order to once again define their financial status in the Act on the Ombudsmen.

VIII. Information

Constitution:
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=211295

Law:
http://www3.lrs.lt/cgi-bin/preps2?Condition1=253973&Condition2=

Annual report:
http://www.lrski.lt/files/206.pdf

Internet:
http://www.lrski.lt/index.php?l=EN

D. Lygių galimybių kontrolieriaus tarnyba – Equal Opportunities Ombudsperson

I. History and Legal Basis

The Law on Equal Opportunities of Women and Men created the institution of the *Controller for Equal Opportunities* as supervisory organ for the prohibition of discrimination based on gender (Law VIII-947-1/12/2007 as amended IX-1433-3/4/2003; hereafter LEO). The office took up its work in 1999. In 2003, Parliament passed a formally independent but almost identical Law on Equal Treatment with direct regard to the EU's Anti-Discrimination directives, which entered into force in 2005 (Law IX-1826-18/11/2003; hereafter LET). The law also prohibits discrimination based on age, sexual orientation, disability, racial or ethnic origin, religion, beliefs and other grounds established in international agreements or laws. The surveillance of these interdictions were entrusted to the Controller for Equal Opportunities (Art 13

LET) whose powers are defined in Articles 10–29 of the Law on Equal Opportunities of Women and Men. The constitutional basis for the institution is found in Art 73 Const (supra C.1.).

II. Specific Features

The office is a **monocratically organised institution**. The legal status is to a large extent identical to that of the general Ombudsmen. However, the term of office is **four years,** the requirements for candidates demand highest integrity, a university degree in law and five years of experience in legal profession or in state administration. The number of terms of office of the Equal Opportunities Ombudsman are expressly unlimited (Art 13–14 LEO). State and municipal administrative authorities are subject of control, however, they are only controlled to ensure that equal rights are guaranteed in all legal acts drafted and enacted, to draw up and implement other programs and measures aimed at ensuring equal opportunities and provide assistance to other institutions in this respect (Art 3 LET, LEO). The real control concerns institutions of education and science in respect to the admission, award of grants, selection of curricula and assessment of knowledge (Art 4 LET, LEO); employers with regard to recruitment criteria, working conditions, opportunities to improve qualification and the provision of benefits, the assessment of the quality of work, equal pay for work of equal value, and the prevention of harassment (Art 5, 6 LET, LEO); sellers and producers of goods or service providers when selling and commercialising their products (Art 5^1 LET, LEO). Criteria of control are the principles of equal treatment as laid down in international instruments and national laws (Art 2 LET, LEO).

The right to file a complaint is limited to three months after the commission of the concerned act. A decision on whether the complaint will be treated has to be taken within 15 days. The investigation has to be concluded within one month, and in exceptional situation within two months.

All state government and administration institutions, enterprises, institutions and organisations shall make available the information, documents and material necessary for carrying out the Ombudsman's function. The Ombudsman also has the right to request that the person under investigation provides an explanation within 10 working days. Persons obstructing the Equal Opportunities Ombudsman to exercise his duties shall be held liable under the law. The Ombudsman can himself impose administrative sanctions (Art 24 LEO).

III. Information

Laws:
Law on Equal Opportunites of Women and Men
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=220981

Law on Equal Treatment:
http://www.lygybe.lt/ci.admin/Editor/assets/Law%20on%20Equal%20Treatment.doc

Annual Report:
http://www.lygybe.lt/ci.admin/Editor/assets/ataskaita2005eng.pdf

Internet:
http://www.lygybe.lt/

E. Vaiko teisių apsaugos kontrolieriaus įstaiga – Controller for the Protection of the Rights of the Child

I. History and Legal Basis

In 1995, Lithuania ratified the UN Convention on the Rights of the Child. A basic law for the protection of the rights of the child was adopted in 1996.[231] In order to foster the implementation of these rights Parliament created an Ombudsman for Children's Rights in 2000 (Law on the Controller for Protection of the Rights of the Child VIII-1708-25/5/2000, hereafter COA), on the basis of Art 73 Const.

II. Specific Features

The Legal Status is identical to that of the Ombudsman for Equal Opportunities with slight deviations: The incumbent may also have gone through a pedagogical rather than a legal education, re-election is only possible for one consecutive term (Art 5 (2) COA). The Ombudsman appoints a deputy upon consent of the Speaker of the *Seimas* (Art 11 (2) COA). Subject of control are the actions of all persons and institutions, even those who have no legal personality, if they have or may have violated the rights or interests of a child (Art 12 (1)(1) COA). These rights and lawful interests, as laid down by the Constitution, by laws and international treaties are thus the criteria to be applied to matters under investigation (Art 3 COA). The Ombudsman shall generally oversee how well these provisions are implemented and executed (Art 12 (1)(2), (3) COA).

Children have the explicit right to complain and are not bound by formal requirements (Art 18 (2) COA). Complaints have to be filed within three years (Art 21 COA). The investigation must be concluded within one month. If necessary, this time limit may be expanded to six months (Art 23 COA).

Public institutions including "non-governmental establishments of the state" can be entered by the Ombudsman without hindrance in order to permit him to acquaint himself with their activities. All institutions under control have to provide documents, information, explanations, protocols and

[231] Law I-1234 of 14/3/1996.

other documents necessary for exercising the Ombudsman's powers. Courts can be asked for information about cases related to the violation of the rights or interests of the child. The Ombudsman can participate in meetings of the *Seimas* and the Government as well as in commissions or other institutions created by the executive power and has the right to participate in discussions which are related to the protection of the rights of the child (Art 13 COA). Information requested by the Ombudsman has to be delivered within 10 days. Persons hindering the Ombudsman in the fulfilment of his official duties shall be held responsible "in the procedure established by the laws" (Art 31 (3) COA).

The Controller can make proposals for remedying a violation of a child's rights or interests, for revising a decision or for applying disciplinary sanctions. Furthermore, the Ombudsman can express a warning or file a suit in court (Art 25 COA). To propose the amendment and enactment of laws for the improvement of the rights of the child is an express purpose of the institution (Art 12 (1)(4) COA). Its annual report has to be "announced in public" (Art 15 COA).

III. Information

Law:
http://vaikams.lrs.lt/law.htm

Annual Report:
http://vaikams.lrs.lt/informaciniai/report2003.pdf

Internet:
http://vaikams.lrs.lt/

Luxembourg

Joachim Stern

A. Constitutional Background

The Constitution of Luxembourg has been in force since 1868. Since then it has undergone some major amendments, which occurred mostly in the 1990's (Constitution of 17/10/1868, as amended 25/11/2004, hereafter Const). The Constitution defines the Grand Duchy of Luxembourg a democratic, free, independent, and indivisible state (Art 1 Const) with the Grand-Duke as the Head of State. The unicameral Parliament (*Chamber of Deputies*) consists of 60 members (Art 50 Const). The Government is composed of the Head of State and the ministers with the Prime Minister controlling the political agenda. The Council of State, originally having exercised controlling and counselling functions, was reduced to the counselling function in 1996 (Art 83bis Const). Since then an Administrative Tribunal and an Administrative Court have been established as courts of the so-called administrative order (Art 95bis Const). The Superior Court of Justice exercises control as the court of final instance in the so-called judicial order of the courts (Art 87 Const).

In 1997 a Constitutional Court (Art 95ter Const), composed of various judges from other courts, has also been created. This court's function is to rule upon the conformity of laws with the Constitution. It must be seized by any court if a party to the proceedings raises a question concerning the constitutionality of a law. Courts can also seize the Constitutional Court *ex officio*. Laws that have been passed in order to ratify international treaties are not subject to its control.

The Luxembourgian Constitution contains a charter of fundamental rights which is titled "Luxembourgers and Their Rights". These rights also include some social rights such as the right to social security, to health and to work (Art 11 Const).

Luxembourg is a founding member of the Council of Europe. The ECHR was ratified in 1953 and it ranks between domestic laws and the Constitution.

B. Overview of Existing Ombudsman-Institutions

The *Médiateur du Grand Duché de Luxembourg* – Mediator of the Grand-Duchy – is Luxembourg's national ombudsman-institution with a general mandate. No comparable institutions exist on a regional or local level.

C. Médiateur du Grand-Duché de Luxembourg – Ombudsman

I. History and Legal Basis

In 1976, the Government initiated a legal project aimed at creating a "general commissioner for the control of the administration of the state and the communities" (*Commissaire général au contrôle de la gestion administrative de l'État et des Communes*). It was rejected by the Deputies, mostly due to the envisioned right of the Government to appoint the incumbent and it was also opposed by the Union of Public Employees. It was not until 2001 that the Prime Minister brought forward a new project of law providing for a *Médiateur.*[232] The Chamber of Deputies passed the **Law** in 2003 (Loi du 22/8/2003 instituant un Médiateur, hereafter OA)[233] and the institution began operating in May 2004. It is currently **not embodied in the Constitution**. Supplementary provisions regulating the office can be found in the Standing Orders of Parliament (hereafter ParlO).[234]

II. Organisation

The Mediator is a **monocratically organised** institution and the incumbent has no deputies. A regional office has been established in the city of Wiltz, where complainants are received twice a month. The office currently employs eight people.

The institution's budget is part of the finances of the Chamber of Deputies and is subject to negotiations between the Mediator and the Chamber. However, the Government is involved in this process (Art 17 OA, Q I).

III. Legal Status

The Mediator is appointed by the Grand-Duke following nomination by the Chamber of Deputies. The election must be publicly announced 30 days in advance. Candidates may file their applications personally or may be nominated by the Deputies. The Deputies then decide in a secret ballot with a simple majority of the given votes (Art 131-2 ParlO).

To be eligible for the position the following requirements must be met: The applicant must be Luxembourgian citizen who is in full possession of his civil and political rights and who shows the "necessary moral qualities". Moreover, the candidate must have an education in a discipline considered relevant for the position by the Deputies, have professional experience useful for the exercise of the function and have sufficient knowledge of the three administrative languages (French, German and Luxembourgish). The office of the Mediator is **incompatible** with offices in the private as well as in the

---

[232] Projet de Loi relative à la mise en place d'un Médiateur au Luxembourg, No. 4832-1/8/2001.

[233] Mémorial A-128-3/9/2003.

[234] Art 131-1–131-5 Règlement de la Chambre des Députés du 31 mai 2000 modifié le 13 novembre 2003.

public sector and also with the participation – whether directly or indirectly – in any business in which his interests would be inconsistent with those of his office. Persons exercising elective mandates forfeit this mandate by consenting to the nomination for election (Art 11 OA).

The **term of office** is eight years and not renewable. It **ends** with the expiry of this term and also terminates the moment the incumbent reaches the age of sixty-eight or if he violates the rules of incompatibility. It could not be established which organ has the right to officially establish whether these criteria are met and to subsequently declare the office vacant. However, a simple majority of Deputies can demand the Grand-Duke **remove** the Ombudsman if the Ombudsman wants to resign, if his health compromises the exercise of his functions, or if he is not capable of fulfilling his duties for some other reason. One third of the Deputies can demand removal from office if the incumbent does not exercise his duties according to the law. Parliament then must initiate an investigation and decide, with simple majority, whether it proposes the Grand Duke to remove the incumbent (Art 10 OA). During this process the Mediator is to be given the right to present his point of view (Art 131-5(3) ParlO).

The Mediator is "attached to the Chamber of Deputies" and is **independent** when exercising his functions in that no authority has the right to give him instructions (Art 1 (1) OA).

The incumbent is **not immune** from criminal prosecution. His **income** is determined by law and about one eighth less than that of a minister (Art 12 OA).

IV. Scope of Control

The law defines the reception of complaints as **mission of the institution** (Art 1 (2) OA). The **jurisdiction** of the institution includes the administration of the state and of the communities, as well as public institutions created by the state or by a community with exception of their industrial, financial or commercial activities. However, there are restrictions in regard to the powers of control concerning matters of national defense, state security and foreign politics (infra V.1.). Moreover, the judiciary is not subject to the institution's control, with the exception of cases involving lengthy proceedings and enforcement of final judgments (Art 4 (3) OA; infra V.2.).

The criteria for investigations are "conventions, laws and ordinances" as well as the "functioning" of the respective institution in conformity with its mission (Art 2 (1) OA). This amounts to a control based on the entire legal system and on principles of good administration. Furthermore, the law provides that the Mediator may apply the principle of equity (*équité,* Art 4 (2) OA).

The **right to submit a complaint** lies with natural persons or persons of private law who are concerned by a concrete measure (Art 2–3 OA). Disputes between officials and the authority they are attached to are excluded (Art 3 (4) OA). The petition can be filed directly with the office of the Me-

diator – in writing or orally – or through a member of Parliament (Art 2 (2) OA). Members of Parliament can themselves refer a question to the Ombudsman. The Mediator **cannot** start an investigation on his **own initiative**.

Before submitting a complaint "appropriate steps" to obtain a resolution must be taken with the concerned authority (Art 3 (1) OA). Even if these preconditions are fulfilled, the Ombudsman is **free to decide** whether or not he wishes to take a matter on. The complaint filed with the Mediator expressly does not interrupt time limits for administrative or judicial appeals.

The Mediator must **inform** the petitioner once a decision to refuse a case or a completion thereof has been reached with a statement including the relevant reasons for the action (Art 4 (4) OA). The Mediator is under the obligation to keep information entrusted to him confidential. Persons shall not be identifiable in the documents published by the institution (Art 7 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Mediator can demand access to any **information** that he deems necessary from any authority subject to an investigation. The concerned body must provide this information within a specified time limit set by the Ombudsman. The ministries and any other public authorities subject to the Ombudsman's control have to **facilitate the exercise** of the Ombudsman's functions and must permit all persons under their authority to answer to the Mediator's questions. The confidential nature of documents may not be opposed the Ombudsman unless the classification of these documents relates to matters of national defense, security of the state or foreign politics (Art 6 OA). The law does not provide any further powers to investigate. The Mediator may freely access prisons if respective security measures are met (Q II).

If the Mediator considers a complaint to be justified, he must **consult** the complainant and the authority concerned. The Mediator may **issue recommendations** to both sides setting out what he deems to be an appropriate measure to permit a friendly settlement. Recommendations can also aim at ameliorating the respective administrative services (Art 4 (1) OA). If the Mediator finds that the execution of a decision leads to inequity (*iniquité*), he can suggest "any solution" to remedy the situation within the legal framework. If he identifies the problem to be based in the legal framework itself, he can also suggest the modification of the relevant law or administrative regulation. If the authority concerned responds insufficiently or not at all, the Mediator can publish the recommendations.

V.2. Powers in Relation to the Courts

As a principle, the law provides that the Mediator cannot intervene in judicial proceedings and is not allowed to question the reasoning (*bien fondé*) of a court decision. However, he does have certain rights with regard to the judiciary.

The Ombudsman can be seized concerning cases of lengthy proceedings.[235] The manner of proceeding is open to the Mediator (e.g. direct contact with judges or the president of the court).

In cases of non-enforcement of a court decision which has been obtained vis-à-vis an administrative authority, the Mediator can demand the authority implement the ruling within a specific time frame (Art 3 (3) OA). If the authority does not comply with this request, the Mediator has to address a special report to the Chamber of Deputies that has to be published in the official journal (Art 4 (5) OA).

The principle of equity also permits the Mediator to become involved in rulings which the public administration has obtained vis-à-vis private persons. If the enforcement of such a judgment would lead to a disproportional or unjustifiable burden on the complainant the Ombudsman may issue recommendations to the public authority.

V.3. Powers in Relation to Legislative Organs

The Mediator must present an **annual report** to the Chamber of Deputies. **Special reports** can be issued on a quarterly basis if the Mediator deems it necessary to do so. These reports summarise the Ombudsman's activities and contain recommendations judged useful as well as problems that the Mediator encountered during the exercise of his functions. The reports have to be **published** by the Parliament. Upon the Ombudsman's request or upon the request of Deputies the Ombudsman may be heard by them (Art 8 OA).

A specific kind of special reports is provided for in cases of non enforcement of judicial decisions by administrative authorities (supra V.2.). Such cases must also be reported to Parliament by the Ombudsman and published in the official journal (Art 4 (5) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The institution has no special powers or functions in the field of human rights protection. The Advisory Committee for Human Rights (*Commission Consultative des Droits de l'Homme*) is accredited with the International Coordinating Committee as Luxembourg's National Human Rights Institution in accordance with the Paris Principles (Status A). To date the OPCAT has been signed but not ratified. There is no information as to the potential designation of the Ombudsman as NPM.

VI. Practice

The institution of the Mediator received 894 complaints between October 2005 and 2006, out of which 642 were concluded. 52 complaints were refused as lying beyond the jurisdiction or as pending in or already decided upon by court. 30 complaints were refused because the complainant had not taken sufficient measures to remedy the case, because the claim was manifestly un-

[235] http://www.ombudsman.lu/data/guide_f.pdf (31/10/2007).

founded or the person who submitted the complaint was not involved in the case. In 220 cases administrative authorities at least partially complied with the complainants' demands and in 41 cases the Ombudsman's recommendations were ignored. Since the Ombudsman lacks the right to start investigations *ex officio*, there is no possibility for a permanent control in certain areas. During the year reported, the Mediator visited two prisons to receive complaints there.

VII. Reform

No concrete plans to reform the institution could be found. In order to close gaps in the control of the judiciary, the Mediator suggested creating a Superior Judicial Council as a competent body to watch over judges.[236]

VIII. Information

Law (in French only):
http://www.ombudsman.lu/data/loi_officielle.pdf

Annual Report (in French only):
http://www.ombudsman.lu/data/RA-2006.pdf

Internet:
http://ombudsman.lu/frameset_e/index.htm

[236] Recommandation relative à l'institution d'un Conseil Supérieur de la Justice du 22/3/2006, http://www.ombudsman.lu/data/CSJ-22.doc (31/10/2007).

FYR Macedonia

Brigitte Kofler

A. Constitutional Background

The Former Yugoslavian Republic of Macedonia gained independence after the break-up of former Yugoslavia in 1991. The current Constitution entered into force in 1991 and declares Macedonia to be a parliamentary democratic state. Macedonia is a unitary state with local self-government exercised in the municipalities. The Framework Agreement of Ohrid of 2001 envisages decentralisation. The members of Parliament, the *Sobranje*, are elected by the people for a term of four years (Art 63 (1)). The President of the Republic, the Head of State, is also elected directly for a term of five years (Art 80 (1)) and is entrusted with the mandate for constituting the Government to a candidate from the party having a majority in Parliament (Art 90 (1)).

The Supreme Court of the Republic of Macedonia is the highest court of the Republic for civil and criminal matters (Art 101). Furthermore, there is a Constitutional Court which decides, *inter alia,* on the conformity of laws with the Constitution as well as on the conformity of regulations with the Constitution and laws. Furthermore, the Constitutional Court decides on conflicts of competency among holders of legislative, executive and judicial offices and among state bodies and units of local self-government. The Court also protects the freedoms and rights of the individual and citizen relating to freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation (Art 110). Hence, an individual complaints procedure exists only for those fundamental rights mentioned in Art 110. There are plans to establish administrative courts in the near future.

Chapter II contains a list of fundamental rights. Macedonia is a member of the Council of Europe since 1995 and has ratified the European Convention on Human Rights in 1997.

B. Overview of Existing Ombudsman-Institutions

The Ombudsman of FYR Macedonia, the *Naroden Pravobranitel*, is a **parliamentary, national ombudsman-institution**. Currently, its headquarters are in Skopje and there are six further **regional offices** headed by deputies of the Ombudsman. No comparable ombudsman-institutions have to date been established on the local level.

C. Naroden Pravobranitel – Ombudsman

I. Historiy and Legal Basis

The Institution of the Ombudsman was for the first time mentioned in Art 77 of the Macedonian Constitution of 1991. It took some time until the first incumbent was elected in 1997. Further provisions on the Ombudsman are laid down in the Ombudsman Act (Law No. 07-4502/1 of 10 September 2003; hereinafter OA). In addition, on the basis of Art 47 of the Ombudsman Act, there is a Rulebook for the Ombudsman which lays down the investigation procedure in greater detail.

II. Organisation

The Ombudsman is a **monocratic** body with several **deputies.** The number of deputies is determined by Parliament upon proposal of the Ombudsman (Art 5 (2) OA). The Ombudsman's deputies are appointed for a term of eight years and are entitled to another tenure (Art 5 (3) OA). At present, there are ten appointed deputies. All in all, 43 people are on staff at the headquarters and a further 23 at the regional offices of the institution. The Ombudsman's **funds** are provided from the budget of Republic of Macedonia. The Parliament takes a separate vote on the budgetary section concerning the Ombudsman (Art 48 (2) and (3) OA).

III. Legal Status

The Parliament, upon proposal of the competent parliamentary committee, elects and dismisses the Ombudsman with a majority vote of the total number of MPs including the majority of MPs who belong to non-majority communities (Art 5 (1) OA).

A graduated lawyer who has working experience in legal affairs of over nine years, whose activity has been proved in the sphere of protection of citizens' rights and who has a good reputation for performing the duties of the Ombudsman, may be elected Ombudsman (Art 6 (1) OA).

The Ombudsman is **independent** and self-governing in the performance of the function (Art 3 (1) OA). The Ombudsman and deputies may not be called to account for an opinion and actions, measures and activities undertaken in the performance of their function (Art 38 OA).

The office is **incompatible** with another public function and profession or with membership in a political party (Art 8 OA). The Ombudsman is appointed for the **period** of eight years and is entitled to another tenure (Art 5 (1) OA). The **salary** and other allowances of the Ombudsman and deputies are stipulated by a separate act (Art 49 OA).

The Ombudsman is **dismissed** on resignation, conviction resulting in an unconditional imprisonment of at least six months, an incapacity to perform the duties, retirement according to age or a finding of incompetency or biased performance (Art 9 OA).

IV. Scope of Control

The Ombudsman's control extends to state administration bodies and other bodies and organisations that have public authority including local self-government units (Art 2 OA). As far as the judiciary is concerned, only in respect of actions and measures undertaken for protection against unjustified prolongation of court proceedings or irresponsible performance of the work of court's services while not infringing the principles of independence and autonomy of the judicial authority (Art 12 (1) OA). Except for these cases, the Ombudsman may not proceed in cases for which court proceedings are pending (Art 12 (2) OA).

The Ombudsman's **control criteria** are the Constitution, laws and international agreements ratified pursuant to the Constitution (Art 3 (2) OA). Furthermore, the principle of equity may be invoked (Art 3 (3) OA).

Any person may put forward a submission to the Ombudsman. The Ombudsman may also initiate proceedings on an assessment that the constitutional and legal rights of citizens have been infringed (Art 13 OA). The consent from the injured person is necessary for initiating the procedure (Art 21 (2) OA). No special formal requirements exist (Art 16 (4) OA). Persons deprived of their freedom may file a complaint in a closed envelope without censorship (Art 31 (4) OA).

The Ombudsman may not initiate an investigation if more than a year has passed since the action or the last decision of the body, organisation or institution excepting on an assessment that the person who put forward the submission has missed the deadline due to justified reasons. Furthermore, the Ombudsman may neither investigate submissions which are anonymous, insulting, abusive or incomplete nor investigate a case if the person who put it forward has not completed the submission after prior instruction by the Ombudsman (*v* Art 20 OA).

The Ombudsman is to inform the complainant of the decision whether to start and investigation or not within 15 days after receiving the complaint (Art 20 (2) OA, 22 OA).

The person who puts forward the submission is exempt from paying taxes for the procedure before the Ombudsman (Art 16 (5) OA).

The Ombudsman is obliged to respect the privacy and confidentiality of information regarding the persons who put forward the submission and is to keep state and official secrets (Art 18 and 27 (2) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The bodies under the control of the Ombudsman are obligated to co-operate with the Ombudsman and upon request are to provide with all data and information notwithstanding the degree of confidentiality (Art 27 (1) OA). Upon request the President of the Republic, the Speaker of Parliament, the Prime Minister and other officials of the bodies within the control are obligated to appear personally without any delay (Art 26 (2) OA). For the pur-

poses of investigating a complaint the Ombudsman may demand necessary explanations, information and evidence regarding the allegations in the submission, enter the office premises and have direct insight into the files and affairs within their competence. Furthermore, the Ombudsman may interview anybody who is able to provide information or request the opinion of scientific and specialised institutions.

The bodies are obligated to submit the demanded information within eight days. Should they be impeded from submitting them due to justified reasons, they are to notify the Ombudsman. The Ombudsman may determine a new deadline. The rejection of and disrespect for the demands of the Ombudsman are deemed as **obstruction** to the work of the Ombudsman (Art 24 OA). In case of an obstruction of work the Ombudsman may inform the immediate superior body, the official in charge of the body or the Government with a special report and, if they do not undertake the necessary measures, the Parliament of the Republic of Macedonia (Art 25 (1) OA).

The Ombudsman may forward recommendations, opinions and criticisms to the bodies under the control of the office (Art 28 (2) OA).

On a conclusion that there has been an infringement of constitutional and legal rights or some other irregularities have occurred, the Ombudsman may give **recommendations, proposals, opinions and indications** on the manner of the removal of the determined infringements or propose that a certain procedure be implemented pursuant to law.

Furthermore, the Ombudsman may initiate the **commencing of disciplinary proceedings** against the responsible person or submit a request to the competent public prosecutor to initiate **criminal proceedings.**

The bodies are obligated to notify the Ombudsman about the undertaken measures within a deadline of no more than 30 days. If the body does not notify the Ombudsman or only partly undertakes the measures, the Ombudsman may inform the immediate superior body, official in charge or Government with a special report, and, if they do not undertake the necessary measures, the Parliament of the Republic of Macedonia. The Ombudsman may publicise the case in the mass media, at the expense of the respective body when there is an infringement of rights (Art 25 OA).

On an assessment that the execution of the administrative act might cause irreparable damage to the interested person, the Ombudsman may **request a postponement** of the act until the decision by the second-instance body or the competent court. The bodies are obligated to inform the Ombudsman within three days at the latest whether the enforcement of the act has been temporarily suspended (Art 33 OA).

The Ombudsman is to monitor the situation in respect of state bodies, organisations and institutions where the freedom of movement is restricted (Art 31 (1) OA) and may for this purpose visit these institutions at any time to interview individuals (Art 31 (3) OA).

In addition, the Ombudsman may submit a proposal to the Constitutional Court of the Republic of Macedonia for evaluation of the **constitutionality and legality** of regulations or general acts (Art 30 (2) OA).

V.2. Powers in Relation to the Courts

The Ombudsman's control over the courts is limited to issues of the **administration of justice** (see IV.). In this field, there are the same powers as vis à vis administrative organs.

V.3 Powers in Relation to Legislative Organs

The Ombudsman may propose initiatives to those bodies which are formally authorised to propose **amendments and modifications** to laws and other by-laws, and their harmonisation with international agreements ratified pursuant to the Constitution of the Republic of Macedonia (Art 30 (1) OA).

Further, the Ombudsman is entitled to submit a proposal to the Constitutional Court of the Republic of Macedonia for evaluation of the **constitutionality** of the laws and the constitutionality and legality of the other regulations or general acts (Art 30 (2) OA).

The Ombudsman may participate at sessions of Parliament and parliamentary committees.

The Ombudsman has to render an **annual report** to Parliament (Art 36 (1) OA). This report is discussed in Parliament at a session which is to be attended by the members of Government. The report is to be publicised in the mass media (Art 36 (2) and (3) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is considered to be a major and important task of the Ombudsman (Q II). However, there are **no special competences** of the Ombudsman in this field. The annual report contains a separate section dealing with human rights.

VI. Practice

In 2005, 3,935 complaints were pending with the Ombudsman (3,053 new complaints were received in 2005) and 2,729 complaints could be concluded in the same year. More than 31% of these complaints concerned the judiciary, 13% concerned property rights and a further 13% police issues. The Ombudsman exercises **continual monitoring** over prisons, refugee camps, children's homes and psychiatric hospitals. The institution continually tries to increase public awareness about its existence by organising public discussions and maintaining a detailed and up-to-date website. On the occasion of the opening of regional offices advertisements were also aired on TV (*v* Annual Report 2005, 5).

VII. Reform

In the opinion of the Ombudsman the long duration of court and administrative proceedings constitutes a major problem. However, the situation is expected to improve since administrative courts are to be established in the context of an ongoing court-reform project (Q II). Furthermore, the Om-

budsman states that many officials do not know about the Ombudsman's work and the role in society so that there is also a need for better education of officials in this field. The introduction of fines for officials who do not implement recommendations is proposed by the Ombudsman (*v* Annual Report 2005, 5; Q II).

NGOs recommend extensive use of the provision in Article 25 (2) OA regarding publicising cases in the mass media and of Article 30 (1) OA pursuant to which the Ombudsman may launch initiatives for changes and amendments to laws and other secondary legislation with the authorised drafters.[237]

VIII. Information

Constitution:
www.sobranie.mk/en (31.10.2007)

Ombudsman Act and Rulebook – Ombudsman:
www.ombudsman.mk (31.10.2007)

Annual Report:
Annual Report 2005,
http://www.ombudsman.mk/comp_includes/webdata/documents/Izveztaj-2005-WEB-ang.pdf (31.10.2007)

Council of Europe:
European Commission for Democracy Through Law (Venice Commission), Opinion on the Draft Law on the Public Attorney (Ombudsman) of the Former Yugoslav Republic of Macedonia, Adopted by the Venice Commission at its 54th Plenary Session (Venice, 14–15 March 2003) on the basis of comments by Ms. Serra Lopes (Substitute-member, Portugal), CDL-AD (2003) 7 Opinion N° 236/2003, http://www.venice.coe.int/docs/2003/CDL-AD(2003)007-e.asp (31.10.2007)

[237] *Jordanoski*, Human Rights Support Project – Report for the Period 2004–2005, http://www.osce.org/documents/mms/2005/12/17563_en.pdf.

Malta

Brigitte Kofler

A. Constitutional Background

After gaining independence from the United Kingdom in 1964, Malta's Constitution entered into force declaring Malta a Democratic Republic (Art 1 (1)). Since 1993, Malta has been subdivided into 68 local councils or localities which form the most basic form of local government.

National Parliament, the *House of Representatives*, consists of 56 deputies (Art 52). The Head of State is the President of Malta who is appointed by resolution of the House of Representatives for a term of five years (Art 48). The President appoints a member of the House of Representatives as Prime Minister (Art 80 (1)).

The highest court of Malta is the Constitutional Court which, *inter alia*, hears and decides appeals from decisions of the Civil Court concerning the violation of constitutional rights (*v* Art 46) as well as appeals from decisions of any court as to the interpretation of the Constitution or on questions as to the validity of laws (Art 95 (2)). The courts of first instance are *Courts of Magistrates* and *Small Claims Tribunal*s, minor breaches of law are tried with Commissioners of Justice. In addition, there is a *Civil Court* and a *Criminal Court*. The *Court of Appeal* has appellate jurisdiction over the judgments of the said courts of first instance in civil law matters whereas the *Court of Criminal Appeal* is competent to decide about appeals in criminal matters. According to a *White Paper* of the Ministry of Justice, there are plans for the introduction of administrative courts which so far do not exist.

Chapter 4 contains a list of fundamental rights. Malta is a member of the Council of Europe since 29 April 1965 and ratified the European Convention on Human Rights in 1987.

B. Overview of Existing Ombudsman-Institutions

In Malta, there is one **national parliamentary ombudsman-institution** called the Ombudsman. No similar institutions exist on regional or local level.

C. Uffiċċju ta'l – Ombudsman – Office of the Ombudsman

I. History and Legal Basis

The Ombudsman was legally established by the *Ombudsman Act* of 18 July 1995 (Act XXI/1995 as of Act XVI/1997; hereinafter OA). By constitutional amendment in July 2007 a provision concerning the Ombudsman was also

included in the Constitution (Art 64a Const as amended Act No. XIV of 2007).

When setting up the Ombudsman-Institution, the Maltese Government received advice from Sir John Robertson, the former Chief Ombudsman of New Zealand and President of the IOI. Hence, the Maltese Ombudsman office is largely similar to the ombudsman-institution in New Zealand (Q II). Its **task** is to promote transparency in administrative activities and improve the service of the authorities (Q II).

II. Organisation

The Maltese Ombudsman is a **monocratic body**. The President may at any time during the illness or absence of the Ombudsman or when the Ombudsman considers it necessary not to conduct an investigation, appoint a temporary Ombudsman (§ 8 (1) OA). **No permanent deputies** are appointed. Currently, 15 people are on staff in the Office of the Ombudsman (Q II). Due to the small size of the state of Malta, **no regional offices** have been established.

III. Legal Status

The Ombudsman is appointed by the President in accordance with a resolution of the House of Representatives passed by a two-thirds majority of all the members of the House (§ 3 (1) OA). Although called "Officer of Parliament" (§ 3 (1) OA), the Ombudsman may not participate in parliamentary debates (Q II).

There are **no legal qualification requirements** for appointment. However, members of the House of Representatives, members of a local council as well as public officers may not be appointed. The office of Ombudsman is further **incompatible** with the exercise of any professional, banking, commercial or trade union activity, or other activity for profit or reward. Further, an incumbent may not hold any position which is incompatible with the correct performance of the official duties or with the impartiality and independence of the office (§ 4 OA).

In exercising the functions, the Ombudsman is not subject to the direction or control of any other person or authority (§ 13 (8) OA). In addition, no proceedings, civil or criminal, may be instituted against an incumbent for any action done in the course of the exercise of the duties unless done in bad faith (§ 25 (1) OA).

The **term of office** is five years and an incumbent is eligible for reappointment for one consecutive term (§ 5 (1) OA). The **salary** is equivalent to a salary of a judge of the superior courts (§ 10 (5) OA).

An Ombudsman may at any time **resign** in writing addressed to the President (§ 5 (3) OA) and may be **removed** or suspended by the President upon an address from the House of Representatives supported by the votes of not less than two-thirds of all members of the House due to a demonstrated inability to perform the functions of the office (§ 6 (1) OA).

IV. Scope of Control

The Ombudsman's control extends to the Government, any government authority, officer or member of such an authority as well as local councils and their committees, mayors, councillors and their staff. Furthermore, any body or partnership in which the said authorities have a controlling interest or over which they have effective control are subject to the Ombudsman's control (§ 12 (1) OA).

Part A of the First Schedule to the Ombudsman Act states numerous **exceptions** most importantly the Head of State, the judiciary, the military and the secret service. The Ombudsman may also not conduct investigations in respect of such action or matter as is described in the Second Schedule to the Ombudsman Act including police investigations in criminal matters as well as civil and criminal proceedings before an ordinary court (§ 13 (7) OA).

The **control criteria** are legality and good administration. The Ombudsman is to examine whether a course of action was contrary to law or whether the action or the law on which the action was based was unreasonable, unjust, oppressive, or improperly discriminatory (see in detail § 22 OA).

The Office of Ombudsman may initiate an investigation or respond to a written complaint of an aggrieved person (§ 13 (2) OA). Furthermore, any Committee of the House of Representatives may refer any petition that is before that Committee or any matter to which the petition relates, and the President may also refer matters for consideration (§ 13 (4) and (6) OA).

The Ombudsman may decline to start an investigation when adequate means of redress are or have been available to the complainant (§ 13 (3) OA). Furthermore, it is in the discretion of the Office to decide not to investigate a complaint which is considered to be trivial, frivolous or vexatious or not made in good faith, or if the complainant has no sufficient personal interest in the subject-matter (§ 17 (2) OA).

Complaints to the Ombudsman may be made in writing or orally (§ 16 (1) OA). A complaint is to be filed not later than six months from the day on which the complainant first had knowledge of the matters complained about unless the Ombudsman believes that there are special circumstances which make it proper to accept the complaint (§ 14 (2) OA). Correspondence between a person in prisons, custody or psychiatric hospitals and the Ombudsman is not to be impeded (§ 16 (2) OA).

The Ombudsman may not proceed to investigate any complaint on the subject matter of which proceedings are pending in a court or other tribunal and is to suspend the investigation if any interested person files a demand before any court or other tribunal on the subject matter of the investigation (§ 13 (5) OA).

Filing a complaint is **free of charge**; no taxes are incurred.

In any case where an Ombudsman decides not to investigate or make further investigation of a complaint, the complainant is to be informed of that decision with reasons (§ 17 (3) OA). The Ombudsman is to inform the respective body of the intention to conduct an investigation (§ 18 (1) OA). If at any time during the course of an investigation it appears to the Ombudsman

that there may be sufficient grounds for issuing a report or recommendation that may adversely affect the body or person controlled, they are to be given an opportunity to be heard (§ 18 (3) OA).

The Ombudsman is to inform the complainant of the result of the investigation (§ 23 (2) OA). Information obtained by the Ombudsman may not be disclosed except for the purposes of the investigation (§ 21 (1) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

In the course of an investigation the Ombudsman may require any person to furnish information and to produce documents or papers or objects which in the Ombudsman's opinion relate to any matter investigated (§ 19 (1) OA). The Prime Minister may exempt certain documents and information concerning "secret" issues from disclosure (§ 20 (1) OA). The Ombudsman may summon witnesses (§ 19 (2) OA) who may be liable to a fine (*multa*) not exceeding five hundred liri, imprisonment not exceeding three months, or both, if they do not appear. However, in giving evidence, the same privileges to which a witness giving evidence before a court of law apply (§ 19 (3) OA).

Further, the Ombudsman may access and inspect public premises at any time without prior notice (§ 26 OA).

After conducting an investigation, the Ombudsman is to **give an opinion** and state the reasons to the appropriate body and may make such **recommendations** as deemed necessary (§ 22 (3) OA). The Ombudsman may request the respective body to notify the Office within a specified period of the steps that it proposes to take to give effect to the recommendations. If no adequate or appropriate action is taken within reasonable period, the Ombudsman may send a copy of the report and recommendations to the Prime Minister and may make a report to the House of Representatives on the matter (§ 22 (4) OA).

If, during or after any investigation, the Ombudsman is of the opinion that there is substantial evidence of any significant breach of duty or misconduct, the matter is to be referred to the appropriate authority including the police (§ 18 (5) OA).

V.2. Powers in Relation to the Courts

The Ombudsman has no powers with respect to the courts.

V.3. Powers in Relation to Legislative Organs

Every year or as frequently as deemed necessary, the Ombudsman is to **report** to the House of Representatives on the performance of the Office (§ 29 (1) OA). From time to time reports relating generally to the exercise of the functions or relating to any particular case may be published. Such reports may be published whether or not the matters dealt with in the report have been the subject of a report to the House of Representatives (§ 29 (2) OA).

In these reports the Ombudsman may include recommendations concerning necessary changes or amendments of law (Q II).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is considered to be an important task the Ombudsman, but the main thrust of the Office is centred particularly around the right to good and efficient public administration (Q II). To prevent the violation of human rights, the Ombudsman campaigns in favour of fair and efficient service provision in the context of the right of citizens to good administrative behaviour by public bodies (Q II). In general, persons who feel that their human rights have been violated can resort to courts of law (Q II). The Ombudsman of Malta is not accredited as a National Human Rights Institution according to the UN Paris Principles.

VI. Practice

In 2005 the Ombudsman received 583 complaints and moreover dealt with 333 enquiries and requests for information. The number of written complaints received and processed by the institution in 2005 represented the lowest annual complaint intake ever recorded since the institution was established (Annual Report 2005, 33). The **focus** of the caseload lay with the activity of local councils (10.8%), inland revenue collection (8.8%) and the health sector (6%; Annual Report 2005, 37). There is **no continual monitoring *ex officio*** of certain institutions. In order to promote good governance and the provision of a better service to citizens the Ombudsman in 2004 issued two flyers captioned respectively *The Ombudsman's guide to standards of best practice for good public administration* and *Redress: the introduction of a new culture in the Maltese Public Service*. The Ombudsman holds regular **consultation days** on the island of Gozo.

VII. Reform

In most cases, recommendations of the Ombudsman are generally accepted without any hesitation by the public body concerned (Q II). However, in the light of the last ten years' experience, the Ombudsman approves of a review of legislation. In particular, it should be ensured that remedies recommended by the Ombudsman especially such including compensatory payment on an *ex gratia* basis cannot be put aside lightly by authorities. A uniform scale of redress provisions should be formulated (Q II).[238]

VIII. Information

Constitution:
http://www.parliament.gov.mt/ (31.10.2007)

---

[238] *Jordanoski*, Human Rights Support Project – Report for the Period 2004–2005, http://www.osce.org/documents/mms/2005/12/17563_en.pdf.

Ombudsman-Act:
Ombudsman Act 1995, www.ombudsman.org.mt (31.10.2007)

Annual Report:
Annual Report 2005, http://www.ombudsman.org.mt/pdf/annual2005.pdf (31.10.2007)

Republic of Moldova

Joachim Stern

A. Constitutional Background

As of 1991 Moldova has been an independent Republic. The Constitution, which was passed in 1994, was profoundly amended in 2001 which effectively strengthened the role of Parliament and made the country a parliamentary democracy (Constitution of 28/7/1994 as amended 21/7/2001, hereafter Const). The Head of State is the President who is elected by Parliament with a vote requiring a three fifths majority via a secret ballot. The term in office is four years and is only renewable once. The President has the right to legislative initiative on questions concerning national interest and can demand a referendum (Art 73, 88 Const). The unicameral Parliament (*Parlamentul*) consists of 101 members who are elected every four years.

The Higher Magistrates Council, consisting of eleven judges, exists as the supreme organ for the nomination, transfers, promotion as well as the disciplinary actions against judges (Art 123 Const).

In 1995 a Constitutional Court (*Curtea Constitutional*) was created which exercises the exclusive right to determine the constitutionality of laws and interpret the Constitution. Out of the six judges, the Parliament, the Government and the Higher Magistrates Council each appoint two judges independently. Individuals cannot file complaints before the Constitutional Court. However, any administrative decisions can be appealed to Administrative Courts.[239] In such cases the Supreme Court serves as the court of last instance with a chamber for administrative disputes.

The Constitution contains an extensive charter of "Fundamental Rights, Freedoms and Duties". However, due to the current economic situation in the country, the social rights provided have only the character of basic policy clauses. Constitutional provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights and with other conventions and treaties endorsed by the Republic of Moldova. Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and its own national laws, priority shall be given to international regulations (Art 4 Const).

State authorities only exercise a limited amount of control over the territory of the self-proclaimed and internationally unrecognised Republic of Transnistria.

Moldova has been a member of the Council of Europe since 1995 and ratified the ECHR in 1997.

---

[239] Law on the Administrative Courts 793-XIV-10/02/2000.

B. Overview of Existing Ombudsman-Institutions

The Parliamentary Advocates – Centre for Human Rights in Moldova is a national ombudsman-institution with a general mandate. There are no comparable institutions on either a regional or communal level.

C. Avocatii parlamentari – Centrul pentru drepturile omului din Moldova Parliamentary Advocates – Centre for Human Rights in Moldova

I. History and Legal Basis

Following from a study conducted by the UNDP on the necessity for a national institution for the protection of human rights, the UN established a commission in cooperation with the Moldavian Government. This joint effort culminated in a draft act which was adopted as a law of Parliament in October 1997 (Law No. 1349-XII on Parliamentary Advocates, promulgated by Presidential Decree No. 381-II-28/11/1997). In February 1998, Parliament established the Ombudsman's office under the name "Centre for Human Rights in Moldova"[240] – this term is also used for designating the Parliamentary Advocates and their staff as a whole (cf infra II.). The institution was permitted to start its work that same year. The preamble of the Law refers to the Universal Declaration on Human Rights and other international legal instruments on human rights. Moreover, it references the UN Charter with its obligation that states promote respect for and compliance with human rights and freedoms. The legal basis for this office was amended three times so far culminating in small changes to the institution (last amendment Law 321-XVI-3/11/2006, hereafter OA). The institution is currently not embodied in the Constitution.

II. Organisation

The Parliamentary Advocates are organised as a **collegial body**. The three incumbents have equal rights and responsibilities (Art 4 OA). Parliament appoints – at the proposal of the Chairman of Parliament – one incumbent as the **Director** of the Centre for Human Rights. At the proposal of the two other Parliamentary Advocates the Director hires and dismisses assistants and additional staff members, supervises their work, organises the preparation of the annual reports and represents the Institution within the country and abroad (Art 36 (2) OA). In the case of absence, the Director's powers are exercised by the oldest of the Advocates. Along with their personnel the Parliamentary Advocates form the independent institution called the "Centre for Human Rights in Moldova" (Art 11 (3) OA).

The institution has so-called **branch offices** in the cities of Balti, Cahul and Comrat where complaints can be filed. Not less than three times per

[240] Parliamentary Decision No.1484 XIII.

month the Parliamentary Advocates are required to personally receive visitors at the institution and also in other cities of the republic according to an established schedule (Art 38 (2) OA). The office currently employs 29 people.

The institution has its own position in the state budget. However, the funds are proposed to Parliament by the Ministry of Finances (Art 27 OA, Q II).

III. Legal Status

The three Advocates are appointed by Parliament which requires an absolute majority of votes. The **term in office** is five years and only renewable once (Art 5 ff OA). The right to **propose a candidate** rests with the President of the Republic, the Government or any group of at least twenty deputies. The Parliamentary Committee on Human Rights and National Minorities subsequently provides Parliament with a reference for each of the candidates (Art 5 (2) OA). **Requirements** for the office are as follows: a minimum age of 35, Moldavian citizenship, higher legal education and knowledge in the area of protection of human rights and freedoms as well as "prestige in the society" (Art 3 OA).

The exercise of the function is **incompatible** with elected positions or any position in a public administrative body. Moreover, the Advocates may not act in any other paid position, except for teaching positions and scientific work, and must suspend any membership in a party or another "social-political organisation". The respective legal regulations on organisations and parties also prohibit the Parliamentary Advocates from taking part in activities of organisations.[241] Any incompatible activities have to be ceased within ten days of taking office (Art 8 OA).

The Parliamentary Advocates may be **removed** from their office by a vote of non-confidence by two thirds of the Parliamentarians. A proposal regarding such a vote can be moved for by the President of the Republic or a group of not less than twenty members of Parliament. The Parliamentary Committee on Human Rights and National Minorities has to offer a proposal on the issue (Art 9 (1), (2) OA). Reasons for such a non-confidence vote will mostly lie within a violation of the Advocate's duties for behaviour. He has to be correct and attentive in relationships with complainants, shall not disclose classified information and data protected by law such as confidential information and personal data of the complainant or partake in any action incompatible with the position (Art 26 OA). Moreover, the office shall **end** when the Advocate reaches the age of retirement and in the case of sickness for more than four consecutive months that interferes with the performance of his duties. Lastly the same result occurs in the case of a criminal conviction entering into force (*court order regarding him/her being substantiated*). Parliament decides with a simple majority vote upon the incumbent's removal in these cases (Art 9 (4) OA).

---

[241] Art 10/8 Law on political parties and other socio- political organisations No. 718-17/9/1991 as amended 18-XIV-14/05/1998.

When performing their duties the Parliamentary Advocates are independent (Art 11 (1) OA). They enjoy immunity (*inviolability*) in criminal and administrative matters and cannot be confined, arrested, or searched without the prior consent of Parliament, except in the case of arrest at a crime scene. Also, their residence and offices, transportation and communication means, correspondence, documents and personal property are inviolable (Art 12 OA). Lastly, the Advocates cannot be summoned in court.[242]

The Advocates are entitled to the same **income** as judges of the Supreme Court (Art 37 (2) OA). Thus, their salary amounts to 4,800 Lei, which equals about 280 EUR. A raise by 1,600 Lei has been agreed upon by Parliament but suspended due to budgetary problems. For comparative reasons: the new rule would entitle members of Parliament to 8,800 Lei per month. After ceding the office the Advocates have the right to return to their former places of employment (Art 9 (5) OA).

IV. Scope of Control

The **mandate of the Parliamentary Advocates** includes guaranteeing the observance of the citizens' constitutional rights and freedoms by the central and local public administration bodies, institutions, organisations and enterprises irrespective of the type of ownership, public associations, as well as officials of all levels (Art 1, Art 15 OA).

Subject to control are all of these institutions listed above. However, the law explicitly excludes laws and decisions approved by Parliament, decrees of the President of the Republic of Moldova, decisions and orders of the Government, complaints to be considered by criminal or civil courts, administrative and labour courts from the Ombudsmen's control. However, the Advocates have some rights to appeal in such cases (infra V.1., V.3.).

The **criteria for exercising a control** include the Constitution, laws of the Republic as well as the Universal Declaration on Human Rights and other international treaties and agreements, to which the Republic of Moldova is a party. Like all institutions the Advocates have to give priority to international law unless national provisions provide for better protection (Art 10 OA; see supra A.) The Advocates shall also base their activities on principles of legality and transparency, social justice, democracy, humanism and access to law (Art 11 (2) OA). This amounts to criteria of control that include the entire body of law as well as principles of good administration and the principle of equity.

The **right to submit a complaint** lies with citizens of Moldova but also with foreign citizens and stateless persons permanently or temporary residing in the territory of the Republic whose rights and lawful interests have been infringed in the Republic of Moldova (Art 13 (1) OA). Complaints by prison inmates have to be forwarded to the institution without prior inspection within 24 hours (Art 19 OA, Art 178, Art 229 Execution Code[243]; see

[242] Art 134 lit h Civil Procedural Code, Law 225-30/5/2003.
[243] Law 442- 24/1/2004.

also infra V.1.). Parliamentarians can also forward on petitions addressed to them.

Complaints must be filed in writing and must contain the complainant's full name, place of residence and must be signed. If incomplete, the complaint is regarded as anonymous and not subject to consideration (Art 18 OA). Complaints have to be filed within **one year** from the assumed infringement or since the date the infringement became known. They can be written in the state language or in the language of an official minority. According to the institution, people who are not able to do so are provided with a translator (Q III).

The Advocates can return the complaint to the complainant with due explanation of the ways and means by which their rights and freedoms are to be protected, pass on the complaint to respective institutions for examination, or simply reject the complaint, although such a response must be "accompanied by reasons" (Art 20 OA).

The Advocates can act on their **own initiative** "in case of reliable information regarding serious or widespread infringement of citizens' constitutional rights or freedoms, in case of infringement with a high social significance, or when necessary to protect the interests of persons unable to use on their own legal means for protection" (Art 21 (1) OA).

The right to complain is free of charge (Art 14 (2) OA). Complainants have to be informed about the result of the proceedings and of the measures taken (Art 28 (2), (3) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Parliamentary Advocates have the right to freely visit all bodies and institutions subject to their control, including military units and penitentiaries (Art 24 (b) OA). However, detained or arrested persons can only be interviewed in presence of other authorities (Art 24 (f) OA). The Advocates also have the right to obtain any data, documents or any other material necessary for the examination of the complaint including explanations from officials. All authorities have to support them in order to elucidate the complaint which also means that the Advocates can delegate the performing of specialised investigations and of preparing final reports as they deem necessary (Art 24 OA). The Parliamentary Advocates have the "priority right" to be received not only by managers and officers of institutions under their jurisdiction but also by institutions and organisations irrespective of their type of ownership as well as by non-governmental organisations and they have the right to participate in their collegial meetings. Any information requested by the Advocates has to be produced within 10 days (Art 25 OA).

At any stage of the proceedings the Advocates can work towards reconciliation of parties by seeking a mutually acceptable solution. By mutual consent of all parties this process may result in the signing of a respective agreement (Art 23 OA). Otherwise the investigation ends with a conclusion as to

whether a violation of a right has taken place. The statement can include recommendations regarding immediate actions to be undertaken for the effective redress of the infringed rights and freedoms. The respective body or person in charge has the responsibility to examine the report and notify the Parliamentary Advocate in writing about the actions undertaken in response to the report within one month (Art 27 OA).

In cases of "neglect of duties, unethical conduct in performing the duties, procrastination and bureaucracy", the Advocates have the right to notify the respective officials or civil servants at all levels. The Ombudsmen may also issue general comments regarding the observance of constitutional rights and freedoms and the general improvement of administrative activity (Art 28 (1)(c), 29 (b) OA).

Acts which violate rights can be appealed to the administrative courts by the Advocates in the name of the complainants.[244] Decisions and ordinances of the Government, as well as decrees of the President, can be appealed to the Constitutional Court by claiming a violation of the Constitution, generally accepted principles or international laws in the area of human rights (Art 31 OA, see infra V.3.).

If an official's action resulted in "significant infringement of human rights and freedoms" the Advocates may apply to the respective bodies to initiate a **disciplinary or administrative action** or an action in a criminal court (Art 28 (1)(b) OA). Interference in the work of the Parliamentary Advocates with a view to influencing their decisions, intentionally ignoring the requirements and recommendations of the Parliamentary Advocates, as well as attempting to hinder their activities in any manner is considered an administrative offence. The Advocates can themselves initiate respective proceedings for sanctioning such behaviour (Art 23 OA, Art 174 (19) Code on Administrative Violations).

V.2. Powers in Relation to the Courts

The Parliamentary Advocates shall not consider complaints that could be reviewed by criminal, civil, administrative or labour courts (Art 16 OA). They can, however, apply to a court by way of a statement defending the interests of the complainant whose constitutional rights and freedoms have been infringed (Art 22 (2), Art 28 (1)(a) OA). This does not amount to a power to control a court but rather is a means to guarantee fair proceedings. Like other authorities, courts are subject to a general duty to assist the Advocates in verifying a case (supra V.1.). In the case of matters concerning human rights violations within courts, including cases of lengthy proceedings, the Ombudsmen can only turn to the Superior Council of Magistrates as the responsible disciplinary authority (Q III).

---

[244] Art 5 Law on Administrative Courts, 793 of 10/2/2000.

V.3. Powers in Relation to Legislative Organs

If the Advocates conclude that a law constitutes a breach of the Constitution or of generally accepted principles and international laws in the area of human rights, they can demand their annulment by the Constitutional Court. Otherwise, they can turn to Parliament with proposals for improvements of the law concerning the protection of human rights and fundamental freedoms (Art 30a OA). If the facts of the case establish gross or widespread human rights violations, the Advocate can present special reports in Parliament and recommend to the latter that it create investigatory committees. At any time the Ombudsman enjoys the right to take part in sessions of Parliament with the right to speak. Annual reports have to be presented before March 15th of each year and shall be subject to debate in Parliament. They have to be published in the Official Journal (*Monitorul Official*; Art 34 (1) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Parliamentary Advocates shall organise public education initiatives and provide information to the public in the field of protection of human rights as well as constitutional rights and freedoms. In view of this purpose information brochures are published and the office cooperates with NGOs and other human rights institutions as well as with the media (Art 33 OA). Since 2006, the Advocates have the explicit obligation of "guaranteeing women's and men's equal rights" as "integrative part of the constitutional rights". However, no additional powers are connected to this function. The Law Regarding Access to Information explicitly provides that in cases whereby a violation of the right to data protection by private entities or public authorities is present persons can either appeal to an Administrative Court or submit a complaint to the Parliamentary Advocates.[245]

In 2006, the Republic of Moldova signed the OPCAT and currently discussions are underway regarding the potential designation of the Ombudsmen as NPM. The institution is not accredited as NHRI in accordance with the Paris Principles.

VI. Practice

In 2005, the Advocates received 3,563 complaints and requests. The largest percentage of cases concerned personal security and dignity (27.76%) followed by cases involving free access to justice (16.28%). The most prevalent criticisms include the high cost of court fees and social obstacles concerning the access to legal consultation and representation. Complaints regarding social rights also constitute a high percentage of cases (16.05%). In eight cases the Parliamentary Advocates proceeded with recommendations concerning the amendments of laws in Parliament and in three cases such action was directed to the Government. The institution launched proceedings twice at the

[245] Art 21 Law regarding access to information No. 982-11/5/2000.

Constitutional Court and twice in regular courts. Prisons and other institutions where people are restricted in their personal freedoms are inspected *ex officio* in irregular intervals.

The institution provides brochures and other means of information on human rights in cooperation with specialist organisations. Beginning in 2006, the institution began publishing a quarterly newsletter in English financed by the OSCE which informs readers about recent cases and other activities (Parliamentary Advocate – Newsletter of the Centre for Human Rights of Moldova). A free hotline offering counselling to victims of human rights abuses – reachable between 8:00 and 21:00 everyday – has been established in cooperation with the UNDP.

VII. Reform

The institution considers its legal basis sufficient but regrets the lack in financial funding and the inability to provide consultations in remote areas, especially in Transnistria. Moreover, there are practical problems that include inadequate responses by administrative organs but also by members of Parliament.

A current legislative plan is being discussed to give additional responsibilities to the Advocates with regards to data protection. This idea is looked upon with some scepticism by the institution since it would transfer the responsibilities of an administrative authority to the institution which is considered incompatible with its status.

The incumbents propose an amendment to Art 24 OA which provides that persons detained or arrested can only be interviewed in presence of other organs (Q III). With regard to the potential designation as NPM in the OPCAT framework adoptions within the law are to be expected and also considered as necessary by the Government.

VIII. Information

Constitution:
http://xiv.parlament.md/en/legalfoundation/constitution/

Law (initial version only):
http://www.ioi-europe.org/legalbases/moldova.pdf

Annual Report:
http://www.ombudsman.md/FL/103-2005_eng.doc

Internet:
http://www.ombudsman.md/en.html

Montenegro

Brigitte Kofler

A. Constitutional Background

Based on the results of a referendum, Montenegro declared independence on 3 June 2006 and, thus, ended the union of Serbia and Montenegro which had existed since 1992. In the referendum on 21 May 2006, 55% of the electorate voted in favour of independence from Serbia. By now Montenegro has been internationally recognised as a sovereign state including a formal recognition by Serbia on 15 June 2006.

On 22 October 2007 Montenegro's new Constitution entered into force declaring Montenegro a democratic state with a republican form of government (Art 1) and local self-government within the communities (Art 114).

Parliament consists of 81 members who are elected in direct and general elections for a term of four years (Art 83–84). The President of Montenegro is the Head of State and is also elected directly by the people for five years respectively (Art 96–97).

The Supreme Court of Montenegro is the court of last resort in civil and criminal matters. In addition, there is a Constitutional Court which rules on the conformity of laws with the Constitution and of regulations with the laws. Furthermore, a constitutional appeal may be lodged with the Constitutional Court if human rights and freedoms guaranteed by the Constitution have been violated and all possible remedies have been exhausted (Art 149).

Part Two of the Constitution contains a list of fundamental rights.

On 11 May 2007 Montenegro became the 47th member state of the Council of Europe.

B. Overview of Existing Ombudsman-Institutions

In Montenegro, there is one **national parliamentary ombudsman-institution**, the institution of the "Protector of Human Rights and Freedoms". Comparable regional or local institutions have to date not been established.

C. Zaštitnik ljudskih prava i sloboda u Republici Crnoj Gori – Protector of Human Rights and Freedoms

I. History and Legal Basis

The Ombudsman's Constitutional basis is Art 81 of the Constitution. Further details concerning the institution are laid down in the Law on the Protector of Human Rights and Freedoms (Act of 8 July 2003, hereinafter OA).

The OSCE played a major role in the establishment of the institution. The first Ombudsman was elected in October 2003. Then still being a regional institution, it commenced its activity on 10 December 2003 (*v* Annual Report 2004, 25).

II. Organisation

The Ombudsman of Montenegro is a **monocratic body** and has at least one **deputy**. Upon a proposal of the Ombudsman Parliament determines the exact number of deputies. One of the deputies is tasked with the protection of minority rights (Art 9 OA). The headquarters of the Ombudsman are in Podgorica. The Ombudsman may organise Ombudsman Days outside the headquarters (Art 6 OA). The **resources** are included as a separate item in the national budget based on a draft budget proposal of the Ombudsman (Art 50 OA).

III. Legal Status

The Ombudsman is **elected** by Parliament upon a proposal of the competent working body of Parliament by a majority vote (Art 8 (1) OA). The same procedure applies to the deputies (Art 10 OA).

Any citizen of the Republic of Montenegro, who holds a university degree, has extensive experience in the field of human rights and freedoms and is of high personal and professional stature may be elected as an Ombudsman (Art 12 OA).

The office is **incompatible** with any representative and other public office as well as any other professional activity except for scientific, educational or artistic activities. Furthermore, the Ombudsman and the deputy may not be members of bodies of political parties (Art 16 OA).

The **term** of office is six years and the incumbents may be re-elected for a second term (Art 11 OA).

The Ombudsman is autonomous and **independent** in the exercise of the duties (Art 2 OA) and along with the deputies enjoys the same **immunity** as accorded to the representatives. They may not be held liable for opinions expressed or for recommendation given in the exercise of their duties (Art 14 OA). The Ombudsman is entitled to the same **remuneration** as that accorded to the President of the Constitutional Court (Art 48 (1) OA).

The Ombudsman's office **terminates** in case of death, expiration of the term of office, resignation, retirement, permanent loss of the ability to hold the office, loss of citizenship and violation of the provisions concerning incompatibilities (Art 19 (1) OA). When a cause for termination occurs, the competent working body of the Assembly is to inform Parliament (Art 19 (2) OA). Parliament then is to pass a decision verifying the termination of office (Art 19 (3) OA).

Further, the Ombudsman may be dismissed from office on a conviction rendering the incumbent unsuitable for holding the office or an exercise of the duties unprofessionally and carelessly (Art 20 (1) OA). The procedure

for the dismissal of the Ombudsman is launched upon initiative of one third of the members of Parliament and the resolution of dismissal is to be passed by a majority vote of all members (Art 20 OA). The Ombudsman may give a statement on the issue (Art 20 (4) OA).

IV. Scope of Control

The Ombudsman's **mission** is to protect human rights and freedoms as guaranteed by the Constitution, laws, ratified international treaties on human rights and generally recognised rules of international law when these are violated by means of enactment, action or failure to act of state authorities, authorities of local self-government and public services and other holders of public power (Art 1 (1) OA).

Hence, the **control** extends to state and local self-government authorities, public services and other holders of public power as well as to courts to a certain extent (Art 23 OA).

The **control criteria** are the Constitution and laws. In addition, the Ombudsman shall abide by the principles of justice and equity in the work (Art 3 OA).

Any person suffering a violation of human rights and freedoms may file a complaint with the Ombudsman (Art 31 (1) OA). Furthermore, complaints may be filed through relevant associations or organisations as well as through members of Parliament (Art 31 (2) OA).

Individuals deprived of their liberty may file their complaint in a sealed envelope (Art 28 (3) OA) and their correspondence with the Ombudsman may not be subject to censorship (*v* Art 28 (4) OA). The Ombudsman may also act *ex officio* (Art 4 (2) OA).

The complaint is to contain the title of the authority whose action it refers to, a description of the violation of human rights and freedoms, facts and evidence substantiating the complaint, information on legal actions that have been undertaken, name and address of the complainant as well as the statement indicating whether or not the complainant agrees that the identity of the complainant may be disclosed in the procedure (Art 32 OA). If the complaint does not contain all the necessary information, the Ombudsman may request that the complaint be amended within a determinate period (Art 33 OA).

The Ombudsman may request that, prior to considering the complaint, other legal actions be exhausted in order to remedy the violation which the complainant refers to on finding such procedure more efficient (Art 35 OA).

In principle, the complaint is to be **filed within one year** from the date the alleged violation was committed or became known but, in important cases, it may be decided to investigate the complaint beyond this limitation (Art 36 OA). In certain cases such as an anonymous complaint or there is an obvious abuse of the right to file the complaint, the Ombudsman may decline to investigate the complaint (Art 37 OA). In any case, the complainant

is to be notified of the reasons for not taking action upon the complaint (Art 38 OA).

The proceedings before the Ombudsman are **free of charge** (Art 4 (3) OA). The Ombudsman and the deputies shall protect the confidentiality of all information or personal data they have gained knowledge of in the exercise of their duties during and also after the expiration of the terms of office or dismissal (Art 15 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman may, without prior notification, inspect prisons and other premises in which individuals are deprived of their liberty and is entitled to communicate with those individuals without being monitored (Art 28 (1) and (2) OA) and has the right to meet high state officials without any delay upon request (Art 29 OA).

All authorities are obliged to provide the Ombudsman with adequate **assistance** upon request (Art 41 OA). They are to provide access to all information and documents regardless of the level of secrecy as well as with free access to all premises (*v* Art 40 (1) and (3) OA). Should the authorities fail to proceed upon the request of the Ombudsman within the determined period, they are to inform the Ombudsman of the reasons why they have not proceeded (Art 40 (2) OA). Failure to act upon the request of the Ombudsman is considered an obstruction of those activities, of which the Ombudsman may inform the immediate superior authority, Parliament or the public (Art 40 (4) OA). For the purpose of investigation, the Ombudsman may summon any person possessing appropriate knowledge or information about allegations of the complaint to appear as an expert or witness (Art 43 OA).

After considering the complaint, the Ombudsman is to render a **final opinion** including a judgment on whether, how and to what extent a violation of human rights and freedoms occurred, **recommendations** as to what needs to be done in order to remedy the said violation as well as the deadline for authorities to take action (Art 44 (1) and (2) OA). The respondent authorities are obliged to submit to the Ombudsman, within the deadline, a report stating the action taken in order to enforce the recommendations contained in the final opinion (Art 44 (3) and (4) OA).

The Ombudsman may submit complaints to the competent authorities for launching **disciplinary proceedings** or dismissal procedures against persons whose action provoked the violation of human rights and freedoms (Art 45 OA).

V.2. Powers in Relation to the Courts

The Ombudsman may act upon complaints referring to pending judicial proceedings only in case of **delay**, an **obvious abuse of procedural** powers occurred or court decisions have **not been executed** (Art 24 OA). In these

cases there are the same powers as in relation to administrative organs especially in respect of the issuance of recommendations.

V.3. Powers in Relation to Legislative Organs

The Ombudsman may launch an **initiative for amending certain legislation** especially for the purpose of harmonisation with internationally recognised standards in the field of human rights and freedoms (Art 25 (1) OA) and may give opinions on draft laws, other regulations or general enactments (Art 25 (2) OA).

Furthermore, the initiation of **proceedings before the Constitutional Court** may be proposed for the purpose of assessing the constitutionality and legality of legislation or general enactments relating to human rights and freedoms (Art 26 OA).

An **annual report is to be submitted** to the Parliament (Art 46 (1) OA). Upon request of Parliament, the Government is obligated to give its opinion on the Ombudsman's annual report (Art 46 (2) OA).

The report is available to the public (Art 46 (4) and (5) OA). The Ombudsman may submit a **special report** on assessment that exceptionally important reasons so require (Art 47 OA).

V.4. Special Functions and Powers in the Field of Human Rights

In addition to the power to investigate individual complaints, the Ombudsman may also deal with general issues which are important for the protection and promotion of human rights and freedoms. Further, the Ombudsman is to co-operate with appropriate organisations and institutions dealing with human rights and freedoms (Art 23 (2) OA). Furthermore, the Ombudsman may provide an opinion on the protection and promotion of human rights and freedoms upon the request of the authorities deciding on such rights notwithstanding the nature or degree of the procedure that is on going before these authorities (Art 27 OA). The Ombudsman is not accredited as a National Human Rights Institution according to the UN Paris Principles.

VI. Practice

During the first reporting period of 12 December 2003 to 31 December 2004 the Ombudsman dealt with 582 cases, four cases of which were *ex officio*. The vast majority of complaints, 537 cases, were filed by individuals. A comparably large number of complaints related to the activity of the courts (161). In all, 46% of the complaints concerned procedural issues especially inaction of administrative organs or courts. The Ombudsman assesses a general mistrust of the population towards the judiciary (Annual Report, 41).

VII. Reform

In his First Annual Report of 2004 the Ombudsman of Montenegro emphasised two important reform plans, that is, first, to be involved in all projects

regarding the reform of the legal system and to have more authority in relation to administrative organs, for example, they should proceed upon recommendations of the Ombudsman and respond within limitation period.

Second, the Ombudsman wants to improve the public relations work of the Office to inform the citizens about the purpose of the institution and its competences (Annual Report 2004, 55).

VIII. Information

Constitution:
www.coe.int

Ombusman-Act:
Act on the Protector of Human Rights and Freedoms,
http://www.ombudsman.cg.yu/eng/propisi.htm (31.10.2007)

Annual Report:
Annual Report 2004,
http://www.ombudsman.cg.yu/docs/izvjestaji/Annual%20Report.pdf
(31.10.2007)

Netherlands

Joachim Stern

A. Constitutional Background

The *Grondwet,* the Constitution of the Netherlands has been in force since 1814. It was extensively amended and re-promulgated in 1983. The Netherlands is a constitutional monarchy with a parliamentary system of Government. The bicameral Parliament (*Staten-Generaal*) has a legislative period of four years with the first chamber consisting of 75 senators who are elected by the provincial Parliaments (*Provinciale Staten*). There are 150 members in the second chamber, the House of Representatives, who are elected in a general ballot according to the principle of proportionality without any requirements for parties to reach a minimum percentage of votes (Art 51 Const). The Government consists of the Queen and the ministers (Art 42 Const). The Council of State (*Raad van State*) is the Government's highest consultative organ.

The High Council of the Netherlands *(Hoge Raad der Nederlanden)* is the Netherlands highest judicial authority in civil and criminal matters. In 1978, the Supreme Administrative Court was established for administrative disputes and regional administrative Courts followed in 1994. With only a few exceptions, individual acts of administrative organs can be appealed to these Courts. There is no court exercising constitutional jurisdiction. However, such functions are performed by the Council of State on a very limited scale.

The first part of the Constitution contains an extensive charter of fundamental rights which set out the classical liberal rights and freedoms. The Constitution also contains some social rights, however, these are not enforceable.

The Netherlands is a founding member of the Council of Europe. The ECHR was ratified in 1954 and like other ratified international treaties it has priority over the domestic legal order including the Constitution.

B. Overview of Existing Ombudsman-Institutions

The National Ombudsman (*Nationale Ombudsman)* is an ombudsman-institution with a **general mandate** for all central administrative authorities of the state. Originally, the institution was responsible for supervising the administration of regional or local bodies only if these bodies had provided for a respective jurisdiction of the National Ombudsman in their statute. In order to establish a nationwide system of ombudsman-institutions, this mechanism was inverted in 2005. Since then, the Ombudsman has been responsible for all administrative bodies which are not equipped with their

own ombudsman-institution. At the same time the regulations concerning the treatment of complaints found in the National Ombudsman Act were incorporated into the General Administrative Act and have to be applied by other ombudsman-institutions as well, thus providing for a uniform and harmonised system of external complaints mechanisms. Local institutions exist in cities like Amsterdam, Rotterdam, Den Haag, Utrecht and Groningen. Since these institutions have to apply the same regulations of the General Administrative Act and may only deviate from the national institution concerning some provisions related to the appointment of the incumbents, they will not be described separately here.

C. Nationale Ombudsman – National Ombudsman

I. History and Legal Basis

The *Nationale Ombudsman* was created by **Act of Parliament** in 1981, which has been amended numerous times (*Wet Nationale Ombudsman*, Act 35 of 4/2/1981 last amended by Act 71 of 3/2/2005; hereafter OA). The Legislators based this Act on Article 108 (1) of the Constitution which allowed for the creation of independent institutions to investigate complaints dealing with acts of administrative authorities. In 1998 the institution itself was explicitly **embodied in the Constitution** (Art 78a Const as amended 1999, 133).

In 2005, the procedures to follow when investigating complaints were laid down in the General Administrative Act (Chapter 9,2 *Algemene Wet Bestuursrecht*; hereafter AWB).

II. Organisation

The National Ombudsman is a **monocratically organised institution**. The Constitution provides for the appointment of one deputy (Art 78a (2) Const) and the law gives the Ombudsman the right to apply to the House of Representatives to appoint one or more **deputies** (Sec 9 (1) OA). Their term of office is always one year longer than that of the Ombudsman (Sec 9 (2) OA). The Ombudsman shall determine the activities of his deputies, may authorise them to use his powers and may draw up guidelines for the exercise of those powers (Sec 9 (6) OA). The current Ombudsman has one deputy.

The institution currently employs 127 people. The Head of State appoints and dismisses **staff** in the office upon the Ombudsman's proposal. This right can also be entirely conferred upon the Ombudsman (Sec 11 OA).

Bodies who have no proper external complaints mechanism and thus are subject to the Ombudsman's control (infra IV.) must cover the costs incurred in handling complaints investigated by the National Ombudsman (Sec 1(c) OA).

III. Legal Status

The National Ombudsman is **appointed** by the House of Representatives with a simple majority of votes (Art 78a Const) for a **term in office** of six years. For that purpose the Vice President of the Council of State, the President of the Supreme Court and the President of the Court of Audit compose a list containing at least three candidates for the office. This proposal is not binding, especially not in case of a re-election of the previous incumbent (Sec 2 (2), (4) OA).

No **requirements** for an appointment are laid down. The conditions for a removal for office indicate though that the candidate must be younger than 65 and hold Dutch citizenship (Sec 3 OA). Legal expertise and knowledge of the administrative system are also regarded as a necessity.[246]

There is no legal provision explicitly declaring the Ombudsman free from having to take instructions. His **independence** is derived from his constitutional rank elevating him to one of the "High Councils of State" on the same level as the Chambers of Parliament, the Council of State and the Court of Audit (Art 73ff Const).

The office is **incompatible** with membership in a public body to which elections take place, a public office for which a fixed salary is received, membership in a permanent government advisory body, or with the position of an advocate, procurator litis, or notary. Furthermore the Ombudsman may not hold any position which is incompatible with the proper performance of his official duties, which threatens the principles of impartiality and independence or which weakens the public confidence therein. The Ombudsman shall publish a list of any offices he holds (Sec 5 OA).

The House of Representatives shall **remove** the incumbent from office with a simple majority vote if the Ombudsman is permanently unable to carry out the duties of the position due to illness or disability, if an activity incompatible with the position is conducted, or if Dutch nationality is lost. The same applies if the Ombudsman is convicted of a serious offence or deprived liberty by a final and conclusive court judgment or if he has been made the subject of a guardianship order. Furthermore, the Chamber shall end the Ombudsman's term if the incumbent has been declared bankrupt, has agreed to a debt rescheduling arrangement, has been granted a moratorium on the payment of his debts or has been imprisoned for non-payment of debt by a final and conclusive court judgment. A more general clause provides that the mandate may be terminated if in the opinion of the House of Representatives the Ombudsman has seriously undermined the confidence placed in him as a result of his acts or omissions (Sec 3 (2) OA). A **suspension** of a maximum of three months is possible if the incumbent is held in pre-trial investigation or if court judgments which would justify a removal are not yet binding (Sec 4 OA). Whenever the incumbent reaches the age of 65 he must also be removed by the House or Representatives. These re-

[246] http://www.nationaleombudsman.nl/english/ombudsman/the_institution/high_counsil_of_state.asp (31/10/2007).

quirements for an early termination of office are to a large extent identical to those of judges.

The national Ombudsman is **not immune** from criminal proceedings. His income is fixed in a separate law and amounts to that of a minister (Q III).

IV. Scope of Control

The Ombudsman's **mandate** is to "determine whether or not the administrative authority acted properly" (Sec 9:27 AWB).

The actions of ministers and authorities controlled by them are **subject to control** by the National Ombudsman. A general clause submits all other national administrative bodies, except for the Equal Treatment Commission (cf infra V.4.) to the Ombudsman's jurisdiction. However, these bodies can be exempt from the control by ordinance. Administrative authorities of a municipality, province, water board or bodies set up under the Joint Arrangements Act are subject to the National Ombudsman's control if they are not equipped with their own system for dealing with complaints. Public bodies exercising police duties are in any case subject to the Ombudsman's control.

Matters of general government policy and generally binding regulations may not be investigated by the Ombudsman.

The **criteria to be applied for an investigation** include the entire legal system, international standards on human rights as well as "standards of proper conduct".

Any individual has the **right to petition** the Ombudsman in writing to investigate the way in which an administrative authority has behaved towards them or another person. If the complaint is raised for another person, the Ombudsman is free to decide whether to start an investigation (Sec 9:18(1), 9:23(d) AWB). The Ombudsman may also initiate an investigation **on his own initiative,** unless he would have to refuse dealing with the matter if it was subject of a complaint. Such a **refusal** must take place whenever an administrative complaint or an application for judicial review may be lodged or is pending, unless the action consists of the failure to give a decision in good time. Actions subject to the jurisdiction of courts are generally exempt (Sec 9:22 AWB). Before filing a complaint with the Ombudsman the complainant must take the action to the appropriate administrative authority, unless this cannot reasonably be expected of him. The complaint lodged with the Ombudsman is strictly **subsidiary**.

A petition has to be filed within **one year** from the date on which the administrative authority notified the complainant of the findings of its investigation or from the date since the handling of the complaint by the administrative authority (internal complaint) ended or should have ended (Sec 9:24 AWB). The complaint must be submitted in **writing** and must contain the name and address of the petitioner, the date, a description of the action concerned and details of the person the action relates to. The grounds of the pe-

tition and details on the steps taken to resolve the complaint beforehand must also be included. The petitioner has to provide a translation if he files the complaint in a foreign language and such a translation is considered necessary by the Ombudsman in order to properly proceed with the case. However, if one of the formal requirements is not fulfilled, it is up to the Ombudsman to **decide** whether to **take up the matter** anyway. The same applies if the case is patently unfounded, lacking seriousness, if the complainant has not made use if his rights of appeal or if a *judicial tribunal* has passed a decision on the matter. The Ombudsman is also free to deal with the case if a similar petition is pending in the parliamentary committee for petitions (Sec 12 OA). In all other cases he is under a **duty to investigate** (Sec 9:18(3) AWB).

To file a complaint is **free of charge.** The Ombudsman has to inform the petitioner if he has decided not to institute an investigation and, if an investigation has been instigated, about the results thereof (Sec 9:25 AWB).

V. Powers

V.1. Powers in Relation to Administrative Organs

The administrative authority, persons employed under its responsibility, persons formerly so employed, witnesses and the petitioner shall provide the Ombudsman with the **information** necessary for his investigation. Moreover they must **appear in person** if so requested. The same obligations rest with any official body. The Ombudsman can designate which members of such a body are to discharge these obligations (9:31(1) AWB). The Ombudsman may order people whose attendance is required to **appear in person** which can be enforced by the police, although to date this right has never been invoked (Sec 15 OA). The Ombudsman can request, in writing, any **document** in possession of the administrative authority, the person to whose action the petitions relates and to other parties. If there are "weighty reasons" for doing so, the Ombudsman may permit the refusal to comply with these demands (Sec 9:31(4), (5) AWB).

The Ombudsman can entrust certain activities to **experts** and obtain the assistance of interpreters. Persons summoned as experts or interpreters shall be **obliged to appear** before the Ombudsman and to render their services impartially and to the best of their professional ability. Petitioners, witnesses, experts and interpreters required to attend by the Ombudsman shall receive payment which is at the charge of the legal entity carrying responsibility for the administrative authority to whose action the petition relates (Sec 9:32, 9:33 AWB).

The Ombudsman is entitled to **inspections on any site** other than a dwelling without the consent of the occupier insofar as reasonably necessary for the performance of his duties (Sec 9:34 AWB). Ministers may deny the Ombudsman entry to certain sites if in their opinion entry would be detrimental to the security of the state (Sec 14 OA). Administrative authorities

shall provide any assistance required for an on-site inspection and in the end an official report on the investigation must be drawn up.

Before closing the investigation, the Ombudsman shall **communicate his findings** in writing to the relevant administrative authority, the person to whom the action and the investigation relates and – if not the same person – also to the petitioner. The Ombudsman shall give the relevant parties the opportunity to comment upon the findings within a period to be specified by him (Sec 9:35 AWB). Finally, the Ombudsman shall draw up a **report** containing the findings and decision. If the Ombudsman decides that the action in question was improper, that should be specified in the final report as well as which of the standards of proper conduct was breached. The Ombudsman must then send the report both to the administrative authority concerned and to the petitioner and – if not the same person – also the person to whom the petition relates. If the report contains a **recommendation** to the administrative authority, the authority must notify the Ombudsman of the action that it intends to take for implementing the recommendation within a reasonable period of time. If the administrative authority is considering taking no action on the recommendation it must also notify the Ombudsman of this and state its reasons (Sec 9:36, Sec 9:27(3) AWB). Anyone has the right to obtain a copy of the final report. Summaries thereof are regularly published on the Ombudsman's website.

General acts of administration can only be criticised in the annual report, which also has to be presented to the ministries and to concerned regional authorities (infra V.3.).

V.2. Powers in Relation to the Courts

The Ombudsman has no right to control courts as such. Furthermore, complaints in which judicial proceedings are pending or could be started shall not be investigated. Only in cases of lengthy proceedings does the Ombudsman have the right to investigate the issue, however, there are no provisions allowing the Ombudsman to take action in relation to judges. The administration of justice is not subject to these restrictions and may be controlled in such areas as for example the enforcement of judicial decisions.

V.3. Powers in Relation to Legislative Organs

The Ombudsman must submit an **annual report** of his activities to both Houses of Parliament, the ministers, and also to other administrative authorities insofar as the Ombudsman has dealt with petitions relating to them. The Ombudsman shall publish the report and make it generally available. Parliament is obliged to debate such reports. Whenever he deems earlier communication necessary or if a concerned body so requests, the Ombudsman may publicly communicate the findings and decision immediately after closing an investigation.

Even though the Ombudsman is only permitted to investigate individual cases without being permitted to deal with questions of governmental or administrative policy, the Ombudsman still recommends the amendment of

laws, ordinances or administrative policies if this is found to be necessary after dealing with a complaint.

V.4. Special Functions and Powers in the Field of Human Rights

The National Ombudsman has no additional functions or powers with regard to human rights. The *Equal Treatment Commission* has an observatory status with the International Coordinating Committee for NHRIs according to the Paris Principles (Status B). The ratification of the OPCAT is currently under discussion. It is not clear whether the Ombudsman is supposed to be assigned with the role of an NPM. Due to strict rules of subsidiarity and the obligation to first appeal to the authority itself, complaints by people restricted in their personal freedom do not play a major role for the Ombudsman.

VI. Practice

During the course of 2005 the National Ombudsman received 11,852 complaints. With 20.8%, cases concerning social security matters lead the statistics. These complaints were in large part due to a restructuring and changing of the law concerning unemployment insurance. The area of immigration and integration matters amounted to a total 13.9% of complaints followed by the Ministry of Finances, Ministry of Justice and the police. Due to subsidiarity regulations only 27% of all cases were admissible. In 60% of these cases the Ombudsman contacted the authority concerned; in 27.5% the authority was given a "second chance". Only 13.5% lead to a report by the Ombudsman. The National Ombudsman does not conduct inspections *ex officio* of certain sensitive areas.

VII. Reform

The institution claims that questions of jurisdiction lead to complex investigations as to whether the Ombudsman is allowed to deal with this matter. The extension of the Ombudsman's right to control judges is currently subject to political debate.

VIII. Information

Constitution:
http://www.minbzk.nl/contents/pages/6156/grondwet_UK_6-02.pdf

Law:
http://www.nationaleombudsman.nl/english/ombudsman/act/nationalombudsmanact.pdf

Annual Report:
http://www.nationaleombudsman.nl/english/ombudsman/annual_report/2005/documents/annualreport2005-summary.pdf

Internet:
http://www.nationaleombudsman.nl/english/index.asp

Norway

Joachim Stern

A. Constitutional Background

The Constitution of the Kingdom of Norway has been in force since 1814 and since 1905 the country has been a constitutional monarchy (*Kongeriget Norges Grundlov* of 17/5/1814 as amended 2/2/2006, hereafter Const). There are 169 members of Parliament (*Storting*) who are elected every four years. In an internal voting, one quarter of the deputies are appointed as members of the *Lagting*, the second chamber, while the other members constitute the *Odelsting*, the first chamber (Art 49, 73 Const). When passing laws it depends upon the matter as to whether the chambers will decide consecutively or together. If the *Lagting* sends an act back to the *Odelsting* twice a subsequent majority of two-thirds in the *Storting* as a whole is required to pass the act (Art 76 Const). Parliament cannot be dissolved during the legislative period.

The Head of the State is the King and the executive power is formally vested in him (Art 3 Const). His acts must be countersigned by a minister and in reality he does not play a major political role. Formally, he also has the power to freely appoint ministers who together with him form the Council of State. However, since 1884 this right to nominate ministers is conditional upon the consent of a parliamentarian majority. At least half of the members of the Council of State have to profess the official religion of the State (Art 12 (2) Const).

Norway is a unitary state divided into 19 counties (*fylker)* and 434 communes. The latter enjoy self-administration. In every county there is a representative of the state, supervising the administration of the counties and communes.

The judiciary is divided into three levels of jurisdiction. In civil rights matters an office for arbitration has to be applied to before proceedings can start. The Supreme Court (*Høyesterett)* is the court of last instance. There is no specialised administrative or constitutional court. However, ordinary courts have jurisdiction over administrative disputes and decide upon questions of constitutionality. The Court of Impeachment, composed of members of the *Lagting* and the Supreme Court, has jurisdiction over proceedings against ministers, members of the Supreme Court and of the *Storting* (Art 87 Const).

The Norwegian Constitution provides for a short catalogue of fundamental rights and freedoms, including some social rights like the right to work in fair conditions or the right to a healthy environment (Art 95–110c Const). Norway is a founding member of the Council of Europe. The

ECHR has been ratified as an act of Parliament with some – albeit not very clear – priorities over other laws (Art 110c Const).

B. Overview of Existing Ombudsman-Institutions

Since 1962, the *Stortingets ombudsmann for forvaltningen*, the Ombudsman of the *Storting* for Administration (also named *sivilombudsmannen* – Civil Ombudsman), has been Norway's parliamentarian ombudsman-institution with a general mandate (infra C.). The term Civil Ombudsman distinguishes him from his colleague, the Military Ombudsman (*Stortingets Ombudsmann for Forsvaret)*, which has existed since 1952. The latter, who is also responsible for complaints from people in the alternative civil service, has existed since 1956 (infra D.).

C. Stortingets Ombudsmann for Forvaltingen – Sivilombudsmannen – Parliamentarian Ombudsman for Public Adminstration – Civil Ombudsman

I. History and Legal Basis

The Civil Ombudsman was established by law in 1962 and the office opened in 1963. Its legal basis has been amended nine times so far. Since the last amendment the protection of human rights has been an explicit task of the institution (§ 3 Act 8 of 22/6/1962 as amended by Act 3 of 16/1/2004, hereafter OA). As of 1995 the office has been embodied in the Constitution (Art 75 Const as amended 23/7/1995) and a general directive of the *Storting* further lays down some provisions of the Act (Directive to the *Storting's* Ombudsman for Public Administration of 19/2/1980 as amended 2/12/2003, hereafter Dir).

II. Organisation

The Ombudsman for Public Administration is a **monocratically organised** institution. If the incumbent is temporarily prevented by illness or for other reasons from discharging his duties, the *Storting* may elect a person to act in his place during the term of absence. If absent for up to three months the Ombudsman may empower the Head of Division to act in his place. If the Presidium of the *Storting* should deem the Ombudsman to be disqualified to deal with a particular matter, it shall elect a substitute Ombudsman to deal with the said case (§ 1 OA).

The institution is currently **structured** into five departments with responsibilities that correspond to an assigned field of law and one department that deals with administrative matters. Currently the institution employs 42 people (AR 2005). The Ombudsman can only employ people on a temporary basis for up to six months. The regular **staff** are to be appointed by the *Storting's* Presidium upon the recommendation of the Ombudsman, or, in pursuance of a decision of the Presidium, by an appointments board (§ 14 OA).

Their wages are equal to employees of the *Storting*. No legal provisions on the financing of the institution itself could be found.

III. Legal Status

After each general election, the *Storting* **appoints** an Ombudsman with a simple majority vote. Even though the term in office of the Ombudsman depends on Parliament, the Ombudsman's **term in office** is fixed at four years, since an early dissolution of Parliament is not possible. The candidate must not be a member of the *Storting* and must satisfy the same **qualifications** prescribed for the appointment as a Supreme Court Judge (§ 1 OA). He thus must have a minimum age of 30 years (Art 91 Const), hold Norwegian citizenship, be "blameless" and solvent, and must have graduated from law-studies with highest grades (§ 53, § 54 Law on Courts).[247] The position is **incompatible** with any public or private appointment or office without the consent of the *Storting* or of a person authorised by the *Storting* (§ 13 (2) OA). If the Ombudsman violates these rules, but also for any other reason, the *Storting* can decide by a majority of at least two thirds of the votes cast to **deprive him of office** (§ 1 (3) OA). A new Ombudsman shall then be elected for the remainder of the term. Otherwise, the **office ends** if the incumbent dies or becomes unable to discharge his duties. In this case, the law only provides that the *Storting* shall elect a new incumbent, without requiring certain majorities (§ 1 (3) OA).

The Ombudsman acts as the *Storting's* representative; subsequently, he is **independent** from the executive power. Also Parliament cannot give him any instructions other than through a general directive. The incumbent shall exercise his office autonomously and independently of the *Storting* (§ 2 OA), however, he is **not immune** from prosecution. His annual income is to be determined by the *Storting* but is in practice decided upon by the Presidium of the *Storting* (Q III). The Ombudsman's pensions shall be determined by law (§ 13 (1) OA).

IV. Scope of Control

The **mandate of the Ombudsman** is "to endeavour to ensure that injustice is not committed against the individual citizen by the public administration and to contribute towards that the public administration respect and ensure human rights" (§ 3 OA). According to the Constitution, the task is – more generally – "to supervise the public administration and all who work in its service, to assure that no injustice is done against the individual citizen" (Art 75 (1) Const).

The Ombudsman's **jurisdiction** extends to all parts of public administration including legal persons of private law if they are entrusted with public powers. However, the law as well as the *Storting's* directive define exceptions. These exceptions include matters on which the *Storting* or the

[247] Lov 1915-08-13 nr 05 om domstolene.

Odelsting alone have reached a decision, matters which have been examined by the committee of the *Storting* for the scrutiny of intelligence and security services, or matters concerning the *Storting's* Ex-Gratia Payments Committee. Moreover, decisions adopted by the King in the Council of State, activities of the Auditor General, as well as matters in which the Military and Alternative Civil Service Ombudsman is deemed competent are also exempted.

The functioning of the courts of law cannot be controlled by the Ombudsman. This also concerns any case which may be brought before a court by means of a complaint, an appeal or some other legal remedy (§ 4 (1)(c) OA, § 2 (4) Dir). Also, actions of local and regional administrative bodies can generally not be controlled, but may nevertheless be investigated into if the Ombudsman "considers that regard for the rule of law or other special reason so indicate" (§ 4 OA, § 2 Dir).

The **criteria of control** is "justice", defined through the protection against "injustice", and includes principles of good administration, the entire legal system and human rights (§ 3, § 10 (2) OA). Anyone who believes that they have been subjected to injustice by the public administration may **bring a complaint** to the Ombudsman. Persons deprived of their personal freedom are entitled to complain to the Ombudsman in a closed letter. As a principle, the complaint should be made in writing but it can also be made verbally and transcribed at the Ombudsman's office. The complaint shall indicate the complainant's name and "as far as possible state the grounds on which the complaint is based and submit evidence and other documents relating to the case" (§ 6 OA, § 3 Dir). The complaint must be submitted not later than **one year** after the administrative action or matter complained of was committed or ceased. If the complainant has brought the matter before a higher administrative agency, the time limit runs from the date on which this authority rendered its decision (§ 6 (3) OA, § 4 Dir). Administrative legal remedies must have been used, with exception of cases in which the King is the only instance for complaints. The complaint to the Ombudsman is therefore **subsidiary**. However, if special grounds for taking the matter up immediately are found, he may do so (§ 5 Dir). In any matter, the Ombudsman may on his **own initiative** undertake investigations "if he finds reason to do so" (§ 5 OA, § 8 Dir).

The Ombudsman can **freely decide** whether a complaint contains sufficient grounds for a closer investigation (§ 6 (4) OA). If the Ombudsman refuses to take up the case, the complainant must be informed immediately about the decision and other channels of redress which may exist, or the case may be referred to the correct authority (§ 7 Dir). The complainant also has to be informed about the outcome of any investigation (§ 10 (5) OA). It is considered to be a natural characteristic of the institution that submitting a complaint is free of charge. The acts and other documents of the Ombudsman are publicly accessible, however, the Ombudsman is bound to secrecy concerning personal and other confidential information (§ 9 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

If the Ombudsman takes up a case for further investigation, information about the case and subsequent statements and information from the complainant shall usually be brought to the attention of the authority concerned (§ 6 (1) Dir). The Ombudsman may demand from public officials and from all others who serve in the public administration such **information** as is required to discharge his duties. To the same extent he may demand that **minutes, records and other documents** be produced and may set time limits for complying with these requests (§ 6 (2) Dir). In all of these cases officials have the right to refuse to provide the requested information according to the rules laid down in the Civil Procedures Act concerning duty to public and professional secrecy (§ 7 OA).

The Ombudsman may also require **taking of evidence** by courts of law in non-public hearings. Furthermore, the Ombudsman has access to places of work, offices and other premises of any administrative agency and of any other enterprise which come under his jurisdiction (§ 8 OA). If the Ombudsman deems it "necessary on special grounds", he may also obtain **statements from experts** (§ 6 (4) Dir).

The Ombudsman may "let the matter rest" when an error has been rectified or an explanation has been given. If not, he may **express an opinion**, pointing out that an error has been committed or that negligence has been shown but not before the authority concerned had an opportunity to make a statement (§ 6 Dir). If he concludes that a decision rendered must be considered invalid, clearly unreasonable or that it clearly conflicts with good administrative practice, he may say so. If the Ombudsman believes that there is justifiable doubt pertaining to factors of importance in the case, he may draw the appropriate administrative agency's attention thereto. If sufficient reasons for doing so are found, the Ombudsman may **inform the prosecuting authority** or appointments authority on the action he believes should be taken against the official concerned. If the Ombudsman finds that there are matters which may entail liability to pay compensation, he may, depending on the circumstances, suggest that compensation be paid. He may also notify the superior administrative agency concerned and, if the case concerns negligence or errors of major significance or scope, he may notify the superior administrative agency in a **special report** which is addressed to the *Storting* and to the appropriate administrative agency (§ 12 (1) OA, see infra V.3.). If the Ombudsman becomes aware of shortcomings in statutory law, administrative regulations or administrative practice, he may notify the Ministry concerned to this effect (§ 11 OA). The Ombudsman can decide whether or not to **inform the public** of the handling of a case and if so in what manner.

The Ombudsman shall personally render a decision on all cases. Only in cases which must obviously be rejected or cases where there are clearly insufficient grounds for further consideration he may authorise specific members of his staff to take on this obligation (§ 9 Dir). The law does not provide for any duties to react upon the Ombudsman's measures.

V.2. Powers in Relation to the Courts

The Ombudsman has no powers in relation to the courts. Also, in cases which may be brought before a court by means of a complaint, an appeal or some other legal remedy, he has no right to act (§ 4 (1)(c) OA, § 2 (4) Dir).

V.3. Powers in Relation to Legislative Organs

The Ombudsman has to present an **annual report** to the *Storting* no later than April 1st each year, which has to be printed and published (§ 12 (1) Dir). The report shall also contain information on his supervision and control of public agencies to safeguard that the public administration respect and ensure human rights. In every case the Ombudsman has to include what the administrative agency or public official concerned has stated in respect of the complaint.

If the Ombudsman becomes aware of negligence or errors of major significance or scope he may make a **special report** to the *Storting* and to the appropriate administrative agency (§ 12 OA). If the Ombudsman becomes aware of shortcomings in statutory law, administrative regulations or administrative practice, he may only notify the ministry concerned to this effect (§ 11 OA). However, these cases have to be included in the annual report (§ 12 (2) Dir). The reports are regularly discussed in the *Storting*, the Ombudsman has no general right to participate in these debates.

V.4. Special Functions and Powers in the Field of Human Rights

No special powers or functions are connected with the Ombudsman's mission to "contribute towards that the public administration respect and ensure human rights" (see supra IV., § 3 OA). The Norwegian Institute for Human Rights (*Norsk senter for menneskerettigheter*) is accredited as NHRI with the International Coordination Committee according to the Paris Principles (Status A). To date the OPCAT has not been ratified by Norway.

VI. Practice

In 2005, the Ombudsman received 1,956 complaints and conducted 64 investigations *ex officio*. During the same period, the institution concluded 2,028 cases; 42.9% (870 cases) were rejected, another 28.9% (585 cases) were discontinued without further action based on the documents received. In 8.4% of the cases (170 cases) they were concluded by formally criticising the concerned authority. There are no statistics available as to which authorities were most often complained about, however, the Ombudsman identifies problems in the bailiff's offices (see infra VII.), immigration offices and construction offices, also in the areas of social rights, the right of free access to information, officials' rights to make use of their freedom of speech, the health sector and concerning tax authorities. There are no areas that the institution controls *ex officio* on a regular basis.

VII. Reform

The Ombudsman criticises the lack of jurisdiction concerning the judiciary, especially the absence of measures to control the execution of court rulings – an area that is neither subject to control by the Ombudsman's office nor by the courts of law (AR 2005, 16ff). Other voices criticise the unclear but far reaching exclusion of regional and local authorities from the Ombudsman's jurisdiction, causing deficits in the protection in this area which is responsible for administrating important matters.[248] There is no information about current reform projects.

VIII. Information

Constitution:
http://www.stortinget.no/english/constitution.html

Ombudsman-Act:
http://www.sivilombudsmannen.no/eng/article.php?32/30

Annual Report:
http://www.sivilombudsmannen.no/eng/files/arsmld_05_eng.pdf

Internet:
http://www.sivilombudsmannen.no/eng/

D. Stortingets Ombudsmann for Forsvaret – Stortingets Ombudsmann for Sivile Vernepliktigte – Parliamentary Ombudsman for the Armed Forces

I. History and Legal Basis

The Ombudsman for the Defense Forces was established in 1952 by an **order of the *Storting*** (*Instruks for ombudsmannsnemnda for forsvaret* of 21/4/1952 as amended 7/11/2003; hereafter MOA). The creation of the office can be traced back to demands of the Worker's Union's Youth-Organisation and to experiences with gross human rights violations during World War II. During the war the then existing Swedish Military Ombudsman was known to a wider public in Norway.

In 1956, political demands to establish a parallel organ of protection for those who refused to serve in the armed forces and thus under the duty of an alternative civil service were strong. With regard to the small number of persons concerned, Parliament decided rather to enlarge the competences of the Ombudsman for the Defense Forces and personally expand the office. An order of the *Storting* provided that the same persons who act as Ombudsman for the Defense Forces should also carry out the obligations of the Alterna-

---

[248] *Lane*, The Ombudsman in Denmark and Norway, in *Gregory/Giddings (eds)*, Righting Wrongs, 152.

tive Civil Service Ombudsman (*Instruks for ombudsmannsnemnda for sivile vernepliktige* of 23/11/1956 as amended 7/11/2003; hereafter ACSOA). Thus, there are two separate offices, united in the same incumbents.

II. Specific Features

The institution consists of **seven members** and an equal number of deputy-members, who are appointed by the *Storting* for four years. There are no personal requirements to take the office and there exists no possibility for early removal. In practice most of the incumbents serve as members of Parliament at the same time. The *Storting* elects one member for the office as president and one member as vice-president who then act under the title "Ombudsman" and "Deputy Ombudsman". Only the Ombudsman has the right to a fixed income while the other members are entitled to reimbursement of expenses. The Ombudsman carries out the day-to-day business while other matters are carried out collectively. The function of the institution is to contribute to the safeguarding of the "general human rights" of members of the armed force and of the alternative civil service, as well as to render the armed forces more effective.

The **criteria for investigations** expressly include economic and social rights. Members of the defense forces as well as those participating or willing to participate in the alternative civil service have the right to submit a complaint even if the chain of command foresees other channels. Also, the *Storting*, the defense committee of the *Storting*, the Minister of Defense and the leader of the armed forces – concerning the alternative civil service: the Minister of Justice and of the Interior – can instruct the Ombudsman to conduct investigations. Any member of the Ombudsman's office can carry out investigations on his own initiative.

With respect to the defense forces, the Ombudsman can **request any information** by any means, as long as this is not in conflict with security matters (§ 5 MOA). Concerning the alternative civil service, the Ombudsman can turn to any authority to demand information and documents (§ 4 (2) ZOA). Further powers are not provided for in the Act. The Ombudsman has to present a **report** on his work as Ombudsman for the Defense Forces to the *Storting* annually. Only every fourth year is such a report concerning the Alternative Civil Service required. Special Reports can be presented to the *Storting* anytime. All of the reports have to be subsequently presented to the responsible ministries.

In 2006, the Military Ombudsman formally treated 78 complaints and considered about one quarter of them as qualified. Inspections are regularly conducted *ex officio* even with troops stationed abroad. The report of the Alternative Civil Servants Ombudsman does not provide statistics in relation to how many complaints are dealt with each year.

III. Information

Legal Basis, Annual Report (in Norwegian only):
Military Ombudsman:
http://www.stortinget.no/dok5/pdf/dok5-200607.pdf

Alternative Civil Service Ombudsman:
http://www.stortinget.no/dok6/pdf/dok6-200506.pdf

Internet (in Norwegian only):
Military Ombudsman:
http://www.ombudsmann.no/

Alternative Civil Service Ombudsman:
http://www.ombudsmann.no/default_sivil.asp

Poland

Joachim Stern

A. Constitutional Background

The Polish Constitution is in force since 1997, replacing the Provisional Constitution of 1992 (Constitution of the Republic of Poland, 2/4/1997, hereafter Const). It declares that Poland is a democratic republic (Art 1, Art 2 Const). The Head of State is the President of the Republic, who is directly elected for a mandate of five years (Art 126, 127 Const). Among his broad powers is the right to legislative initiative, the possibility to veto laws and to challenge them in the Constitutional Court (Art 118, 122 Const). Parliament consists of two chambers: the *Sejm* with 460 representatives and the Senate with 100 members, who, in contrast to the representatives, are not elected based on proportional representation but rather following the principles of a majority system (Art 95–101 Const). The *Sejm* has the stronger powers, notably it exercises control over the Council of Ministers (Art 95 (2) Const). The *Marshal of the Sejm* is elected by the members of the Sejm and performs the functions of a President of Parliament (Art 110 Const). The Senate has a right to veto bills of the *Sejm*. However, an act submitted to the Senate is considered to be adopted if the Senate does not reject it within 30 days (Art 120, 121 Const). The *Supreme Chamber of Control* is the *Sejm's* supreme organ for auditing the activity of the organs of the government administration, the National Bank of Poland, state legal persons and other state organisational units regarding the legality, economic prudence, efficacy and diligence of their actions (Art 202, 203 Const).

Government administration is vested in the Council of Ministers, which is composed of the Prime Minister and the ministers (Art 146–162 Const). Poland is a unitary state and, for administrative purposes, divided into so called *voivodships*, headed by *vojvods* as representatives of the Council of Ministers. Local government shall perform public duties that are not reserved to organs of other public authorities (Art 163 Const).

The judiciary system consists of the common courts, administrative courts and military courts (Art 175 (1) Const). The Supreme Court (*Sąd Najwyższy*) is the last instance, also against decisions of the Supreme Administrative Court, which was founded in 1980. The Supreme Court also exercises control over electoral disputes (Art 101, Art 129 Const). Established in 1986, the Constitutional Tribunal (*Trybunal Konstytucyjny*) decides on the compatibility of laws and international treaties with the Constitution and of laws with ratified international treaties, on the legality of administrative regulations, and on the conformity of purposes or activities of political parties with the Constitution (Art 188–197 Const). In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been

infringed upon by a final decision of a court or organ of public administration, shall have the right to appeal to the Constitutional Tribunal. The tribunal will then judge on the constitutionality of a statute or another normative act which is at the basis of the relative act. The right to asylum is exempt from this rule (Art 79 Const). The Tribunal of State (*Trybunał Stanu*) decides upon the constitutional responsibility of supreme administrative organs and of members of the *Sejm* and of the Senate in case of incompatible business (Art 198 Const). Public prosecution is lead by the Prosecutor-General, who at the same time is Minister of Justice.

The Polish Constitution contains a charter of "freedoms, rights and obligations of persons and citizens", which is divided into personal, political and economical, social and cultural freedoms and rights. The latter are to a large extent subject to regulations by law (Art 30–81 Const).

Poland is a member of the Council of Europe since 1991. The ECHR was ratified in 1993 and has precedence over statutes (Art 91 Const).

B. Overview of Existing Ombudsman-Institutions

The **Commissioner for Civil Rights Protection** (*Rzecznik Praw Obywatelskich)* is Poland's parliamentarian ombudsman-institution with a general mandate. A specialised parliamentarian **Commissioner for the Rights of the Child** was established in 2000 (infra D.). There are no separate institutions on a regional or local level.

C. Rzecznik Praw Obywatelskich – Commissioner for Civil Rights Protection

I. History and Legal Basis

The Polish Ombudsman was established in the course of the process of democratisation during the 1980s by the **Act** of July 15, 1987 on the Commissioner for Civil Rights Protection. The Act was amended in 2000 (Act of 12/5/2000, OJ 48-552, hereafter OA). The institution was **embedded in the Constitution** in 1989 for the first time. In its actual form the basic provisions on the institution can be found in Articles 80, 208-212 Const.

II. Organisation

The Commissioner is a **monocratically organised** institution. The Marshal of the *Sejm* can appoint **up to three deputies** upon request of the Commissioner. Their dismissal can be exercised by an identical procedure. It is up to the Commissioner to determine the scope of responsibilities of his deputies; one of them must be responsible for soldiers (Art 20 OA). The current incumbent has two deputies. Upon the *Sejm's* approval the Commissioner may also appoint **local representatives**. In the cities of Gdańsk and Wrocław such branch-offices currently exist. Organisational aspects of the institution are laid down in its statutes which have to be elaborated by the Commissioner

and confirmed by the Marshal of the *Sejm*. In total an average 250 people are employed by the office. Its budget is determined by Parliament, without the involvement of the Government, according to the institution's information (see Art 21 OA).

III. Legal Status

The Commissioner for the Protection of Civil Rights is **appointed by the *Sejm*** with a simple majority. The right to nominate a candidate is exercised by the Marshal of the *Sejm* or by a group of 35 deputies. After a successful vote in the *Sejm*, the Senate has 30 days to confirm or reject the candidate. If this period passes without a decision, the candidate is considered to be approved. The **condition for the appointment** is that the candidate is "a Polish citizen of outstanding legal knowledge, professional experience and high prestige due to the individual's moral values and social sensitivity" (Art 2 OA). During his **term in office** of five years, which might be renewed once (Art 5 OA), strict **rules of incompatibility** apply to the Commissioner (Art 5 OA): He shall not hold any other post, except for a professorship in an institute of higher education, and not perform any other professional activities; he shall not belong to a political party, a trade union or perform other public activities incompatible with the dignity of his office (Art 209 Const). There are no direct consequences linked to a breach of these rules. However, upon a motion of either the Marshal of the *Sejm* or of 35 of the deputies, the *Sejm* can **discharge** the Commissioner if he acts against his oath, with a qualified majority of three fifths of the votes with at least the half of the regular number of deputies present (Art 7 OA). Among the criteria laid down in the oath are the "performance of the public duties according to the Constitution and guided by the law and the principles of community life and social justice" as well as impartiality, greatest diligence and care (Art 4 OA). In addition, if the Commissioner has become permanently incapable of performing his duties as a result of an illness, disability or decline in general health and this has bean certified by a doctor, such a removal from office can then be performed. Otherwise the office **ends** with expiry of the term and after the appointment of a successor, or by resignation, which has to be confirmed by a resolution of the *Sejm* passed with a simple majority (Art 7 (3) OA). As a rule, the Commissioner has the right to return to the position he held before taking office (Art 6 OA).

The Commissioner is **independent** from other state organs and accountable only to the *Sejm* (Art 210 Const). He is **immune** from criminal prosecution (Art 211 Const). His income is determined by law and equal to that of a minister and about 40% higher than that of a member of the *Sejm*.[249]

---

[249] Q III: Act of July 31, 1981 on the remuneration of persons occupying management positions in the state administration.

IV. Scope of Control

The Commissioner's mandate is to "safeguard the freedoms and rights of persons and citizens specified in the Constitution and other normative acts" (Art 208 (1) Const).

The Ombudsman's jurisdiction is defined through his **criteria of control**: He can control any "organs, organisations or institutions responsible for the observance and implementation of those rights and liberties, the law and principles of coexistence and social justice". Not only state and local authorities are included in this definition, but also "co-operative, social, professional, and socio-professional organisation bodies and bodies of organisational units that have corporate status" (Art 13 (1)2 OA). Also, courts of law are encompassed, however, with different powers of control (infra V.2.). The notion of "principles of coexistence and social justice" (Art 1 (3) OA) were a widely used term within the legal order of the socialist Republic that originated from civil law. It was meant as a corrective for formally accepted but unfair results and also used to counterbalance an interpretation of fundamental rights as merely individual subjective rights.[250]

The **right to raise a complaint** with the Ombudsman is provided for in the Constitution (Art 80 Const). According to the Law, it applies to "citizens and their organisations" (Art 9 OA). However, non-polish citizens are expressly named as potential complainants (Art 18 OA). Furthermore, self-governed organs and the Commissioner for the Rights of the Child have the right to complain (Art 9 OA). The Ombudsman can **act on his own initiative** at any time; he has to do so whenever he gains information indicating that a civil or human right or liberty has been violated (Art 9 (3), Art 8 OA). The Marshal of the *Sejm* can ask the Ombudsman to take action in a specific matter (Art 19 (4) OA).

A complaint with the Commissioner is **free of charge** and not subject to formal requirements. The complainant and, if not identical, also the concerned person has to be indicated, including a description of the case (Art 10 OA). Correspondence with the institution is exempt from possible censorship measures or other means of controlling communication, according to the institution (Q III).

After a first assessment of the case the Commissioner can limit his action to providing the applicant with an indication of the means of action available to him, or to hand over the case to a competent institution. Furthermore, he can simply refuse to take any steps. The Commissioner must inform the complainant of his decision, however, there is no duty to state reasons for said decision (Art 11 OA). The complaint is **not subsidiary**. Nonetheless, in general, the Ombudsman expects the person to have exhausted legal remedies. There are **no time limits** for raising a complaint.

---

[250] *Jaster*, Der polnische Beauftragte für Bürgerrechte: eine Institution zum Schutz der Grundrechte im Übergang vom realen Sozialismus zum bürgerlichen Rechtsstaat, 1994, 62.

The Commissioner shall refuse to reveal the name and other personal data of an appellant, if he believes that this is necessary to the preservation of the individual's liberties, rights and interests (Art 13 (2), (3) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Commissioner can instruct any "appropriate body – including in particular bodies of supervision, prosecutor's offices, and bodies of state, professional, and social inspection" to investigate the matter for him. If he wants the case to be examined by the Supreme Chamber of Audit, he has to appeal to the *Sejm* to order the respective control. He himself can also independently conduct "explanatory proceedings" with wide-ranging **powers to control**: The Ombudsman has the right to investigate, even without prior notification, each case on site. He may also ask for the presentation of clarifications and records pertaining to cases conducted by bodies subject to his control and may request the preparation of expert reports and opinions (Art 13 (1) OA). All institutions are obliged to cooperate with the Commissioner and provide assistance to him within the set deadlines (Art 17 OA). In matters involving state secrets the Commissioner has to stick to procedures for the protection of confidential information (Art 13 (2) OA). The prosecutor's office and other "law enforcement bodies" are subject to the same regulations as the courts (infra V.2.).

If the Commissioner identifies a violation of a right, he can direct a **recommendation** (*intervention*) to the institution, formulating opinions and conclusions regarding the method in which the matter should be handled and can expressly demand the initiation of disciplinary proceedings or the application of professional sanctions. He can also present general conclusions intended to ensure the effective protection of rights (Art 16 (1) OA). Without undue delay and within a period of 30 days, the concerned institution has to inform the Commissioner about the action taken or the position adopted. If the Ombudsman does not agree with these measures, he can petition to the superior body to take the respective measures. The intervention might also be directly addressed to the superior authority, asking it to apply its means of repairing the violation (Art 14 (2), (3), Art 15 OA).

In cases involving offences that are subject to public prosecution *ex officio* the Ombudsman can demand the authorised prosecutor to **initiate** preparatory **proceedings** (Art 14 (5) OA). Otherwise, he can apply for the initiation of administrative proceedings or an administrative appeal for punishment, as well as for the submission of a complaint to an administrative court. In the following proceedings he enjoys the same rights as a prosecutor.

At the **Constitutional Court**, the Commissioner can ask for the annulment of any norm subject to constitutional review. Within 60 days, he can also demand the participation in ongoing proceedings (Art 16 (2)(2)-(3) OA).

Organs with the power to issue executive orders can be asked by the Ombudsman to issue or repeal such norms, if they shall concern fundamental rights (for corresponding powers concerning acts of Parliament, see infra V.3.).

V.2. Powers in Relation to the Courts

The judiciary, in principle, is subordinated to the Commissioner's control like other organs. However, the Ombudsman's powers to control this area, including the prosecutor's offices and other "law enforcement bodies", are different: During ongoing proceedings the Commissioner is only allowed to demand the presentation of information concerning the status of cases. Only after the proceedings have been concluded and a ruling has been pronounced, the Commissioner can examine the records of these authorities. Measures taken by him may not infringe upon the independence of the judiciary (Art 13 (1)(3), Art 14 (2) OA).

The position of the Ombudsman towards courts resembles more one of a plaintiff than that of a supervisory organ: He can demand the initiation of proceedings as well as participate in proceedings that are already underway (Art 14 (4) OA). Also, he can appeal for the cassation or special review of a lawful ruling (Art 14 (8) OA),[251] and appeal to the Supreme Court to pass a resolution on the clarification of legal provisions which in practice raise doubts or which have been inconsistently applied in rulings (Art 16 (4) OA).

V.3. Powers in Relation to Legislative Organs

Annually, the Commissioner has to **inform** the *Sejm* and the Senate about his activities and on the observance of liberties and rights in general (Art 19 OA). This information has to be debated by the *Sejm* within three months and shall be made publicly available (Art 124, 169 (2)(14) Standing Orders of the *Sejm*).[252] Specific matters can be submitted to the Parliament's chambers at any time.

The Ombudsman has the **right to participate** in sessions of the *Sejm* with the right to speak within his area of competence. He has to be informed about sessions in advance (Art 170, 171, 186 Standing Orders of the *Sejm*, see also Art 33 Rules and Regulations of the Senate[253]).

Considering legislative amendments, the Commissioner may appeal to any organ that has the right to legislative initiative and ask it to undertake respective measures to issue or amend legal acts. Such proposals are included in the annual report regularly and must relate to his mandate (Q II).

---

[251] Art 515, 521, 524, 526 Code of Criminal Procedure: Act of 6/6/1997 www.era.int/domains/corpus-juris/public_pdf/polish_ccp.pdf (31/10/2007).

[252] Standing Orders of the Sejm, Monitor Polski 2002, No. 23, item 398, as amended in 2007, No. 23, item 253 libr.sejm.gov.pl/oide/dokumenty/regulamin_en.pdf (31/10/2007).

[253] Rules and regulations of the Senate, Monitor Polski of 2000, No. 8, item 170 http://www.senat.gov.pl/k4eng/senat/rules/rule.htm (31/10/2007).

The Commissioner can **apply to the Constitutional Tribunal** for the annulment of laws incompatible with the Constitution or ratified international treaties. He has the right to take part in any proceedings pending before the Constitution Tribunal (Art 16 (2)(2)-(3) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Commissioner shall cooperate with "associations, civic movements, and other voluntary organisations and foundations for the protection of civil and human rights and liberties" (Art 17a OA). In matters concerning children, he has to coordinate his work with the Commissioner for the Rights of the Child (see infra D.). The Commissioner for Civil Rights has been designated as NPM as provided for in the OPCAT in 2005. The International Coordination Committee of NHRIs has qualified the institution as fully compliant with the Paris Principles (Status A).

VI. Practice[254]

The institution receives about 60,000 complaints annually. The Commissioner uses his right for intervention in courts on an average 20 times per year. About ten times a year he applies to the Constitutional Tribunal. In the area of freedom of association the institution regularly takes preventive action, as for example in the case of supervising public rallies. Prisons are inspected on site. A regular TV-program is considered to play an important role in the interaction between the Ombudsman and the public. A regular report about current activities is issued on a quarterly basis.

VII. Reform

The institution considers its powers to be sufficient, but criticises the long time that authorities take for reacting to his requests. This situation is considered to be caused by the bad working conditions of public officials. The Commissioner demands for principles of good administration to be laid down in a binding form and also desires better financial funding of the institution (Q II). With regard to the institution's designation as NPM, this desire is supported by NGOs which criticise personal resources in the office as poor, with only eight persons working in the section responsible for the supervising of the penal system.[255]

---

[254] This section is based on general information, since no annual report in English has been available.

[255] Association for the Prevention of Torture, NPMs Country by Country Status as of June 7, 2007, 88; http://www.apt.ch/component/option,com_docman/task,doc_download/gid,124/Itemid,59/lang,en/ (12/6/2007).

VIII. Information

Constitution:
http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm

Law:
http://www.rpo.gov.pl/index.php?md=1372&s=3

Annual Reports not available in English.

Internet:
http://www.rpo.gov.pl

D. Rzecznik Praw Dziecka – Commissioner for the Rights of the Child

I. History and Legal Basis

Art 72 of the Polish Constitution provides that "everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense". For this purpose, the Constitution empowers the legislator with the ability to establish a Commissioner for the Rights of the Child (Art 72 (4) Const). In January 2000 the respective Act was passed (Law of 6/1/2000 on the Ombudsman for Children, Journal of Laws No. 6/69, hereafter COA), a first incumbent was elected by the *Sejm* in June the same year.

II. Specific Features

The appointment procedures and the legal status are to a large part identical to that of the general Commissioner. However, with 15 members of the *Sejm* or of the Senate, the number of those required for nominating a candidate is lower (see Art 4–8 COA). Also, the Marshal of the Senate can propose a candidate. While the jurisdiction is also very general, differences between the institutions can be remarked concerning the criteria of control: The Commissioner for the Rights of the Child shall "guard the rights of the child defined in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other rules of law, with the responsibilities, rights and duties of parents being respected". He thereby shall "take into account the fact that the natural milieu for the child's development is the family" (Art 1 COA). A child is defined as "every human creature, from conception to the coming of age" (Art 2 COA).

The powers of control are limited to an access to documents and information. The Commissioner can then issue "reviews and motions" aimed at ensuring effective protection of the rights and the interest of the child and relative to the rationalisation of the procedures for dealing with such matters. He can also demand from respective organs to undertake legislative initiative

or issue and amend other legal acts. The respective organs have to take position upon these recommendations within 30 days.

Unlike the Civil Rights Commissioner, the Commissioner for the Rights of the Child has no further means of action, such as the right to apply to courts. However, he is entitled to cooperate with his colleague and to ask him to take further action (see Art 17 COA, Art 9 (2a) OA). The Commissioner for the Rights of Child has to present an annual report to both chambers of Parliament. This information has to be published (Art 12 COA).

III. Information

Law:
http://www.brpd.gov.pl/law.html

Internet:
http://www.brpd.gov.pl/ang.html

Annual Reports are not available.

Portugal

Brigitte Kofler

A. Constitutional Background

The current Constitution of Portugal entered into force on 2 April 1976 and declares Portugal to be a Democratic Republic (Art 1 and 2). Portugal is a unitary state with the island of Azores and Madeira having a status of autonomy (Art 6). Self-government bodies are established on the local level. Parliament, the *Assembleia da República,* consists of one chamber with two hundred and thirty members elected in accordance with the proportional representation system for a term of four years (Art 147). The President of the Republic is the Head of State and is elected directly by the people for a term of five years (Art 121 and 122). Based on the results of the parliamentary elections the President nominates one Prime Minister and the Council of Ministers. Furthermore, there is a Council of State, a political body which advises the President (Art 141) and is composed of the President of Parliament, the Prime Minister, the President of the Constitutional Court, the Ombudsman, the presidents of the regional Governments, former Presidents of the Republic as well as five citizens appointed by the President and five citizens elected by Parliament (Art 141 and 142).

The ordinary court system consists of *Tribunais de Comarca* in first instance, *Tribunais de la Relação* in second instance and the Supreme Court, the *Supremo Tribunal de Justiça*. Besides, there is an administrative judiciary with a Supreme Administrative Court as court of last resort for administrative and fiscal matters (Art 212) as well as military courts and a Court of Audit. Furthermore, since 1982 a Constitutional Court exists, the *Tribunal Constitucional* (Art 209 (1)).

Part I contains a comprehensive list of human rights, which was influenced by the European Convention on Human Rights (Q III). Portugal is a member state of the Council of Europe since 1976 and ratified the European Convention on Human Rights on 9 November 1978. The rules and principles of general or common international law form an integral part of Portuguese law (Art 8). Jurisprudence recognises the supremacy of the ECHR over simple Portuguese law (Q III).

B. Overview of Existing Ombudsman-Institutions

The *Provedor de Justiça* is a **national, parliamentary ombudsman-institution**. There are no further Ombudsmen on regional or local level. The *Provedor de* Justica has two **field offices**, on the Azores (founded in 1996) and on Madeira (Founded in 2000).

C. Provedor de Justiça – Portuguese Ombudsman

I. History and Legal Basis

The ombudsman-institution of the *Provedor de Justiça* was first introduced by decree on 21 April 1975 (Decree No. 212/75) and subsequently footed in Art 24 (now Art 23) of the new Portuguese Constitution of 1976. It basically states that an independent Ombudsman is to investigate citizen's complaints about actions and omissions of state bodies and direct recommendations to the respective bodies to prevent and remedy instances of injustice. Further legal provisions on the Ombudsman are found in the Ombudsman Act, the *Estatuto do Provedor de Justiça* (Law No. 9/91 as of by Law No. 30/96; hereinafter OA).

The Ombudsman took up office on 9 June 1976. The institution was founded during the democratisation process after the revolution of 1974 and with the purpose of enhancing citizen rights.

II. Organisation

The *Provedor de Justiça* is a **monocratic** body who may appoint two deputies to whom may be delegated some powers (Art 16 (1) and (2) OA). Currently, 120 are on staff in the Ombudsman's office.

III. Legal Status

The Ombudsman is elected by Parliament by a two-third majority of the members present (Art 5 (1) OA). Candidates may be nominated by the factions in parliament.

The appointment may only fall upon a citizen who meets the conditions required for being elected a member of the Parliament, that is, a minimum age of 18 years (Art 49) and who enjoys a well-established reputation of integrity and independence (Art 5 (2) OA).

The Ombudsman is subject to the same **incompatibilities** that apply to judges and may not hold any functions in political parties or associations nor bee engaged in any public partisan activities (Art 11 OA).

The Ombudsman is elected for a period of four years and may be re-elected once (Art 6 (1) OA). The same salary is the same as a minister (Art 9 OA).

The Ombudsman is **independent** in the performance of the duties (Art 1 (2) OA) and may not be held liable, either civilly or criminally, for the recommendations, remarks or opinions made or for any other act carried out in the performance of the duties (Art 8 (1) OA). Once appointed, the Ombudsman is irremovable from office (Art 7 OA) and the duties cease before the four-year term lapses only in case of death or permanent physical disability, loss of the prerequisites for being elected a member of the Parliament, newly arisen incompatibility or resignation. It is up to Parliament to monitor the grounds for the Ombudsman's cessation of duties (Art 15 (1) and (2) OA).

The Ombudsman *ex officio* is a member of the Council of State (Art 20 (2) OA).

IV. Scope of Control

The main **task** of the Ombudsman is to protect and promote the rights, freedoms, guarantees and legitimate interests of citizens and ensure that public institutions exercise their rights pursuant to justice and the law (Art 1 (1) OA).

The **control,** therefore, extends to the services integrated in the central, regional and local public administration, Armed Forces, public institutes, public companies including companies whose capital is mostly public and concessionaires operating public services or exploiting state property (Art 2 (1) OA). In addition, the scope of activity may also include relations between private persons provided that there is a special relation of dominion authority between them (Art 2 (2) OA). An example for a "special relation of authority" would be the relation between a big financial corporation and its employee. The judiciary, including criminal prosecutors, is exempted from the control excepting the administration of the judiciary. Last, political activities of administrative organs are also exempted.

The Ombudsman's **control criteria** are justice and the law as the Ombudsman is tasked to defend and to promote the rights, freedoms, guarantees and legitimate interests of the citizens (Art 1 (1) OA).

The Ombudsman takes action upon a complaint referred by a citizen or on the initiative of the Office (Art 4 OA). Furthermore, the Ombudsman is to investigate petitions or complaints referred by Parliament or parliamentary committees (Art 26 OA). Complaints may also be lodged with the Public Prosecution Office that is to forward them to the Ombudsman (Art 25 (3) OA). There is no duty for the Ombudsman to examine every complaint received.

Complaints may be submitted orally or in writing and are to include the identity and address of the complainant and, if possible, a signature (Art 25 OA). The complaints addressed to the Ombudsman are subject neither on the complainant's direct, personal and legitimate interest nor on any limitation period (Art 24 (2) OA). If a judicial or administrative remedy is still available to the complainant, the complainant may be advised to apply to another authority (Art 32 OA).

Where it is established that a complaint has been lodged *mala fide*, the Ombudsman is to forward the matter to the competent official of the public prosecution office for purposes of criminal proceedings in accordance with the law (Art 27 OA).

A complaint to the Ombudsman is free of charge. The Ombudsman is to transmit the conclusions to the bodies or officials involved and also to the complainants, as applicable (Art 38 (7) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

All state bodies are to provide the Ombudsman with information and clarifications upon request. Their **duty to cooperation** includes producing information notes, undertaking inspections through the competent offices, making documents and files available for examination or sending them to the Ombudsman, if so requested (Art 29 (1) and (2) OA). A deadline of no less than 10 days may be stipulated for the fulfilment of an urgent request. Unjustified non-compliance with the duty to cooperate amounts to a crime of disobedience and may be subject to disciplinary proceedings (Art 29 (6) OA). In such cases the Ombudsman may also address the competent hierarchical superior body or the Parliament (Art 38 (4) and (6) OA). The Ombudsman may request statements or information from any citizen and may summon those persons to a hearing. A subsequent unjustified absence or refusal to make a statement amounts to a qualified crime of disobedience (Art 30 OA). Furthermore, the Ombudsman has the right to make inspection visits to public premises, including military public services and prisons (Art 21 (1) OA).

After conducting an investigation the Ombudsman may address **recommendations** to the competent bodies with a view to rectify illegal or unfair acts of public authorities or to improve their services (Art 20 (1) a OA). Recommendations addressed by the Ombudsman to the Parliament or to the Regional Legislative Parliaments are to be published in their respective official journals (Art 20 (5) OA). In less serious and non-contentious cases, the Ombudsman may simply address a **critical remark** to the body or the services involved or close the file upon receiving explanations (Art 33 OA). The Ombudsman's recommendations are to be addressed to the body, which has the powers to correct the irregular act or omission. This body, within sixty days upon receipt, is to inform the Ombudsman of the position it has taken on the issue (Art 38 (1) and (2) OA). The grounds for non-compliance with a recommendation are to be duly stated (Art 38 (3) OA). If a recommendation is not complied with, the Ombudsman may address the competent hierarchical superior or Parliament stating the reasons for the initiative (Art 38 (3), (4) and (6) OA). The conclusions are to be transmitted to the bodies or officials involved and also to the complainants, as applicable (Art 39 (7) OA).

Further, the Ombudsman may request the Constitutional Court to make a ruling on unconstitutionality by omission (Art 20 (4) OA and Art 283 (1) Const).

If sufficient evidence of criminal, disciplinary or regulatory offences comes to the notice of the Ombudsman during the procedure, either the public prosecutor or the authority that is hierarchically competent to start disciplinary or regulatory proceedings is to be informed (Art 35 (1) OA).

V.2. Powers in Relation to the Courts

In respect of the courts, only the administration of the judiciary is subject to the Ombudsman's control (IV, Q III). Complaints concerning the adminis-

tration of the judiciary are to be clarified with the *High Judicial Council*, the *High Prosecutorial Council* or *the High Councils of the Administrative and Finance Courts.* In particular, the Ombudsman may appeal to the Constitutional Court for a ruling of unconstitutionality by omission (Art 20 (4) OA and Art 283 (1) Const*).*

V.3. Powers in Relation to Legislative Organs

The Ombudsman may request the Constitutional Court to make generally binding rulings on issues of unconstitutionality or illegality of any legal provisions (Art 20 (3) OA and Art 281 (1) and (2) d).

Upon request of the Parliament, the Ombudsman may give opinions on any matter related to the Office (Art 20 (1) c OA). In matters within the competence, the Ombudsman may also participate in the work of parliamentary committees (Art 23 (2) OA).

An annual **report** is to be sent to Parliament on the activities, initiatives, complaints, undertaken actions and achieved results. The report is to be published in the official journal of Parliament (Art 23 (1) OA). The Ombudsman may also render **special reports** on issues of specific interests which so far have been prisons, social issues, environmental protection and town planning (Q II).

The Ombudsman may point out shortcomings in the law and make recommendations concerning the interpretation, amendment or revocation of the relevant provisions as well as proposals for the drafting of new legislation (Art 20 (1) b OA). On the basis of this provision, the Ombudsman may also call for the implementation of ratified international treaties (Q III).

V.4. Special Functions and Powers in the Field of Human Rights

Besides the *ex post* monitoring, the Ombudsman is to promote the disclosure of the substance and the meaning of fundamental rights and freedoms as well as the purposes of the Ombudsman-Institution, its means of action and how to reach it (Art 20 (1) d OA). Furthermore, the Ombudsman may intervene, in compliance with the applicable law, in the protection of the collective and diffuse interests whenever a public entity is involved (Art 20 (1) e OA). The institution has been accredited the status of a National Human Rights Institution by the Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights pursuant to the UN Paris Principles.

VI. Practice

During the year 2006 the Ombudsman opened 6,386 new cases. The **focus** of the monitoring lies with social issues and the administration of justice, notably the duration of court proceedings. Prisons are continually monitored ***ex officio***.

VII. Reform

The most important practical problem of the institution is the often delayed replies of public authorities. Currently, there are plans to introduce representatives of the Ombudsman within those ministries about which most complaints are received.

VIII. Information

Constitution:
http://www.parlamento.pt/ingles/cons_leg/crp_ing/index.html (31.10.2007)

Ombudsman-Act:
http://www.provedor-jus.pt/Ingles/OmbudsmanStatute.htm (31.10.2007)

Romania

Joachim Stern

A. Constitutional Background

The Romanian Constitution of 1991 entered into force after a referendum and was last comprehensively amended in 2003 (Official Journal I 767, 31/10/2003, hereafter Const). It defines Romania as a sovereign, independent, unitary and indivisible republic (Art 1 (1) Const). The Head of State is the President who is elected by the people for a term of office of five years, renewable once (Art 77 Const). Parliament consists of two chambers, the Chamber of Deputies and the Senate, whose 332 and 137 members respectively are elected by the people for a term of office of four years. The power to initiate laws is divided between the chambers, the corresponding chamber has a right to veto acts of the other chamber in any case (Art 75 Const). However, there are some matters of importance which are decided upon in a common session of both chambers.

The Prime Minister is appointed by the President after consultation with Parliament. He then has to present his program and the other ministers to Parliament in a combined session of both Chambers within ten days (Art 103 Const).

The ordinary Court System consists of four court-levels, headed by the High Court of Cassation and Justice (*Înalta Curte de Casaţie şi Justiţie*). As of 2004, the Courts were declared competent to also review administrative disputes. The Public Prosecution's responsibility is not only to represent the general interests of the society and defend the legal order, but also to defend citizens' rights and freedoms. It carries out its duties under the authority of the Ministry of Justice (Art 131 Const).

The Constitutional Court consists of nine judges who adjudicate the constitutionality of laws before their promulgation upon notification by the President of Romania, by one of the Presidents of the Parliamentary Chambers, by the Government, by the High Court of Cassation and Justice, by the Advocate of the People, or by at least 50 Deputies or at least 25 Senators. It can act *ex officio* on initiatives to revise the Constitution and can also decide upon objections as to the constitutionality of laws and ordinances brought before courts of law. An objection may also be brought up by the Advocate of the People (Art 146 Const). However, complaints by individuals are not possible.

The Romanian Constitution contains a comprehensive Charter of "fundamental rights, freedoms, and duties" which includes some social rights (Art 15–57 Const). The Constitution also provides for the right of Romanians living abroad to be protected (Art 7 Const).

Romania has been a member of the Council of Europe since 1993 and the ECHR was ratified a year later. It formally ranks the same as domestic laws. However, regulations in ratified covenants and treaties on fundamental human rights shall take precedence over national laws, unless the latter provide for more favourable conditions (Art 20 (2) Const).

B. Overview of Existing Ombudsman-Institutions

The Advocate of the People – *Avocatul Poporului* – is Romania's **national parliamentary ombudsman-institution** with a general mandate. No comparable institutions exist on either regional or local levels.

C. Avocatul Poporului – People's Advocate

I. History and Legal Basis

In 1991, Romania was the first country of the former Communist bloc to **constitutionally** provide for an ombudsman-institution (Title II, Chap IV, Art 55–57 Constitution of 1991). However, it was not until 1997 that a corresponding **Law** on the organisation and functioning of the People's Advocate institution was passed (Law No. 35/1997). The first incumbent was appointed in June 1997; his deputies were appointed in December of the same year. It took yet another year until the institution could completely take up its work.[256]

The competencies of the institution were broadened with the constitutional amendments of 2003 and can now be found in Articles 58–60 of the Constitution (see also Art 65 (2), Art 146 (a), Art 146 (d) Const). This amendment extended the term of office from four to five years and introduced rights to apply to the Constitutional Court. The basic law has been amended three times so far (Law 35/1997 as amended by Law 844/2004, hereafter OA). It is completed by an administrative **regulation** of the organisation and function of the People's Advocate Institution, elaborated by the People's Advocate and confirmed by the Standing Bureaus of Parliament (Official Journal I 326, 16/5/2002 as amended 619, 8/7/2004; hereafter OReg; see also Art 38 OA, Art 64 (2) Const).

II. Organisation

The *Avocatul Poporului* is a **monocratically organised institution**. The Advocate has **four deputies** who are appointed by the Standing Bureaus of the Chambers upon proposal of the Advocate for the following areas of activity: a) human rights, equality of chances between men and women, religious cults and national minorities; b) rights of child, family, young people, pensioners, persons with disabilities; c) army, justice, police, penitentiaries; d) property, labour, social protection, taxes and duties (Art 10 OA). Requirements for the

---

[256] *Giddings/Sladecek/Diez Buesco*, The Ombudsman and Human Rights, in *Gregory/Giddings (eds.),* Righting Wrongs, 443.

deputies are laid down by the administrative regulation of the institution. Thus, candidates must hold a university diploma in judicial, administrative, political or economic sciences, have at least ten years of professional experience, knowledge of at least one foreign language, full legal capacity, and good "moral reputation". In addition they must be in an adequate state of health and without a criminal record or political affiliation (Art 7 OReg). The deputies must guide and co-ordinate the activity within their area of specialisation under the supervision of the Advocate and carry out any other responsibility that the Advocate confers upon them. In case of absence of the Advocate the deputy of his choice exercises his powers (Art 6 OReg).

The institution currently administrates fifteen so-called ***territorial offices*** all over the country which serve as the first contact points for complainants and which treat complaints autonomously as far as possible (see Art 29 OA). The institution employs 90 people including the personnel in the territorial offices. The **budget** of the office is approved by the Advocate of the People, with the advisory opinion of the Ministry of Public Finances and subsequently forwarded to Government for approval. Objections by the Advocate to the Government's plans shall be brought to Parliament for settlement (Art 36 (1), (2) OA).

III. Legal Status

The People's Advocate is **appointed** by both chambers of Parliament in a common session with a simple majority of votes cast (Art 6 (1), Art 7 (3) OA). The **right to nominate** a person for the office is up to the Standing Bureaus of the Chambers. Candidates then have to be heard by the Juridical Committees of the Chamber of Deputies and of the Senate (Art 7 (1) OA). The Advocate must be a Romanian citizen and must also fulfil the same **requirements** as judges of the Constitutional Court. This means that he has to have graduated from law, be of "high professional competence" and have at least eighteen years of experience in practical legal or academic activities (Art 143 Const). The **term of office** is five years and is renewable once (Art 6 (1) OA). In any case, the mandate lasts until a new Advocate of the People has taken office (Art 8 (4) OA).

The criteria of **incompatibility** which exist for this position are provided for in the Constitution. The incumbent may not perform any other public or private office, except for teaching positions in higher education (Art 58 (2) Const). Additionally, the law provides that the Advocate is not allowed to be a member of a political party (Art 32 (1) OA). These requirements also apply to staff within the Ombudsman's office holding management positions. If these provisions are violated the office ends *de jure*. As in cases of absence for more than 90 days due to health reasons, such a breach has to be conferred to both Standing Bureaus of the Chambers within ten days of the occurrence of the event. The Advocate can also be **removed** from office for breaching the Constitution or laws. Procedures have to be initiated by the Standing Bureaus of both Chambers, based on the joint report of the Juridi-

cal Committees of both Chambers and agreed to by a majority of Senators and Deputies in a joint session (Art 9 OA).

No one can give instructions or orders to the Advocate of the People as his mandate is not imperative or representative and is thus **independent** (Art 2 (3) OA). The Ombudsman and his deputies are not liable for opinions or acts in the exercise of their duties. Concerning such acts, they cannot be subject to criminal proceedings and in any case not be detained, searched or arrested without the approval of the presidents of both Chambers of Parliament. The Ombudsman can exercise the respective right to suspend **immunity** vis-à-vis his deputies. In case of approval of prosecution the Advocate or the deputies are *de jure* suspended from office until a final court decision is passed (Art 30–32 OA).

The **income** of the People's Advocate equals that of a minister (Art 36 (3) OA).

IV. Scope of Control

Purpose of the institution of the People's Advocate is to defend citizens' rights and freedoms in their relationships with public authorities (Art 58 (1) Const, cf Art 1 (1) OA).

The matters which are **subject to control** are actions of all public administrative authorities, which include public corporations (Q I). Explicitly named in the law are penitentiaries and penitentiary hospitals, re-education centres for minors, the army, police bodies, the Public Ministry (Ministry of the Interior) and the army. The law excludes actions of Parliament, its Chambers and its members, the President of the Republic, the Government, the Constitutional Court, the President of the Legislative Council (a parliamentary advisory body, cf Art 79 Const) and judicial authorities (Art 15 (4) OA). The notion of judicial authorities does not only encompass courts but also the administration of justice and the public prosecutor. Indirect rights to control the judiciary, however, do exist (infra V.2.). The **criteria to be applied for a control** are constitutionally defined as the natural persons' rights and freedoms (Art 58 (1) Const) whereas the law defines citizens' rights and freedoms (Art 1 (1) OA). These provisions encompass rights and freedoms as laid down in the Constitution and also in laws and ratified international treaties (see Art 27 OA). In practice, principles of good administration are also taken as standards for investigation (Q I).

The **right to complain** lies with any individual – irrespective of citizenship, age, sex, political affiliation, or religious beliefs – who has been subject of violations by public authorities (Art 13 (b), Art 14 OA). A complaint must be filed in writing and must indicate the full name and domicile of the person aggrieved, the specific right or freedom that has been violated, as well as the name of the concerned administrative authority or civil servant (Art 15 OA). For grounded reasons a petitioner may be allowed to state his demand orally or through the hot-line service of the Advocate of the People, which shall then be recorded by the staff (Art 16 (3) OReg). Anyone who is impris-

oned, is under arrest or kept in detention as well as minors in re-education centres and persons in the military service must be allowed to communicate complaints to the Ombudsman via any means possible – "except for legal restraints" (Art 17 OA).

Complainants must prove that the authority concerned delayed or refused to treat a request for remedying the violation. In this regard, the complaint with the Ombudsman is **subsidiary** (Art 15 (1) OA). It must not be filed later than **one year** since the violation took place or since the person concerned got to know about it. Only patently unsubstantiated cases can be refused. The Ombudsman thus is under a **duty to investigate** complaints (Art 15 (3) OA) with the exception of anonymous complaints. However, the Advocate may investigate cases on his **own initiative** (Art 59 (1) Const, Art 14 (1) OA).

The Advocate of the People shall **inform** the petitioner about the manner in which the complaint lodged has been solved and may also make these results public with the consent of the concerned party (Art 26 (1) OA). At the request of persons whose rights and freedoms have been infringed the Advocate of the People may decide upon the confidential character of his activity (Art 3 (2) OA). Complaints lodged with the Advocate of the People are exempted from stamp tax (Art 16 OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

Public authorities have the obligation to communicate or to make available to the Advocate of the People any information, documents or other acts that they possess which are related to the complaint. Moreover, they are to provide any support for the exercise of his duties. The Advocate may hear and take depositions from chief-officials of the public administrative authorities or from any civil servant who may provide useful information (Art 4, Art 22, Art 59 (2) OA). Furthermore, he has access to any classified information held by public authorities, as far as is considered necessary (Art 20 (1) OA).

If the People's Advocate concludes that the complaint was founded, he must send the concerned authority a written **request** to put an end to the respective violation, to reinstate the complainant's rights and to redress the damages caused. The authority is obliged to immediately comply with this request and also to remedy the deficiencies that caused or fostered the violation, while informing the Advocate thereof. If this duty is not complied with within thirty days, the Ombudsman shall forward the request to the hierarchically superior administrative authority, which then has forty-five days to comply with it. The Ombudsman may also inform the Government about any violation of rights. If this does not resolve the issue within twenty days, the Advocate has to **inform Parliament** about the case (Art 25 OA).

While enlarging the jurisdiction of courts of law in respect to administrative disputes in 2004, the People's Advocate was simultaneously given the right to inform the competent court about a violation. If the Advocate does

so, the aggrieved person is automatically granted the status of an applicant and the decision of the concerned authority is suspended.[257]

Ordinances can be questioned by the People's Advocate in the Constitutional Court (Art 146 (d) Const, Art 13 (f) OA). The Advocate cannot propose the initiation of disciplinary or criminal proceedings (Q II).

V.2. Powers in Relation to the Courts

Courts, including the administration of justice and also the public prosecutor cannot be controlled directly by the People's Advocate. If the Advocate receives complaints relating to these authorities, he may **forward** them to the responsible ministries or the President of the Court. These organs then have to inform the Advocate about any measures taken (Art 18 OA). However, the S*uperior Council of Magistracy* – the disciplinary organ of judges – cannot be approached by the Ombudsman.

V.3. Powers in Relation to Legislative Organs

The People's Advocate has to present an **annual report** to the Chambers of Parliament in a joint session by February 1st each year. The report has to be discussed and published by the Chambers (Art 60 Const, Art 5 OA). This report may also explicitly contain recommendations concerning the amendment of legislation or measures of another nature for the protection of citizens' rights and freedoms. **Special reports** may be issued anytime if the Ombudsman finds gaps in legislation or serious cases of corruption or violations of the country's laws. Such reports are submitted to the Presidents of the Chambers or to Government (Art 26 OA). The Ombudsman is only allowed to participate in parliamentary sessions if invited to do so.

Organs empowered to enact norms of general application can consult the Ombudsman concerning questions of compatibility with fundamental rights and freedoms before passing the act. If the Ombudsman has doubts with regard to the constitutionality of acts or legality of ordinances he may, even before their coming into effect, apply to the Constitutional Court (Art 146 Const, Art 13 (e), (f) OA). The Constitutional Court can also request that the Ombudsman formulate points of view, especially when a pending case involves the question of constitutionality with regard to citizen's rights and freedoms (Art 13 (d), Art 19 OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Ombudsman's activities are focused on human rights, according to the criteria that are to be applied for a control. The institution can be found on the list of NHRIs at the International Coordination Committee but is not accredited as an institution according to the Paris Principles. The OPCAT has not been ratified by Romania so far.

---

[257] Q III: Law 554/2004 on Administrative Procedures; text not available in English.

VI. Practice

During 2005, 5,465 complaints were filed with the Advocate of the People. In 1,159 cases the right to property was concerned followed by cases concerning the right to a decent standard of living (995 cases), free access to justice (938 cases), the right to information (704 cases) and the right to file a petition (700 cases). In 1,005 cases the Ombudsman took a position on the question of constitutionality of laws and ordinances upon demand by the Constitutional Court in addition to the three cases he filed.

The office does not conduct any permanent investigations of areas *ex officio*. On an irregular basis the Advocate cooperates with NGOs and organises events like workshops informing about the protection of certain rights.

VII. Reform

With regard to the high number of complaints concerning the judiciary, the Ombudsman considers it a deficit that there is no power within the position to inform the Superior Council of Magistracy as disciplinary organ of complaints (Q II). More generally, the institution stresses that lack of funding prevents it from campaigns to inform the population about its rights in general and especially with regard to the right to complain to the People's Advocate.

VIII. Information

Constitution:
http://www.cdep.ro/pls/dic/site.page?id=339&idl=2

Law:
http://www.avp.ro/legien.html

Annual Report:
http://www.avp.ro/AVPOPRULUI2006engl.pdf

Internet:
http://www.avp.ro/indexen.html

Russian Federation

Joachim Stern

A. Constitutional Background

The constitution of 1993 declares Russia a democratic, federal, law-governed republic (Art 1 Constitution of 12/12/1993 as amended 25/4/2003, hereafter Const). The federation is composed of 89 constituent entities: 21 national republics, six districts and ten autonomous districts, 49 areas and one autonomous area as well as two cities (Art 65 Const).

The Federal Assembly is Russia's bicameral Parliament, consisting of the State-Duma and the Council of Federation. The 450 members of the State-Duma are directly elected by the people for a period of four years, while the members of the Council of Federation are appointed, two by each constituent entity: one chosen by the legislative and one by the executive government body. The President of the Federation is the Head of State and the "guarantor of the Constitution and of human and civil rights and freedoms" (Art 80 Const). He is elected directly by the people for a maximum of two consecutive four year terms.

The Supreme Court is the highest judicial body in civil, criminal, administrative and other cases under the jurisdiction of common courts (Art 126 Const). The Supreme Arbitration Court is the highest court for settling economic disputes (Art 127 Const). The Constitutional Court's main function is to determine the constitutionality of federal laws and other normative acts and to settle disputes on conflicting authorities between the constituencies. It also decides complaints dealing with violations of constitutional rights and freedoms of citizens (Art 125 Const).

Chapter 2 of the Constitution provides a charter of "rights and freedoms of man and citizen".

Russia has been a member of the Council of Europe since 1996. The ECHR was ratified in 1998.

B. Overview of Existing Ombudsman-Institutions

The Commissioner for Human Rights in the Russian Federation is Russia's federal ombudsman-institution with a general mandate. The Federal Constitutional Law on the Commissioner for Human Rights in the Russian Federation (infra C.1.) empowers all constituent entities to create their own ombudsman-institution. There are currently 31 such Ombudsmen, who are elected by the respective parliaments (Q I).

C. Уполномоченный по правам человека в Российской Федерации – Commissioner for Human Rights in the Russian Federation

I. History and Legal Basis

The institution of the Commissioner for Human Rights was provided for in the 1993 Constitution (Art 103 (1)(e) Const). The first Commissioner took office in 1994, but not on the basis of a federal constitutional law as required in the Constitution but on the basis of a presidential decree. He was removed from office only one year later after being subject to massive criticism by Government regarding his handling of the gross human rights violations in Chechnya.[258]

In 1997, a **Federal Constitutional Law** on the Commissioner for Human Rights in the Russian Federation was passed and now serves as the legal basis for the institution (Constitutional Law of 26/2/1997, hereafter OA).

II. Organisation

The Commissioner for Human Rights is a **monocratically organised institution**. There are **no deputies** provided for in the legislation. The institution is financed from the federal budget (Art 38 OA). It currently operates **eleven offices**, mostly in western parts of the country.

III. Legal Status

The Commissioner for Human Rights is appointed by the State-Duma in a secret ballot, requiring an absolute majority of votes of the total number of deputies (Art 1 (2), Art 8 (1) OA). Candidates for the office can be **nominated** by the State-Duma, the Council of Federation or the President (Art 7 (1) OA), but to be confirmed as candidates they require the votes of two thirds of the deputies of the State-Duma (Art 8 (3) OA) which is in conflict with the quorum for appointment.

Requirements for appointment are a minimum age of 35, Russian citizenship, knowledge in the field of the "rights and freedoms of man and the citizen", and experience in the defense of these rights and freedoms (Art 6 OA). The Commissioner is subject to extensive regulations on activities **incompatible** with the office: he cannot be member of a legislative organ, in the service of the state, or be engaged in other paid or unpaid activity, except for teaching, scientific or other creative activity. The Ombudsman does not have the right to engage in political activity, to be a member of a political party or other public association that pursues political goals (Art 11 OA).

The Commissioner's **term of office** is five years. The same person may not be elected for more than two consecutive terms (Art 10 OA). The office

---

[258] *Lawyers Committee for Human Rights*, The Price of Independence, in The Office of Ombudsman and Human Rights in the Russian Federation, International Ombudsman Journal, Vol 13, 1995, 125.

ends upon resignation, incapacity to perform his duties for at least four months due to a health condition or other reasons, violation of the rules on incompatibility, or if a criminal conviction against the incumbent Commissioner comes into effect (Art 13 OA). The premature dismissal of the Commissioner takes effect by a resolution of the State-Duma.

In the realisation of his powers the Ombudsman is **independent** and not accountable to any state organ or official (Art 2 (1) OA). He enjoys **immunity** (*inviolability*) and cannot be prosecuted on criminal or administrative charges without consent of the State-Duma (Art 12 OA).

IV. Scope of Control

The **function** of the institution is to "facilitate the restoration of violated rights, the improvement of legislation of the Russian Federation on human and citizens' rights and the bringing of it into accordance with universally recognised principles and norms of international law, the development of international co-operation in the field of human rights, legal education on questions of human rights and freedoms, and the forms and methods of defending them" (Art 1 (3) OA).

The Ombudsman's **jurisdiction** extends to decisions or actions of state organs, organs of local government, officials, and state servants. The legislature is excluded from the Ombudsman's jurisdiction (Art 16 (2) OA). While courts are not expressly under the control of the Ombudsman, he has certain powers dealing with courts (infra V.2.).

The **standards for investigation** applied by the Ombudsman are the Constitution of the Russian Federation, legislation of the Russian Federation, as well as universally recognised principles and norms of international law and international treaties ratified by the Russian Federation (Art 2 (2) OA).

The Ombudsman may **initiate an investigation** based on a complaint of any natural person – the legislation names citizens of the Russian Federation, foreign citizens in the territory of the Russian Federation and persons without citizenship (Art 15 OA). The Commissioner for Human Rights may act on his own initiative only in special cases of gross violations of human rights (infra V.4.).

The **complaint** must be filed in writing, within **one year** of the day that the violation of the rights and freedoms took place or the plaintiff learned of the violation. Complaints addressed to the Commissioner by persons in places of compulsory confinement are not subject to examination by the administration of the place of confinement and are to be forwarded to the Commissioner within 24 hours (Art 19 OA).

The right to complain is strictly **subsidiary**; the plaintiff must have appealed against these decisions or actions in court or by administrative procedure (Art 16 (1) OA). A complaint sent to the Commissioner is free of charge (*not subject to state duties*; Art 18 OA).

Upon the reception of a complaint the Commissioner may accept it for examination, explain to the plaintiff other courses of action that may be taken, pass on the complaint to an organ whose function is expressly related to the subject of the complaint, or refuse it (Art 20 (1) OA). A refusal must be justified (Art 20 (3) OA). The complainant is to be informed of this decision within 10 days and if an investigation takes place, the complainant is to be informed of the results (Art 20 (2), 26 (1) OA).

The authority or official that is the subject of the complaint has the right to be heard during an investigation (Art 25 OA). The Commissioner is bound by rules of secrecy (Art 28 (1) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

In the course of an investigation the Commissioner has the right to request co-operation from competent state organs or officials (Art 22 OA). His powers include the right of **access** to all organs of state power, organs of local government and the right to attend sessions of their competent collegiate organs. The Commissioner also has powers to "**visit** without obstruction enterprises, establishments or organisations, regardless of their organisational-legal form and form of property and public associations", to request and receive **information, documents and materials** that are essential to the investigation and to request explanations from officials (Art 23 (1) OA). Requested information must be sent to the Commissioner within 15 days from the day of receiving the inquiry, unless otherwise stated (Art 34 (2) OA).

The Commissioner enjoys the right to be **received** without delay not only by leaders and other officials of state organs and of local government but also representatives of enterprises, establishments and organisations, regardless of their legal and property status, as well as by leaders of public associations (Art 23 (2) OA). Any person responsible for interference in the activity of the Commissioner, the non-performance of obligations or the obstruction of the activity of the Commissioner in other forms, is subject to liability (Art 36 OA).

If the Commissioner determines that there has been a violation of rights of the plaintiff, he is to send a **conclusion** to the authority concerned **including recommendations** regarding "possible and essential measures" for the restoration of the indicated rights and freedoms (Art 27 OA). This conclusion may also be published (Art 30 (1) OA). The authority is obliged within one month to **examine** the conclusion and to inform the Commissioner in writing as to the measures taken (Art 35 OA).

The Ombudsman may also decide to **appeal to a court** by presenting a declaration in defense of the rights and freedoms which have been violated by decisions, actions or omissions on the part of a state organ, organ of local government or official. Further, the Ombudsman may **participate in the court proceedings** personally, or through a representative, in accordance

with the procedures established by law (Art 29 (1)(1) OA). There are no further provisions as to the exercise of this right.

The Commissioner may also petition the competent organs for the initiation of **disciplinary or administrative actions** or **criminal proceedings** against the official, whose decisions, actions, or omissions have violated rights and freedoms (Art 29 (1)(2) OA).

The Commissioner may provide general comments and proposals to state organs, organs of local government and other officials, based on the analysis of complaints received and other information. These comments and proposals should relate to the safeguarding of the rights and freedoms of citizens and the improvement of administrative procedures (Art 31 OA).

V.2. Powers in Relation to the Courts

The Commissioner for Human Rights can apply to a court or to the prosecutor's office to re-investigate any decision that has already entered into force (Art 29 (1)(3) OA). It could not be established whether the authority concerned must act upon such an appeal.

The Ombudsman also has the right to attend hearings as an observer (Art 29 (1)(4) OA).

V.3. Powers in Relation to Legislative Organs

The Commissioner has the right to **apply to the Constitutional Court** in relation to the violation of constitutional rights and freedoms of citizens by laws that were applied or are to be applied in concrete cases (Art 29 OA).

He may also appeal to the legislature to pass or amend legislation, in order to fill "gaps in legislation" or to rectify legislation that contradicts fundamental rights, universally recognised principles and international treaties to which the Russian Federation is party (Art 31 (2) OA).

At the end of each calendar year the Commissioner shall send an **annual report** on his activity not only to the State-Duma, but also to the President, the Council of Federation, the Government, the Constitutional Court, the Supreme Court, the Supreme Arbitration Court and the General Prosecutor's Office. The annual report is also published in the official journal (Art 33 OA). **Special reports** concerning specific questions on the observance of the rights and freedoms of citizens in the Russian Federation are only to be sent to the State-Duma and may be published in the Official Journal upon the request of the Commissioner (see also infra V.4.).

V.4. Special Functions and Powers in the Field of Human Rights

The mission of the Commissioner for Human Rights includes facilitating the restoration of violated rights, the improvement of legislation on human and citizens' rights, as well as bringing it into accordance with universally recognised principles and norms of international law, the **development of international co-operation** in the field of human rights, and the promotion of **legal education** on questions of human rights and freedoms and the forms and

methods of defending them (Art 1 (3) OA). However, the Commissioner's right to commence investigations on his own initiative is restricted. Only on the basis of information indicating the perpetration of massive or gross violations of the rights and freedoms of citizens will the Commissioner have the right to take "appropriate measures" on his own initiate. Furthermore, these cases must be either of special public significance or relate to the defense of the interests of persons unable to use legal means of defense on their own (Art 21 OA). In such cases the Commissioner has the right to deliver a report to the next session of the State-Duma and may appeal to the State-Duma to create a parliamentary commission to investigate the facts or to conduct parliamentary hearings, in which he may participate directly or via a representative (Art 32 OA).

The Commissioner for Human Rights is accredited with the International Coordinating Committee for NHRIs as an observer (status B), as the institution is not fully compliant with the Paris Principles. Russia has not yet signed the OPCAT.

VI. Practice

No information about the operations of the institution can be given as there is no annual report or other comprehensive data available in English.

VII. Reform

No information about current reform plans is available.

VIII. Information

Constitution:
http://www.kremlin.ru/eng/articles/ConstMain.shtml

Constitutional Law on the Commissioner for Human Rights:
http://www.anticorruption.bg/ombudsman/eng/readnews.php?id=6085&lang=en&t_style=tex&l_style=default

Internet:
http://www.ombudsman.gov.ru/

Serbia

Joachim Stern

A. Constitutional Background

Following the secession of Montenegro, the Constitution of the Republic of Serbia entered into force in November 2006 through a 53% electorate vote in favour of the Constitution in October 2006 (Constitution of 30/9/2006, hereafter Const).[259]

For administrative purposes Serbia is divided into five cities, 29 counties and 163 local communities. Two autonomous provinces are provided for: the Province Vojvodina and the Province of Kosovo and Metohija (Art 182 (2) Const). The autonomous provinces are partially independent in financial matters; their competences include urban planning and development, agriculture, water resources, forestry, tourism, education and health care and social welfare (Art 183 Const). Since 1999, the province of Kosovo is administrated by the United Nations (*United Nations Interim Administration Mission in Kosovo* – UNMIK). The future status of the province is currently pointed at independence from Serbia. The Government consists of the Prime Minister one or more vice presidents and the ministers. The Prime Minister is appointed by Parliament upon proposal of the President, the other members of Government upon proposal of the Prime Minister (Art 125–134 Const). Public administration is independent but accountable for its work to the Government. Government is also competent to regulate the internal organisation of ministries and other public administration bodies and organisations (Art 136 Const).

The National Assembly is Serbia's unicameral Parliament consisting of 250 members who are elected for a four year term through a process of direct suffrage (Art 100 (1), 102 (1) Const). The Head of State is the President who is also directly elected for a term of five years which is renewable once (Art 116 Const).

The Supreme Court of Cassation is the supreme court for civil, criminal and administrative matters (Art 143 (4) Const). Judges are nominated by the High Council of Justice and appointed by Parliament (Art 147, 154 Const). The Constitutional Court's powers include the decision on the compliance of laws and other general acts with the Constitution, generally accepted rules of international law and ratified international treaties; of ratified international treaties with the Constitution; of other general acts with the law; of the Statute and general acts of autonomous provinces and local self-government units with the Constitution and the law; and of general acts of

---

[259] See also Venice Commission, Opinion on the Constitution of Serbia, Opinion No. 405/2006 CDL-AD(2007)004 of 19/3/2007.

organisations with delegated public powers, political parties, trade unions, civic associations and collective agreements with the Constitution and the law (Art 167 (1) Const). Procedures can be instituted by state bodies, bodies of territorial autonomy or local self-government, as well as at least 25 deputies. The Court can also act on its own initiative. A constitutional appeal may be lodged against individual acts[260] or actions performed by state bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not been specified (*Constitutional Appeal*, Art 170 Const). The Court must decide on the constitutionality of a law before its promulgation upon appeal by at least one third of the deputies (Art 169 Const).

Section II of the Constitution contains a charter of "Human and Minority Rights and Freedoms". Serbia is a member to the Council of Europe since 2003 and ratified the ECHR in 2004. As ratified international treaty it ranks between the Constitution and national laws (Art 194 Const).

B. Overview of Existing Ombudsman-Institutions

Established in 2007, the Protector of Citizens is Serbia's national parliamentary ombudsman-institution with a general mandate (infra C.). However, the Province of Kosovo is by fact excluded from the Protector's control. The UNMIK had already established an ombudsman-institution in the province in 2000 (infra E.). The Autonomous Province of Vojvodina has an ombudsman-institution since 2003 (infra D.). Also, some local communities have provided themselves with communal Ombudsmen. All ombudsman-institutions are *inter alia* obliged to cooperation. In cases simultaneously pointing to violations of acts of the Republic and of other entities each Ombudsman who has jurisdiction shall investigate the part of the complaint that lies within his own scope of powers (Art 35 Act on the National Ombudsman).

C. Zaštitnik građana – Protector of Citizens (Civic Defender)

I. History and Legal Basis

In 2004, when Serbia still was a constituent republic of the Federation of Serbia-Montenegro, a draft Act providing for an Ombudsman of Serbia was elaborated upon the initiative of international organisations, mostly the OSCE. The draft law was also examined by the Venice Commission of the Council of Europe.[261] It was altered in some points and passed as an **Act of the Parlia-**

---

[260] The English translation erroneously states „individual *general* acts".

[261] Draft Law on the Ombudsman of Serbia, CDL(2004)113 of 17/11/2004; Venice Commission, Commissioner for Human Rights, Directorate General of Human Rights of the COE, Joint Opinion on the Draft Law on the Ombudsman of Serbia 318/2004, CDL-AD(2004)041 of 6/12/2004.

ment of the Serbian constituent republic in September of 2005 (Act 79/2005 of 16/9/2005; hereafter OA). Although the Act provided for the appointment of an incumbent within six months after its promulgation, it was not until July 2007 that a consensus of the political powers could be reached and the first Ombudsman was elected. Thus, no information can yet be given regarding the practice of the institution.[262] The institution has been **embodied in Serbia's new Constitution** (Art 138 Const; Art 55, 99, 105, 107 Const).

II. Organisation

The Serbian Ombudsman is a **monocratically organised** institution. The Ombudsman has **four deputies** upon who he can delegate **independent powers**. When doing so he shall ensure special expertise for the performance of duties primarily in respect to the protection of rights of persons deprived of their liberty, children's rights, rights of national minorities and rights of disabled persons, which obviously indicates the areas that the legislature intended the Ombudsman to appoint deputies for (Art 6 (2) OA). The deputies are appointed by the National Assembly upon proposal of the Ombudsman for a maximum of two five years terms in office. Requirements for appointment are to a large part identical to those of the Ombudsman (infra III.); the incumbents may also hold any other university degree and only need to have five years of professional experience (Art 6 (6) OA). One of the deputies is designated by the Protector to replace him when he is absent or prevented from performing his duties (Art 6 (3) OA). The legal status of the deputies is also identical to that of the Ombudsman, however, the Ombudsman has the right to propose their removal from office (Art 14 OA).

The institution has its seat in the capital city of Belgrade; the Protector may establish additional offices in other parts of the country (Art 3 OA). The **organisation** of the office shall be determined in a general act elaborated by the Ombudsman and approved by the Assembly (Art 38 (3) OA).

The **financial funds** for the institution shall be provided for in the state budget. For that purpose the Ombudsman shall draft a proposal and deliver it to the Government. The funds shall be sufficient to enable the Protector to fulfil his duties in an efficient and operational manner, however, they shall also be in accordance with the "microeconomic policy of the Republic" (Art 37 OA).

III. Legal Status

The Protector is **appointed by the National Assembly** by a simple majority of votes (Art 138 (3), Art 99 (2)(5), Art 105 (1)(14) Const). Each parliamentary group in the National Assembly has the right to **propose a candidate** for the office. It is up to the Committee for Constitutional Issues to decide upon the eligibility of these candidates. The Committee can also hold a hear-

[262] For that reason neither an annual report has been available nor was it possible to send out questionnaires to the institution.

ing in which all candidates are able to express their views on the role and manner of fulfilment of the Protector of Citizens' functions (Art 4 OA). **Requirements** for the election are the Serbian citizenship, a bachelor's degree in law, at least five years of experience in jobs related to the purview of the Protector of citizens, "high moral character and qualifications" and significant experience in the protection of civil rights (Art 5 OA). The office is **incompatible** with other public offices, any other professional activity, or any duty or function that might influence the Ombudsman's independence and autonomy (Art 9 (1) OA). A prohibition to be member of a political party is also laid down in the Constitution; the Act on the Protector seems to widen this interdiction by using the expression "political organisation" (Art 55 (5) Const, Art 9 (2) OA). Incompatible activities have to be ended the day that the official takes up office (Art 9 (4) OA). The Ombudsman shall not make any political statements (Art 10 (2) OA).

The **term of office** is five years, re-election is possible once (Art 4 (6) OA). The Protector of Citizens is **independent** and autonomous in the performance of his office. No one has the right to influence his work and actions (Art 138 (1) Const, Art 2 (1) OA). The Ombudsman is accountable only to the National Assembly and enjoys **immunity** like a member of Parliament does (Art 138 (5) Const).

The office **ends** with the expiry of the term, death or resignation; furthermore by loss of citizenship, by meeting requirements for mandatory retirement or when becoming permanently physically or mentally unable to carry out the official duties. This has to be determined on the basis of documentation of medical institutions. In such cases the office ends automatically which is to be confirmed by the National Council in a session without debate (Art 11 (1)–(6), Art 15 (1) OA). Upon proposal of one third of its members, Parliament can also **remove** the incumbent from office due to incompetence or negligence in discharging his duties, violation of the rules of incompatibility or in case of having been convicted for a criminal offence which makes him unsuitable for this function. The Protector of Citizens has the right to address the members of the National Assembly at the session in which his dismissal is to be discussed (Art 12 OA). If the Ombudsman is on remand, or if a conviction for a criminal offence has not yet entered into force, the Assembly may temporarily **suspend him from office** (Art 13 OA).

The Protector is entitled to a **salary** equal to that of the President of the Constitutional Court; deputies are entitled to that of a judge of the Constitutional Court (Art 36 OA).

IV. Scope of Control

The mandate of the institution is to "protect citizens' rights and monitor the work of public administration bodies, bodies in charge of legal protection of proprietary rights and interests of the Republic of Serbia, as well as other bodies and organisations, companies and institutions to which public powers have been delegated" (Art 138 (1) Const).

Subject to the Protector's control are acts of these institutions. Actions of the National Assembly, the President of the Republic, Government, the Constitutional Court, Courts and the public prosecutor's offices are explicitly exempt (Art 138 (2) Const, Art 17 OA).

The **standards of an investigation** are the rights of citizens, laws, regulations, and other general acts of the Republic. The Protector of Citizens does not only have the power to control the legality but also the regularity of the work of administrative bodies, thus permitting a control based on criteria of good administration (Art 17 (1), (2) OA). Additionally, the law provides that the Ombudsman shall act in accordance with ratified international treaties and generally accepted rules of international law (Art 2 (2) OA).

The term "citizen" does not only cover Serbian nationals but any physical person, as well as any local or foreign legal person whose rights and responsibilities are determined by the administrative authorities subject to control (Art 1 (2) OA). Any of these persons has the **right to file a complaint** when he considers that his rights have been violated (Art 25 (1) OA). The right to complain is personal; complaints concerning children can be filed by their legal representatives (Art 25 (2) OA). Prior to complaining the persons are "required to endeavour to protect their rights in appropriate legal proceedings". Complaints are therefore **subsidiary**. Only cases in which the complainant would sustain irreparable damage or cases relating to a violation of the principles of good governance are exempt from this rule (Art 25 (5) OA).

The complaint may be filed no later than **one year** from the day the violation occurred or from the date of the last action taken by the administrative authority in respect to said violation. It can be raised in writing or "orally on record" (Art 26 OA). The secretariat of the Protector of Citizens is obliged to offer technical assistance in drafting a complaint without any kind of compensation (Art 27 (2) OA). Persons deprived of their liberty are entitled to submit their complaints in a sealed envelope. All concerned institutions shall visibly and publicly provide adequate envelopes (Art 27 (3), (4) OA). The complaint has to contain the name of the administrative authority involved, a description of the violation of the right, facts and evidence supporting the complaint, information about the legal remedies already used and all necessary information that is related to the complainant (Art 27 (1) OA). The complaint shall **not** be subject to payment of any fees or other dues and is therefore **free of charge** (Art 26 (1) OA).

The Ombudsman shall not investigate into anonymous complaints. "Exceptionally", they can be at the basis of investigations on his **own initiative** (Art 25 (6) OA). Such an investigation is not subject to any conditions (Art 24 (1), Art 32 OA).

The Ombudsman is under the **duty to investigate** into each complaint, except for cases in which requirements for filing a complaint are not fulfilled. If information that is necessary to consider the case is missing, the Ombudsman has to ask the complainant to correct such deficiency (Art 28 OA). Any refusal to treat a case has to state reasons. The complainant and the ad-

ministrative authority involved have to be **informed** of the beginning and end of a proceeding (Art 29 (1), Art 31 OA).

The Protector of Citizens may decide not to disclose the identity of the complainant to the administrative authority "in certain justified cases" (Art 29 (3) OA). Even after the end of office, he and his staff are subject to duties of **confidentiality** (Art 21 (3), (4) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

Administrative authorities subject to control are required to **respond to all requests** of the Protector and to provide all requested information and documents within a **period set** by the Protector which may not be shorter than 15 or longer than 60 days (Art 29 (2) OA). Even beyond these duties there are obligations to **cooperate** with him and obligations to **enable his access** to the premises and other information, if this information is important to his proceedings, but also for the fulfilment of his preventive operations. Confidentiality cannot be opposed to the Ombudsman "unless contrary to the law" (Art 21 (1) OA). The Ombudsman has the power to interview any employee of the administrative authorities when this is of significance for his proceedings (Art 21 (2) OA). The President of the Republic, the Prime Minister and members of the Government, the Speaker of the National Assembly and officials in administrative agencies are obligated to **receive the Protector of Citizens** at his request within fifteen days at the latest (Art 23 OA). He can **freely access** correctional institutions but also other places where persons deprived of liberty are held and is permitted to speak in privacy with those persons (Art 22 OA).

If the administrative authority involved eliminates irregularities by itself, the Protector shall notify the complainant thereof. Unless the latter disapproves of the measures within fifteen days, the Ombudsman shall discontinue the proceedings (Art 30 OA).

If the Protector concludes that irregularities exist he shall deliver a **recommendation** to the administrative authority on steps to be undertaken for a rectification. Within 60 days, the authority is obliged to answer whether it proceeded pursuant to the recommendation and eliminated the irregularity, or about the reasons why it failed to fulfil the Ombudsman's demand. In cases where there is a danger that the complainant's rights might be permanently and seriously violated, the Ombudsman may set a shorter period for elimination of such irregularities but no shorter than fifteen days. If the administrative authority fails to proceed pursuant to the recommendation, the Protector of Citizens may **inform** the public, the National Assembly and the Government, and may recommend proceedings to determine the accountability of the official in charge of the administrative authority (Art 31 OA). The Protector can publicly call for the **dismissal or other disciplinary proceedings** against an official responsible for a violation, when recurring behaviour of the official reveals the intent to refuse to co-operate with the Pro-

tector or when the injury made to the person caused material or other serious damage. If such activities contain elements of criminal or otherwise punishable acts, the Ombudsman has the power to file a motion to initiate appropriate proceedings (Art 20 OA).

General acts of the administration that restrict freedoms and rights can be **appealed** against at the **Constitutional Court**. The Protector can also propose to the Government that such acts be amended (see also infra V.3.).

V.2. Powers in Relation to the Courts

Courts are generally **exempt** from the Ombudsman's control. He has no powers in their regard (supra IV.). Whether this exclusion also covers the administration of justice could not be established.

V.3. Powers in Relation to Legislative Organs

Until March 15th each year the Ombudsman has to present an **annual report** to Parliament, containing information on activities in the preceding year, noted irregularities in the work of administrative authorities and recommendations to improve the status of citizens in relation to administrative authorities. The report shall be **published** in the "Official Gazette of the Republic of Serbia" and on the website of the Protector of Citizens and shall also be delivered to public media. **Special reports** may be submitted during the year "if necessary" (Art 33 OA).

The Constitution gives the Ombudsman the right to **legislative initiatives** concerning "laws falling within his competence" (Art 107 Const). The Act on the Ombudsman provides in this regard that the Protector does not only have the right to propose the amendment of laws if he deems that violations of citizens' rights are a result of deficiencies of such regulations, but also gives him the right to launch initiatives for new laws if he considers this to be significant for exercising and protecting citizens' rights. The competent committee of the **National Assembly is obliged to consider** the initiatives (Art 18 (1), (2) OA). If laws concerning the protection of citizens' rights are drafted by other institutions, the Ombudsman has the right to give his opinion (Art 18 (3) OA). Laws restricting the rights and freedoms of the citizen can be **appealed** against in the **Constitutional Court** (Art 19 OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Ombudsman shall ensure that human rights and freedoms are "protected and promoted" (Art 1 (2) OA). This does not provide for any powers exceeding those described above.

The institution is not accredited with the International Coordinating Committee as NHRI according to the Paris Principles. Serbia is party to the OPCAT, but has not ratified the protocol yet.

VI. Practice

With no information about the actual functioning of the office available yet, no statement concerning the activity of the institution can be drawn. Also, a website of the institution could not be found. A human rights organisation encourages people to turn to the Ombudsman providing forms to use for complaints and the legal basis, using the slogan "Ombudsman – Just do it".[263]

VII. Reform

With regard to the short period of existence no information about plans to reform the institution are available thus far.

VIII. Information

Constitution:
http://www.parlament.sr.gov.yu/content/eng/akta/ustav/ustav_1.asp

Law:
http://www.osce.org/item/16493.html

D. Pokrajinski Ombudman Autonomne Pokrajine Vojvodine – Provincial Ombudsman of the Autonomous Province of Vojvodina

I. History and Legal Basis

The institution of the Provincial Ombudsman of the Autonomous Province of Vojvodina has its **legal basis** in a decision of the regional Parliament (Decision on the Province Ombudsman 23/2002 of 23/12/2002, hereafter OA-V). The Act entered into force in January 2003. The first incumbent got elected in September the same year and took office in October. According to information provided by the institution, the legal basis has been amended twice thus far (Q III).

II. Specific Features

The Ombudsman of the Autonomous Province Vojvodina is also a **monocratically organised institution**. The incumbent has **five deputies** of which one each shall be elected for national minority rights, rights of children and gender equality (Art 6 (1), Art 15 ff OA-V). The institution employs about 20 people and has its seat in the city of Novi Sad. The Ombudsman shall establish **local offices**; one has been established in Subotica so far (Art 4 OA-V).

The Ombudsman is elected by the Parliamentary Assembly of the province by a **two-thirds majority** vote of all deputies (Art 5 (1), 15 ff OA-V) and upon proposal of the Parliamentarian Committee or at least 30 members

[263] http://www.odbor.org.yu/aktivnosti/ombudsman.htm (29/8/2007).

(Art 6 (3) OA-V). Preconditions for an appointment include a law school degree and recognised professional experience of at least seven years (Art 7 OA-V).

The office is **incompatible** with other public offices or professional activities, membership in political parties or organisations, in trade unions, management and supervisory boards of enterprises and institutions, as well as activities or undertakings that could affect the Ombudsman's independence and autonomy (Art 7 (2) OA-V). Moreover, a person having held a high ranking office during the twelve months prior to elections cannot be appointed (see Art 7 (5) OA-V). The term of office is **six years**, the salary equals that of a provincial minister (Art 5, Art 42 OA-V).

A **removal** from office can be proceeded with in case of a criminal conviction, a violation of the rules on incompatibilities, or if the incumbent "fails to discharge the duties of office in a professional, impartial, independent and conscientious manner". The vote requires a two thirds majority in Parliament (Art 10 OA-V).

Subject of control are provincial and municipal administrative authorities, institutions, bodies and organisations exercising specific administrative positions which have been established by the province or a municipality (Art 1 (2) OA-V). No exceptions are defined in this respect.

Any natural or legal person believing to have been violated in his human rights has the **right to complain**. Third parties like NGOs can do so if the concerned person agrees (Art 19 OA-V). Regular legal remedies have to be exhausted before a complaint can be received. "With the goal of quick and efficient protection of human rights", the Ombudsperson is empowered to engage in mediation and reconciliation at any given moment and to initiate proceedings even when a legal remedy has not been exhausted, if that would represent a threat to the protection of human rights (Art 24 OA-V).

The Ombudsperson has access to all premises of administrative agencies, and at any time and without making an appointment, he may visit all institutions for mandatory psychiatric treatment (Art 28 OA-V). If cooperation is refused, the Ombudsman can inform the superior authority or the provincial Parliament (Art 29 OA-V). This behaviour constitutes an administrative offence to be sanctioned with a fine (see Art 44 OA-V).

The Ombudsman may **recommend** to the administrative agency to repeat the procedure in accordance with law, recommend to the administrative agency rules of procedure aimed at improving its work and dealing with citizens or request the suspension of the execution of a final act (Art 35 OA-V). If neither the authority has committed a violation nor its supervisory organ reacts sufficiently upon the Ombudsman's recommendation, he may inform the provincial Government, Parliament and the public via the media (Art 34 OA-V).

The Ombudsman cannot only demand **disciplinary proceedings** against officers responsible for violations of human rights or having obstructed the investigation but also to initiate **misdemeanour or criminal proceedings** before the competent public prosecutor (Art 35 OA-V).

The Ombudsman has no powers vis-à-vis courts. Since a considerable part of complaints received by the institution relate to the judiciary, the Ombudsman has started to demand information and explanations also in these cases. This has proven to speed up proceedings (AR 2004, 68).

In order to "raise the standards of laws with regard to human rights" the Ombudsman can initiate proceedings at the Constitutional Court like any other public authority in Serbia. He can also propose the amendment or passing of new acts to the Parliament and the provincial Government (Art 14 (1) OA-V).

Even though the criteria that are to be applied by the Ombudsman also include simple laws, the **focus** of the institution lies with **human rights**. In this regard the Ombudsman's deputies have extensive duties to supervise and offer information regarding the sensitive areas of minorities, children and gender discrimination (Art 15–17 OA-V). The Ombudsman shall also **monitor** the application of international human rights standards and organise and participate in the preparation of **seminars** regarding the implementation of mechanisms aimed at respecting human rights (Art 13 (1) OA-V).

Between November 2003 and November 2004 the Ombudsman received 265 written complaints. 623 new investigations were launched in 2005 (Q III). Around 30% of these complaints concerned the courts. Attention has also been paid to the so called *Centers for Social Care*, especially with regard to disputes concerning parental authority. In addition, special emphasis was also placed on the conditions in psychiatric institutions and prisons (AR 2004, 69, 96).

The institution considers **lacking financial funds** as its main problem. His recommendations being hardly followed upon, the incumbent also demands for more precise regulations to be applied in cases of non-compliance (Q II). This seems surprising with regard to the detailed provisions available in this respect.

III. Information

Law:
http://www.osce.org/documents/fry/2002/01/132_en.pdf

E. Institucioni i Ombudspersonit në Kosovë – Institucija Ombuspersona na Kosuvu – Ombudsperson Institution in Kosovo

I. History and Legal Basis

The Ombudsperson Institution in Kosovo was founded in June 2000 through a **regulation by the United Nations Interim Administration Mission in Kosovo** (UNMIK – Regulation 2000/38 of 30/6/2000). It opened its office in November 2000. This first regulation was replaced by a new one in 2006 after consultation with the Assembly of Kosovo and its Government (Regulation of 16/2/2006; hereafter OR). The new regulation abolished the

right to also complain against international institutions and thus against the UNMIK. A draft law elaborated by the Parliamentary Assembly of Kosovo largely resembles the current regulation. The Venice Commission of the Council of Europe has issued an opinion on the draft law (CDL-AD(2007)024). The Commission thereby pointed out the importance of embodying such an institution in the Constitution. It criticises the definition of the area of responsibility of the Ombudsperson: The provision *ratione personae* which includes people outside the territory of Kosovo is considered too indefinite and would result in a lack of opportunities for enforcement; the provision *ratione materiae* is considered too narrow in that it provides for a control based solely on human rights. The Commission also questions the need for four deputies.

II. Organisation

The Ombudsman-Institution is **monocratically organised** (§ 5 OR). One "**principal deputy**" and **three regular deputies** are appointed among which there has to be at least one person from the Kosovo-Albanian Community, one person from the Kosovo-Serbian Community and at least one person from one of the other non-majority communities entitled to be represented in the Assembly of Kosovo (§ 6 (7) OR). The institution currently employs 54 people (Q II) and has its seat in Priština. **Additional offices** have been opened in five other towns (§ 14 (1) OR; Q III, 1). The regulation provides that the institution be allocated **sufficient funds** from the Kosovo Consolidated Budget to carry out its functions and responsibilities fully and independently and that it may also receive supplemental donations from international donors, which shall be recorded in the annual accounts (§ 17 OR).

III. Legal Status

The Ombudsperson and the principal deputy Ombudsperson, as well as the three other deputy Ombudspersons are **appointed by the Assembly of Kosovo** "according to open and transparent procedures" by a simple majority vote, following a public announcement issued by the Presidency of the Assembly calling for nominations within a period of not less than forty days from organisations and institutions involved with the monitoring, protection or promotion of human rights and fundamental freedoms (§ 6 (2) OR). The candidates are **required** to be "eminent figures of high moral character, impartiality and integrity, who possess a demonstrated commitment to human rights" and who are habitual residents of Kosovo (§ 6 (1), (4) OR).

The position of the Ombudsperson and even of his staff are **incompatible** with the exercise or holding of any political, public or private professional activity or office (§ 8 (1) OR).

The **term of office** of the Ombudsperson and the principal deputy is four years. The term of the deputies is three years. Both are renewable for a further term (§ 6 (3), (6) OR).

Upon a motion of any member of the Assembly, signed by five additional members, the Assembly may **remove** from office or temporarily suspend the Ombudsperson by a vote that holds the support of two-thirds of the members of the Assembly of Kosovo. This in the event that the Ombudsman's health is such that he is physically or mentally incapacitated and that this affects his ability to perform his functions; if he has been convicted after due process in accordance with internationally accepted standards for a criminal offence punishable by a term of imprisonment; if he fails to discharge his official duties satisfactorily as determined by the judgment of the Assembly of Kosovo; or because of personal conduct or behaviour of a nature incompatible with the due exercise of his functions (§ 8 (2) OR). The Ombudsperson and his deputies enjoy **immunity** from legal process in respect of words spoken or written and acts performed by them in their official capacity. Such immunity continues to be accorded even after they cease their employment. The immunity can be waived by a two-thirds majority of the Assembly (§ 12 OR).

The Ombudsman-Institution shall act **independently**. No person or entity may interfere with the exercise of its functions (§ 2 (1) OR).

The level of **salary** of the Ombudsperson is equivalent to that of the President of the Supreme Court of Kosovo (§ 18 (1) OR).

IV. Scope of Control

Subject of Control are "Kosovo Institutions". This includes all provisory bodies of self-administration and the local communities in the area of Kosovo (§ 3 (1) in connection with § 1 (3) OR). With regard to matters of discrimination, also private persons are under the control of the Ombudsperson (see also § 4 (3) OR). The Ombudsman-Institution may enter into a bilateral agreement with the Special Representative of the Secretary-General on procedures for dealing with cases involving UNMIK – authorities.

Criteria of control are international human rights standards as incorporated in the applicable law and acts, including omissions, which constitute an abuse of authority. This provision also allows for the application of standards of good administration (§ 3 (1) OR).

Any habitual resident of Kosovo or any natural or legal person in the territory of Kosovo has the **right to complain** to the Ombudsperson (§ 3 (1) OR). The Ombudsperson can also start an investigation on his own initiative (§ 4 (5) OR). The Institution may offer its services to habitual residents of Kosovo who are temporarily outside the territory of Kosovo (§ 3 (2) OR).

The complaint must be filed on a form provided for by the Ombudsperson and also be signed by an official of the Ombudsperson. There are **no time limits** for a complaint, but the matter must have occurred after the entry into force of the regulation, or – if occurred prior to this date – must give rise to a continuing violation or constitute a continuing abuse of authority (§ 3 (3) OR). The Ombudsperson and his staff shall maintain **confidentiality** of all information and data obtained, with special attention being given to the

protection of the safety of complainants, injured parties and witnesses (§ 10 OR).

According to the institution a complaint is **subsidiary** (Q I). The services offered by the Ombudsman-Institution shall be **free of charge** (§ 2 (2) OR). There is no appeal against any action or decision of the Ombudsman-Institution (§ 4 (14) OR). The Ombudsperson has the **responsibility to investigate,** report on and attempt to resolve any situation related to a violation of human rights (§ 4 (1)(e) OR).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman-Institution has **access** to and may **examine files and documents** of any Kosovo Institution in relation to cases under consideration and may require any Kosovo Institution and its staff to **cooperate** with it by providing relevant information, documents and files and with all necessary assistance (§ 4 (8), § 11 (1) OR). Officials of the Ombudsman-Institution may at any time **enter and inspect** any place where persons are deprived of their liberty and may be present at meetings or hearings involving such persons and also conduct private meetings with such persons. The Ombudsman may also elaborate special procedures with such institutions to conduct immediate and unannounced inspections (§ 4 (9) OR).

The Ombudsman-Institution may exercise its competencies, *inter alia*, through **reconciliation, mediation and conciliation** at any time (§ 4 (2) OR). During or following an investigation, the Ombudsman-Institution may make **recommendations** to the competent authorities on the adoption of appropriate procedures and measures, including interim measures if necessary (§ 4 (10) OA). If, during an investigation, the Ombudsperson finds that the execution of an administrative decision may result in irreparable harm, he may recommend that the competent authority **suspend the execution** of the decision at issue (§ 4 (7) OR). The recommendations shall be **published**, except in regard to facts and situations considered confidential or secret, or where the complainant, or the injured party has expressly requested that his identity and the circumstances related to the case are not to be disclosed (§ 4 (13) OR).

If the competent authorities concerned do not adopt appropriate procedures or measures within a reasonable period of time, or do not provide the Ombudsman-Institution with acceptable reasons for not doing so, the Ombudsperson may **draw the attention of the Assembly** of Kosovo and the Government to the matter and may make a public statement thereon (§ 4 (12) OR). Furthermore, the Ombudsperson may recommend to the competent authorities that **administrative, civil or criminal proceedings** be initiated against any person (§ 4 (11) OR).

V.2. Powers in Relation to the Courts

The Ombudsperson has the right to control the administration of justice (Q II). For that purpose it can exercise the powers that have been stated above (supra V.1.).

V.3. Powers in Relation to Legislative Organs

The Ombudsperson has to **examine and report** on Assembly legislation and administrative provisions of Kosovo Institutions in force, **draft Assembly legislation** and proposals and make such **recommendations** as it deems appropriate to ensure that these provisions conform to international human rights standards (§ 4 (1)(c) OR). He can also recommend the adoption of new Assembly Laws, the amendment of Assembly Laws in force and the adoption or amendment of administrative measures by Kosovo Institutions (§ 4 (1)(d) OR).

The Ombudsman-Institution shall provide an **annual report** to the Assembly of Kosovo and shall make its findings public. **Special reports** may be issued "when circumstances so warrant" and shall also be made public (§ 16 OR).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is the Ombudsperson's main mandate. It is an explicit purpose of the institution to **advise** the Government, the Assembly of Kosovo and any other competent Kosovo Institution on any matters concerning the promotion and protection of human rights (§ 4 (1)(a) OR). The Ombudsperson shall also **prepare reports** on the situation in Kosovo with regard to human rights in general and more specific matters (4 (1)(f) OR) and publicise human rights and efforts to combat all forms of discrimination, in particular, racial and ethnic discrimination, by **increasing public awareness**, especially through **information** and **education** and by positive use of the media (4 (1)(j) OR).

VI. Practice

Between July 2005 and June 2006, 4,116 people contacted the Ombudsperson or one of its regional offices. In order to allow complainants to personally meet the Ombudsperson or one of his deputies, regular consultation days are held – 78 times during the above mentioned period with more than 1,500 people having taken use of this possibility. The focus of the Ombudsperson's activity lies with social matters, court proceedings, imprisonment, disputes about property as well as with abuse of office. Prisons, children's homes, psychiatric institutions as well as enclaves of minorities are **regularly inspected** ***ex officio***.

VII. Reform

The Institution considers lacking cooperation of authorities a problem. Sometimes the access to files and other documents is refused. The Ombudsperson demands an extension of his powers to include UNMIK authorities (Q II).

VIII. Information

Regulation:
http://www.unmikonline.org/regulations/unmikgazette/02english/E2006regs/RE2006_06.pdf

Internet:
www.ombudspersonkosovo.org

Serbia

Joachim Stern

A. Constitutional Background

Following the secession of Montenegro, the Constitution of the Republic of Serbia entered into force in November 2006 through a 53% electorate vote in favour of the Constitution in October 2006 (Constitution of 30/9/2006, hereafter Const).[259]

For administrative purposes Serbia is divided into five cities, 29 counties and 163 local communities. Two autonomous provinces are provided for: the Province Vojvodina and the Province of Kosovo and Metohija (Art 182 (2) Const). The autonomous provinces are partially independent in financial matters; their competences include urban planning and development, agriculture, water resources, forestry, tourism, education and health care and social welfare (Art 183 Const). Since 1999, the province of Kosovo is administrated by the United Nations (*United Nations Interim Administration Mission in Kosovo* – UNMIK). The future status of the province is currently pointed at independence from Serbia. The Government consists of the Prime Minister one or more vice presidents and the ministers. The Prime Minister is appointed by Parliament upon proposal of the President, the other members of Government upon proposal of the Prime Minister (Art 125–134 Const). Public administration is independent but accountable for its work to the Government. Government is also competent to regulate the internal organisation of ministries and other public administration bodies and organisations (Art 136 Const).

The National Assembly is Serbia's unicameral Parliament consisting of 250 members who are elected for a four year term through a process of direct suffrage (Art 100 (1), 102 (1) Const). The Head of State is the President who is also directly elected for a term of five years which is renewable once (Art 116 Const).

The Supreme Court of Cassation is the supreme court for civil, criminal and administrative matters (Art 143 (4) Const). Judges are nominated by the High Council of Justice and appointed by Parliament (Art 147, 154 Const). The Constitutional Court's powers include the decision on the compliance of laws and other general acts with the Constitution, generally accepted rules of international law and ratified international treaties; of ratified international treaties with the Constitution; of other general acts with the law; of the Statute and general acts of autonomous provinces and local self-government units with the Constitution and the law; and of general acts of

---

[259] See also Venice Commission, Opinion on the Constitution of Serbia, Opinion No. 405/2006 CDL-AD(2007)004 of 19/3/2007.

organisations with delegated public powers, political parties, trade unions, civic associations and collective agreements with the Constitution and the law (Art 167 (1) Const). Procedures can be instituted by state bodies, bodies of territorial autonomy or local self-government, as well as at least 25 deputies. The Court can also act on its own initiative. A constitutional appeal may be lodged against individual acts[260] or actions performed by state bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not been specified (*Constitutional Appeal*, Art 170 Const). The Court must decide on the constitutionality of a law before its promulgation upon appeal by at least one third of the deputies (Art 169 Const).

Section II of the Constitution contains a charter of "Human and Minority Rights and Freedoms". Serbia is a member to the Council of Europe since 2003 and ratified the ECHR in 2004. As ratified international treaty it ranks between the Constitution and national laws (Art 194 Const).

B. Overview of Existing Ombudsman-Institutions

Established in 2007, the Protector of Citizens is Serbia's national parliamentary ombudsman-institution with a general mandate (infra C.). However, the Province of Kosovo is by fact excluded from the Protector's control. The UNMIK had already established an ombudsman-institution in the province in 2000 (infra E.). The Autonomous Province of Vojvodina has an ombudsman-institution since 2003 (infra D.). Also, some local communities have provided themselves with communal Ombudsmen. All ombudsman-institutions are *inter alia* obliged to cooperation. In cases simultaneously pointing to violations of acts of the Republic and of other entities each Ombudsman who has jurisdiction shall investigate the part of the complaint that lies within his own scope of powers (Art 35 Act on the National Ombudsman).

C. Zaštitnik građana – Protector of Citizens (Civic Defender)

I. History and Legal Basis

In 2004, when Serbia still was a constituent republic of the Federation of Serbia-Montenegro, a draft Act providing for an Ombudsman of Serbia was elaborated upon the initiative of international organisations, mostly the OSCE. The draft law was also examined by the Venice Commission of the Council of Europe.[261] It was altered in some points and passed as an **Act of the Parlia-**

---

[260] The English translation erroneously states „individual *general* acts".

[261] Draft Law on the Ombudsman of Serbia, CDL(2004)113 of 17/11/2004; Venice Commission, Commissioner for Human Rights, Directorate General of Human Rights of the COE, Joint Opinion on the Draft Law on the Ombudsman of Serbia 318/2004, CDL-AD(2004)041 of 6/12/2004.

ment of the Serbian constituent republic in September of 2005 (Act 79/2005 of 16/9/2005; hereafter OA). Although the Act provided for the appointment of an incumbent within six months after its promulgation, it was not until July 2007 that a consensus of the political powers could be reached and the first Ombudsman was elected. Thus, no information can yet be given regarding the practice of the institution.[262] The institution has been **embodied in Serbia's new Constitution** (Art 138 Const; Art 55, 99, 105, 107 Const).

II. Organisation

The Serbian Ombudsman is a **monocratically organised** institution. The Ombudsman has **four deputies** upon who he can delegate **independent powers**. When doing so he shall ensure special expertise for the performance of duties primarily in respect to the protection of rights of persons deprived of their liberty, children's rights, rights of national minorities and rights of disabled persons, which obviously indicates the areas that the legislature intended the Ombudsman to appoint deputies for (Art 6 (2) OA). The deputies are appointed by the National Assembly upon proposal of the Ombudsman for a maximum of two five years terms in office. Requirements for appointment are to a large part identical to those of the Ombudsman (infra III.); the incumbents may also hold any other university degree and only need to have five years of professional experience (Art 6 (6) OA). One of the deputies is designated by the Protector to replace him when he is absent or prevented from performing his duties (Art 6 (3) OA). The legal status of the deputies is also identical to that of the Ombudsman, however, the Ombudsman has the right to propose their removal from office (Art 14 OA).

The institution has its seat in the capital city of Belgrade; the Protector may establish additional offices in other parts of the country (Art 3 OA). The **organisation** of the office shall be determined in a general act elaborated by the Ombudsman and approved by the Assembly (Art 38 (3) OA).

The **financial funds** for the institution shall be provided for in the state budget. For that purpose the Ombudsman shall draft a proposal and deliver it to the Government. The funds shall be sufficient to enable the Protector to fulfil his duties in an efficient and operational manner, however, they shall also be in accordance with the "microeconomic policy of the Republic" (Art 37 OA).

III. Legal Status

The Protector is **appointed by the National Assembly** by a simple majority of votes (Art 138 (3), Art 99 (2)(5), Art 105 (1)(14) Const). Each parliamentary group in the National Assembly has the right to **propose a candidate** for the office. It is up to the Committee for Constitutional Issues to decide upon the eligibility of these candidates. The Committee can also hold a hear-

[262] For that reason neither an annual report has been available nor was it possible to send out questionnaires to the institution.

ing in which all candidates are able to express their views on the role and manner of fulfilment of the Protector of Citizens' functions (Art 4 OA). **Requirements** for the election are the Serbian citizenship, a bachelor's degree in law, at least five years of experience in jobs related to the purview of the Protector of citizens, "high moral character and qualifications" and significant experience in the protection of civil rights (Art 5 OA). The office is **incompatible** with other public offices, any other professional activity, or any duty or function that might influence the Ombudsman's independence and autonomy (Art 9 (1) OA). A prohibition to be member of a political party is also laid down in the Constitution; the Act on the Protector seems to widen this interdiction by using the expression "political organisation" (Art 55 (5) Const, Art 9 (2) OA). Incompatible activities have to be ended the day that the official takes up office (Art 9 (4) OA). The Ombudsman shall not make any political statements (Art 10 (2) OA).

The **term of office** is five years, re-election is possible once (Art 4 (6) OA). The Protector of Citizens is **independent** and autonomous in the performance of his office. No one has the right to influence his work and actions (Art 138 (1) Const, Art 2 (1) OA). The Ombudsman is accountable only to the National Assembly and enjoys **immunity** like a member of Parliament does (Art 138 (5) Const).

The office **ends** with the expiry of the term, death or resignation; furthermore by loss of citizenship, by meeting requirements for mandatory retirement or when becoming permanently physically or mentally unable to carry out the official duties. This has to be determined on the basis of documentation of medical institutions. In such cases the office ends automatically which is to be confirmed by the National Council in a session without debate (Art 11 (1)–(6), Art 15 (1) OA). Upon proposal of one third of its members, Parliament can also **remove** the incumbent from office due to incompetence or negligence in discharging his duties, violation of the rules of incompatibility or in case of having been convicted for a criminal offence which makes him unsuitable for this function. The Protector of Citizens has the right to address the members of the National Assembly at the session in which his dismissal is to be discussed (Art 12 OA). If the Ombudsman is on remand, or if a conviction for a criminal offence has not yet entered into force, the Assembly may temporarily **suspend him from office** (Art 13 OA).

The Protector is entitled to a **salary** equal to that of the President of the Constitutional Court; deputies are entitled to that of a judge of the Constitutional Court (Art 36 OA).

IV. Scope of Control

The mandate of the institution is to "protect citizens' rights and monitor the work of public administration bodies, bodies in charge of legal protection of proprietary rights and interests of the Republic of Serbia, as well as other bodies and organisations, companies and institutions to which public powers have been delegated" (Art 138 (1) Const).

Subject to the Protector's control are acts of these institutions. Actions of the National Assembly, the President of the Republic, Government, the Constitutional Court, Courts and the public prosecutor's offices are explicitly exempt (Art 138 (2) Const, Art 17 OA).

The **standards of an investigation** are the rights of citizens, laws, regulations, and other general acts of the Republic. The Protector of Citizens does not only have the power to control the legality but also the regularity of the work of administrative bodies, thus permitting a control based on criteria of good administration (Art 17 (1), (2) OA). Additionally, the law provides that the Ombudsman shall act in accordance with ratified international treaties and generally accepted rules of international law (Art 2 (2) OA).

The term "citizen" does not only cover Serbian nationals but any physical person, as well as any local or foreign legal person whose rights and responsibilities are determined by the administrative authorities subject to control (Art 1 (2) OA). Any of these persons has the **right to file a complaint** when he considers that his rights have been violated (Art 25 (1) OA). The right to complain is personal; complaints concerning children can be filed by their legal representatives (Art 25 (2) OA). Prior to complaining the persons are "required to endeavour to protect their rights in appropriate legal proceedings". Complaints are therefore **subsidiary**. Only cases in which the complainant would sustain irreparable damage or cases relating to a violation of the principles of good governance are exempt from this rule (Art 25 (5) OA).

The complaint may be filed no later than **one year** from the day the violation occurred or from the date of the last action taken by the administrative authority in respect to said violation. It can be raised in writing or "orally on record" (Art 26 OA). The secretariat of the Protector of Citizens is obliged to offer technical assistance in drafting a complaint without any kind of compensation (Art 27 (2) OA). Persons deprived of their liberty are entitled to submit their complaints in a sealed envelope. All concerned institutions shall visibly and publicly provide adequate envelopes (Art 27 (3), (4) OA). The complaint has to contain the name of the administrative authority involved, a description of the violation of the right, facts and evidence supporting the complaint, information about the legal remedies already used and all necessary information that is related to the complainant (Art 27 (1) OA). The complaint shall **not** be subject to payment of any fees or other dues and is therefore **free of charge** (Art 26 (1) OA).

The Ombudsman shall not investigate into anonymous complaints. "Exceptionally", they can be at the basis of investigations on his **own initiative** (Art 25 (6) OA). Such an investigation is not subject to any conditions (Art 24 (1), Art 32 OA).

The Ombudsman is under the **duty to investigate** into each complaint, except for cases in which requirements for filing a complaint are not fulfilled. If information that is necessary to consider the case is missing, the Ombudsman has to ask the complainant to correct such deficiency (Art 28 OA). Any refusal to treat a case has to state reasons. The complainant and the ad-

ministrative authority involved have to be **informed** of the beginning and end of a proceeding (Art 29 (1), Art 31 OA).

The Protector of Citizens may decide not to disclose the identity of the complainant to the administrative authority "in certain justified cases" (Art 29 (3) OA). Even after the end of office, he and his staff are subject to duties of **confidentiality** (Art 21 (3), (4) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

Administrative authorities subject to control are required to **respond to all requests** of the Protector and to provide all requested information and documents within a **period set** by the Protector which may not be shorter than 15 or longer than 60 days (Art 29 (2) OA). Even beyond these duties there are obligations to **cooperate** with him and obligations to **enable his access** to the premises and other information, if this information is important to his proceedings, but also for the fulfilment of his preventive operations. Confidentiality cannot be opposed to the Ombudsman "unless contrary to the law" (Art 21 (1) OA). The Ombudsman has the power to interview any employee of the administrative authorities when this is of significance for his proceedings (Art 21 (2) OA). The President of the Republic, the Prime Minister and members of the Government, the Speaker of the National Assembly and officials in administrative agencies are obligated to **receive the Protector of Citizens** at his request within fifteen days at the latest (Art 23 OA). He can **freely access** correctional institutions but also other places where persons deprived of liberty are held and is permitted to speak in privacy with those persons (Art 22 OA).

If the administrative authority involved eliminates irregularities by itself, the Protector shall notify the complainant thereof. Unless the latter disapproves of the measures within fifteen days, the Ombudsman shall discontinue the proceedings (Art 30 OA).

If the Protector concludes that irregularities exist he shall deliver a **recommendation** to the administrative authority on steps to be undertaken for a rectification. Within 60 days, the authority is obliged to answer whether it proceeded pursuant to the recommendation and eliminated the irregularity, or about the reasons why it failed to fulfil the Ombudsman's demand. In cases where there is a danger that the complainant's rights might be permanently and seriously violated, the Ombudsman may set a shorter period for elimination of such irregularities but no shorter than fifteen days. If the administrative authority fails to proceed pursuant to the recommendation, the Protector of Citizens may **inform** the public, the National Assembly and the Government, and may recommend proceedings to determine the accountability of the official in charge of the administrative authority (Art 31 OA). The Protector can publicly call for the **dismissal or other disciplinary proceedings** against an official responsible for a violation, when recurring behaviour of the official reveals the intent to refuse to co-operate with the Pro-

tector or when the injury made to the person caused material or other serious damage. If such activities contain elements of criminal or otherwise punishable acts, the Ombudsman has the power to file a motion to initiate appropriate proceedings (Art 20 OA).

General acts of the administration that restrict freedoms and rights can be **appealed** against at the **Constitutional Court**. The Protector can also propose to the Government that such acts be amended (see also infra V.3.).

V.2. Powers in Relation to the Courts

Courts are generally **exempt** from the Ombudsman's control. He has no powers in their regard (supra IV.). Whether this exclusion also covers the administration of justice could not be established.

V.3. Powers in Relation to Legislative Organs

Until March 15th each year the Ombudsman has to present an **annual report** to Parliament, containing information on activities in the preceding year, noted irregularities in the work of administrative authorities and recommendations to improve the status of citizens in relation to administrative authorities. The report shall be **published** in the "Official Gazette of the Republic of Serbia" and on the website of the Protector of Citizens and shall also be delivered to public media. **Special reports** may be submitted during the year "if necessary" (Art 33 OA).

The Constitution gives the Ombudsman the right to **legislative initiatives** concerning "laws falling within his competence" (Art 107 Const). The Act on the Ombudsman provides in this regard that the Protector does not only have the right to propose the amendment of laws if he deems that violations of citizens' rights are a result of deficiencies of such regulations, but also gives him the right to launch initiatives for new laws if he considers this to be significant for exercising and protecting citizens' rights. The competent committee of the **National Assembly is obliged to consider** the initiatives (Art 18 (1), (2) OA). If laws concerning the protection of citizens' rights are drafted by other institutions, the Ombudsman has the right to give his opinion (Art 18 (3) OA). Laws restricting the rights and freedoms of the citizen can be **appealed** against in the **Constitutional Court** (Art 19 OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Ombudsman shall ensure that human rights and freedoms are "protected and promoted" (Art 1 (2) OA). This does not provide for any powers exceeding those described above.

The institution is not accredited with the International Coordinating Committee as NHRI according to the Paris Principles. Serbia is party to the OPCAT, but has not ratified the protocol yet.

VI. Practice

With no information about the actual functioning of the office available yet, no statement concerning the activity of the institution can be drawn. Also, a website of the institution could not be found. A human rights organisation encourages people to turn to the Ombudsman providing forms to use for complaints and the legal basis, using the slogan "Ombudsman – Just do it".[263]

VII. Reform

With regard to the short period of existence no information about plans to reform the institution are available thus far.

VIII. Information

Constitution:
http://www.parlament.sr.gov.yu/content/eng/akta/ustav/ustav_1.asp

Law:
http://www.osce.org/item/16493.html

D. Pokrajinski Ombudman Autonomne Pokrajine Vojvodine – Provincial Ombudsman of the Autonomous Province of Vojvodina

I. History and Legal Basis

The institution of the Provincial Ombudsman of the Autonomous Province of Vojvodina has its **legal basis** in a decision of the regional Parliament (Decision on the Province Ombudsman 23/2002 of 23/12/2002, hereafter OA-V). The Act entered into force in January 2003. The first incumbent got elected in September the same year and took office in October. According to information provided by the institution, the legal basis has been amended twice thus far (Q III).

II. Specific Features

The Ombudsman of the Autonomous Province Vojvodina is also a **monocratically organised institution**. The incumbent has **five deputies** of which one each shall be elected for national minority rights, rights of children and gender equality (Art 6 (1), Art 15 ff OA-V). The institution employs about 20 people and has its seat in the city of Novi Sad. The Ombudsman shall establish **local offices**; one has been established in Subotica so far (Art 4 OA-V).

The Ombudsman is elected by the Parliamentary Assembly of the province by a **two-thirds majority** vote of all deputies (Art 5 (1), 15 ff OA-V) and upon proposal of the Parliamentarian Committee or at least 30 members

[263] http://www.odbor.org.yu/aktivnosti/ombudsman.htm (29/8/2007).

(Art 6 (3) OA-V). Preconditions for an appointment include a law school degree and recognised professional experience of at least seven years (Art 7 OA-V).

The office is **incompatible** with other public offices or professional activities, membership in political parties or organisations, in trade unions, management and supervisory boards of enterprises and institutions, as well as activities or undertakings that could affect the Ombudsman's independence and autonomy (Art 7 (2) OA-V). Moreover, a person having held a high ranking office during the twelve months prior to elections cannot be appointed (see Art 7 (5) OA-V). The term of office is **six years**, the salary equals that of a provincial minister (Art 5, Art 42 OA-V).

A **removal** from office can be proceeded with in case of a criminal conviction, a violation of the rules on incompatibilities, or if the incumbent "fails to discharge the duties of office in a professional, impartial, independent and conscientious manner". The vote requires a two thirds majority in Parliament (Art 10 OA-V).

Subject of control are provincial and municipal administrative authorities, institutions, bodies and organisations exercising specific administrative positions which have been established by the province or a municipality (Art 1 (2) OA-V). No exceptions are defined in this respect.

Any natural or legal person believing to have been violated in his human rights has the **right to complain**. Third parties like NGOs can do so if the concerned person agrees (Art 19 OA-V). Regular legal remedies have to be exhausted before a complaint can be received. "With the goal of quick and efficient protection of human rights", the Ombudsperson is empowered to engage in mediation and reconciliation at any given moment and to initiate proceedings even when a legal remedy has not been exhausted, if that would represent a threat to the protection of human rights (Art 24 OA-V).

The Ombudsperson has access to all premises of administrative agencies, and at any time and without making an appointment, he may visit all institutions for mandatory psychiatric treatment (Art 28 OA-V). If cooperation is refused, the Ombudsman can inform the superior authority or the provincial Parliament (Art 29 OA-V). This behaviour constitutes an administrative offence to be sanctioned with a fine (see Art 44 OA-V).

The Ombudsman may **recommend** to the administrative agency to repeat the procedure in accordance with law, recommend to the administrative agency rules of procedure aimed at improving its work and dealing with citizens or request the suspension of the execution of a final act (Art 35 OA-V). If neither the authority has committed a violation nor its supervisory organ reacts sufficiently upon the Ombudsman's recommendation, he may inform the provincial Government, Parliament and the public via the media (Art 34 OA-V).

The Ombudsman cannot only demand **disciplinary proceedings** against officers responsible for violations of human rights or having obstructed the investigation but also to initiate **misdemeanour or criminal proceedings** before the competent public prosecutor (Art 35 OA-V).

The Ombudsman has no powers vis-à-vis courts. Since a considerable part of complaints received by the institution relate to the judiciary, the Ombudsman has started to demand information and explanations also in these cases. This has proven to speed up proceedings (AR 2004, 68).

In order to "raise the standards of laws with regard to human rights" the Ombudsman can initiate proceedings at the Constitutional Court like any other public authority in Serbia. He can also propose the amendment or passing of new acts to the Parliament and the provincial Government (Art 14 (1) OA-V).

Even though the criteria that are to be applied by the Ombudsman also include simple laws, the **focus** of the institution lies with **human rights**. In this regard the Ombudsman's deputies have extensive duties to supervise and offer information regarding the sensitive areas of minorities, children and gender discrimination (Art 15–17 OA-V). The Ombudsman shall also **monitor** the application of international human rights standards and organise and participate in the preparation of **seminars** regarding the implementation of mechanisms aimed at respecting human rights (Art 13 (1) OA-V).

Between November 2003 and November 2004 the Ombudsman received 265 written complaints. 623 new investigations were launched in 2005 (Q III). Around 30% of these complaints concerned the courts. Attention has also been paid to the so called *Centers for Social Care*, especially with regard to disputes concerning parental authority. In addition, special emphasis was also placed on the conditions in psychiatric institutions and prisons (AR 2004, 69, 96).

The institution considers **lacking financial funds** as its main problem. His recommendations being hardly followed upon, the incumbent also demands for more precise regulations to be applied in cases of non-compliance (Q II). This seems surprising with regard to the detailed provisions available in this respect.

III. Information

Law:
http://www.osce.org/documents/fry/2002/01/132_en.pdf

E. Institucioni i Ombudspersonit në Kosovë – Institucija Ombuspersona na Kosuvu – Ombudsperson Institution in Kosovo

I. History and Legal Basis

The Ombudsperson Institution in Kosovo was founded in June 2000 through a **regulation by the United Nations Interim Administration Mission in Kosovo** (UNMIK – Regulation 2000/38 of 30/6/2000). It opened its office in November 2000. This first regulation was replaced by a new one in 2006 after consultation with the Assembly of Kosovo and its Government (Regulation of 16/2/2006; hereafter OR). The new regulation abolished the

right to also complain against international institutions and thus against the UNMIK. A draft law elaborated by the Parliamentary Assembly of Kosovo largely resembles the current regulation. The Venice Commission of the Council of Europe has issued an opinion on the draft law (CDL-AD(2007)024). The Commission thereby pointed out the importance of embodying such an institution in the Constitution. It criticises the definition of the area of responsibility of the Ombudsperson: The provision *ratione personae* which includes people outside the territory of Kosovo is considered too indefinite and would result in a lack of opportunities for enforcement; the provision *ratione materiae* is considered too narrow in that it provides for a control based solely on human rights. The Commission also questions the need for four deputies.

II. Organisation

The Ombudsman-Institution is **monocratically organised** (§ 5 OR). One "**principal deputy**" and **three regular deputies** are appointed among which there has to be at least one person from the Kosovo-Albanian Community, one person from the Kosovo-Serbian Community and at least one person from one of the other non-majority communities entitled to be represented in the Assembly of Kosovo (§ 6 (7) OR). The institution currently employs 54 people (Q II) and has its seat in Priština. **Additional offices** have been opened in five other towns (§ 14 (1) OR; Q III, 1). The regulation provides that the institution be allocated **sufficient funds** from the Kosovo Consolidated Budget to carry out its functions and responsibilities fully and independently and that it may also receive supplemental donations from international donors, which shall be recorded in the annual accounts (§ 17 OR).

III. Legal Status

The Ombudsperson and the principal deputy Ombudsperson, as well as the three other deputy Ombudspersons are **appointed by the Assembly of Kosovo** "according to open and transparent procedures" by a simple majority vote, following a public announcement issued by the Presidency of the Assembly calling for nominations within a period of not less than forty days from organisations and institutions involved with the monitoring, protection or promotion of human rights and fundamental freedoms (§ 6 (2) OR). The candidates are **required** to be "eminent figures of high moral character, impartiality and integrity, who possess a demonstrated commitment to human rights" and who are habitual residents of Kosovo (§ 6 (1), (4) OR).

The position of the Ombudsperson and even of his staff are **incompatible** with the exercise or holding of any political, public or private professional activity or office (§ 8 (1) OR).

The **term of office** of the Ombudsperson and the principal deputy is four years. The term of the deputies is three years. Both are renewable for a further term (§ 6 (3), (6) OR).

Upon a motion of any member of the Assembly, signed by five additional members, the Assembly may **remove** from office or temporarily suspend the Ombudsperson by a vote that holds the support of two-thirds of the members of the Assembly of Kosovo. This in the event that the Ombudsman's health is such that he is physically or mentally incapacitated and that this affects his ability to perform his functions; if he has been convicted after due process in accordance with internationally accepted standards for a criminal offence punishable by a term of imprisonment; if he fails to discharge his official duties satisfactorily as determined by the judgment of the Assembly of Kosovo; or because of personal conduct or behaviour of a nature incompatible with the due exercise of his functions (§ 8 (2) OR). The Ombudsperson and his deputies enjoy **immunity** from legal process in respect of words spoken or written and acts performed by them in their official capacity. Such immunity continues to be accorded even after they cease their employment. The immunity can be waived by a two-thirds majority of the Assembly (§ 12 OR).

The Ombudsman-Institution shall act **independently**. No person or entity may interfere with the exercise of its functions (§ 2 (1) OR).

The level of **salary** of the Ombudsperson is equivalent to that of the President of the Supreme Court of Kosovo (§ 18 (1) OR).

IV. Scope of Control

Subject of Control are "Kosovo Institutions". This includes all provisory bodies of self-administration and the local communities in the area of Kosovo (§ 3 (1) in connection with § 1 (3) OR). With regard to matters of discrimination, also private persons are under the control of the Ombudsperson (see also § 4 (3) OR). The Ombudsman-Institution may enter into a bilateral agreement with the Special Representative of the Secretary-General on procedures for dealing with cases involving UNMIK – authorities.

Criteria of control are international human rights standards as incorporated in the applicable law and acts, including omissions, which constitute an abuse of authority. This provision also allows for the application of standards of good administration (§ 3 (1) OR).

Any habitual resident of Kosovo or any natural or legal person in the territory of Kosovo has the **right to complain** to the Ombudsperson (§ 3 (1) OR). The Ombudsperson can also start an investigation on his own initiative (§ 4 (5) OR). The Institution may offer its services to habitual residents of Kosovo who are temporarily outside the territory of Kosovo (§ 3 (2) OR).

The complaint must be filed on a form provided for by the Ombudsperson and also be signed by an official of the Ombudsperson. There are **no time limits** for a complaint, but the matter must have occurred after the entry into force of the regulation, or – if occurred prior to this date – must give rise to a continuing violation or constitute a continuing abuse of authority (§ 3 (3) OR). The Ombudsperson and his staff shall maintain **confidentiality** of all information and data obtained, with special attention being given to the

protection of the safety of complainants, injured parties and witnesses (§ 10 OR).

According to the institution a complaint is **subsidiary** (Q I). The services offered by the Ombudsman-Institution shall be **free of charge** (§ 2 (2) OR). There is no appeal against any action or decision of the Ombudsman-Institution (§ 4 (14) OR). The Ombudsperson has the **responsibility to investigate,** report on and attempt to resolve any situation related to a violation of human rights (§ 4 (1)(e) OR).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Ombudsman-Institution has **access** to and may **examine files and documents** of any Kosovo Institution in relation to cases under consideration and may require any Kosovo Institution and its staff to **cooperate** with it by providing relevant information, documents and files and with all necessary assistance (§ 4 (8), § 11 (1) OR). Officials of the Ombudsman-Institution may at any time **enter and inspect** any place where persons are deprived of their liberty and may be present at meetings or hearings involving such persons and also conduct private meetings with such persons. The Ombudsman may also elaborate special procedures with such institutions to conduct immediate and unannounced inspections (§ 4 (9) OR).

The Ombudsman-Institution may exercise its competencies, *inter alia*, through **reconciliation, mediation and conciliation** at any time (§ 4 (2) OR). During or following an investigation, the Ombudsman-Institution may make **recommendations** to the competent authorities on the adoption of appropriate procedures and measures, including interim measures if necessary (§ 4 (10) OA). If, during an investigation, the Ombudsperson finds that the execution of an administrative decision may result in irreparable harm, he may recommend that the competent authority **suspend the execution** of the decision at issue (§ 4 (7) OR). The recommendations shall be **published**, except in regard to facts and situations considered confidential or secret, or where the complainant, or the injured party has expressly requested that his identity and the circumstances related to the case are not to be disclosed (§ 4 (13) OR).

If the competent authorities concerned do not adopt appropriate procedures or measures within a reasonable period of time, or do not provide the Ombudsman-Institution with acceptable reasons for not doing so, the Ombudsperson may **draw the attention of the Assembly** of Kosovo and the Government to the matter and may make a public statement thereon (§ 4 (12) OR). Furthermore, the Ombudsperson may recommend to the competent authorities that **administrative, civil or criminal proceedings** be initiated against any person (§ 4 (11) OR).

V.2. Powers in Relation to the Courts

The Ombudsperson has the right to control the administration of justice (Q II). For that purpose it can exercise the powers that have been stated above (supra V.1.).

V.3. Powers in Relation to Legislative Organs

The Ombudsperson has to **examine and report** on Assembly legislation and administrative provisions of Kosovo Institutions in force, **draft Assembly legislation** and proposals and make such **recommendations** as it deems appropriate to ensure that these provisions conform to international human rights standards (§ 4 (1)(c) OR). He can also recommend the adoption of new Assembly Laws, the amendment of Assembly Laws in force and the adoption or amendment of administrative measures by Kosovo Institutions (§ 4 (1)(d) OR).

The Ombudsman-Institution shall provide an **annual report** to the Assembly of Kosovo and shall make its findings public. **Special reports** may be issued "when circumstances so warrant" and shall also be made public (§ 16 OR).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is the Ombudsperson's main mandate. It is an explicit purpose of the institution to **advise** the Government, the Assembly of Kosovo and any other competent Kosovo Institution on any matters concerning the promotion and protection of human rights (§ 4 (1)(a) OR). The Ombudsperson shall also **prepare reports** on the situation in Kosovo with regard to human rights in general and more specific matters (4 (1)(f) OR) and publicise human rights and efforts to combat all forms of discrimination, in particular, racial and ethnic discrimination, by **increasing public awareness**, especially through **information** and **education** and by positive use of the media (4 (1)(j) OR).

VI. Practice

Between July 2005 and June 2006, 4,116 people contacted the Ombudsperson or one of its regional offices. In order to allow complainants to personally meet the Ombudsperson or one of his deputies, regular consultation days are held – 78 times during the above mentioned period with more than 1,500 people having taken use of this possibility. The focus of the Ombudsperson's activity lies with social matters, court proceedings, imprisonment, disputes about property as well as with abuse of office. Prisons, children's homes, psychiatric institutions as well as enclaves of minorities are **regularly inspected** ***ex officio***.

VII. Reform

The Institution considers lacking cooperation of authorities a problem. Sometimes the access to files and other documents is refused. The Ombudsperson demands an extension of his powers to include UNMIK authorities (Q II).

VIII. Information

Regulation:
http://www.unmikonline.org/regulations/unmikgazette/02english/E2006regs/RE2006_06.pdf

Internet:
www.ombudspersonkosovo.org

Slovakia

Joachim Stern

A. Constitutional Background

The Constitution of the Slovak Republic was adopted in 1992 while the state was still part of Czechoslovakia. It entered into full force with the dissolution of the federal state (Constitution of 1/9/1992 as amended 11/4/2002, hereafter Const). It declares the Republic a sovereign, democratic state governed by the rule of law (Art 1 (1) Const).

The National Council is Slovakia's unicameral Parliament, consisting of 150 members who are elected for terms of four years (Art 72ff Const). The Head of State is the President (Art 101 Const). The President nominates the Prime Minister, and upon proposal of the latter, the other members of Government, who form the supreme executive body (Art 108 Const). Within 30 days of appointment, the Government must request a vote of confidence from Parliament.

The Supreme Court is the court of last instance in matters of civil, criminal and administrative disputes (Art 142 Const). The Constitutional Court's principle role is to review the constitutionality of laws and ordinances, as well as to rule on their compatibility with ratified international treaties (Art 124ff Const). The Court also decides complaints of natural or legal persons who claim that their fundamental rights or freedoms have been infringed. The Court may award financial compensation to those whose rights have been infringed (Art 127 Const). There is no specialised administrative jurisdiction, however, administrative disputes are subject to review by ordinary courts.

The Constitution contains a comprehensive catalogue of fundamental rights and freedoms (Part II, Art 14–50 Const).

The Slovak Republic has been an independent member of the Council of Europe since 1993. The ECHR had already been ratified by the Czechoslovak Federation. As it is an international treaty on human rights and fundamental freedoms which was ratified before the Slovak Constitution entered into force, it now forms part of the country's legal order and takes precedence over domestic laws (Art 154c Const).

B. Overview of Existing Ombudsman-Institutions

The *Verejný ochranca práv* – the Public Defender of Rights – is Slovakia's national ombudsman-institution with a general mandate. No similar bodies exist on a regional or community level.

C. Verejný ochranca práv – Public Defender of Rights

I. History and Legal Basis

Before the dissolution of the Czechoslovak federation, a governmental bill for the creation of a Public Defender of Rights was drafted. The six members of the collegially organised body were intended to represent the federal structure of the state. The project was abandoned with the secession of the Republic.

It was not until 2001 that an article providing for a Public Defender of Rights was introduced to Title VIII of the **Constitution** which is now titled "The Office of the Public Prosecution of the Slovak Republic and the Public Defender of Rights". One article with five paragraphs lays down the main characteristics of the institution (Art 151a Const as amended by Act 90/2001 of 23/2/2001). A corresponding parliamentary act was enacted the same year and entered into force in the beginning of 2002. The first Public Defender was elected in March 2002 and commenced work shortly afterwards. An amendment to the legislation gave the Ombudsman the right to apply to the Constitutional Court. It also introduced an obligation for authorities to respond to recommendations of the Ombudsman within 20 days and laid down the right of the Ombudsman to turn to the National Council if his proposals were not being followed (Act on Public Defender of Rights 564/2001 of 4/12/2001, as amended by Act 122/2006, hereafter OA). According to the Ombudsman, the establishment of an ombudsman-institution was a precondition for the country to join the European Union (AR 2005).

II. Organisation

The institution of the Public Defender of Rights is **monocratically organised**. The Public Defender has **no deputies**. A secretariat is responsible for organising the Defender's activities from a "professional, operational and technical aspect" (§ 27 OA). The institution currently employs 40 people. **Consultation days** are held in various regions of the country following a regular schedule.

The **budget** of the institution was previously laid down in a separate chapter of the budget but in 2004 it was integrated into the budget of the Ministry of Finances (Q I).

III. Legal Status

The Public Defender of Rights is **elected** by the National Council by a simple majority in a secret ballot and has a **term of office** of 5 years. Re-election is possible once. Candidates are to be **nominated** by at least 15 members of the National Council (Art 151a (3) Const, § 4, § 5 OA) and must meet the following **requirements**: They must be Slovak Citizens with permanent residence in the territory of the Slovak Republic, have a minimum age of 35 years and enjoy full legal capacity (Art 151a (3) Const, § 4 (2) OA). Additionally, they have to be of "irreproachable character", meaning that they

shall not have been convicted of an intentional criminal offence or sentenced to imprisonment for a negligently committed criminal offence. The candidate shall have "education, skills, experiences and moral character that guarantee that he shall properly exercise the function" (§4 (4) OA). Members of a political party or political movement cannot be elected (§ 4 (2)(d) OA).

The holding of office is **incompatible** with any role in public administration bodies; the legislation explicitly lists all high ranking state offices in this context. The incumbent Ombudsman may not perform any business or other profit-making activity with the exception of the management of his own assets or assets of his minor children. Scientific, educational, literary and artistic activities may be exercised, provided these activities do not interfere with the proper exercise and dignity of his function and do not affect trust in the impartiality and independence of the Public Defender of Rights. The Constitution provides that the Public Defender of Rights cannot be a member of a political party or political movement (Art 151a (3) Const).

The Public Defender will be removed from office automatically if he no longer meets the criteria for election or if he becomes involved in an activity incompatible with the office (§ 8 (1) OA). The legislation does not specify who has the authority to legally terminate the office. The National Council can **remove** the Ombudsman by a simple majority if a long-term health condition, lasting for at least three months, prevents him from performing his duties adequately. If the Ombudsman resigns, he must continue to exercise his functions until the end of the following month and further, he is obliged to complete any duties the postponement of which would prejudice the rights of claimants (§ 9 OA).

The Public Defender of Rights is **independent** (Art 151a (1) Const). He does not enjoy immunity from criminal prosecution. His **income** is defined in the legislation and equals that of the Vice-Speaker of the National Council (§ 26 OA).

IV. Scope of Control

The **function of the Ombudsman** is to protect the fundamental rights and freedoms of natural persons and legal entities from violation by public administration bodies and other public bodies (Art 151a (1) Const).

Subject to the control of the Ombudsman are state administration bodies, local self-governmental bodies as well as legal entities and natural persons who make decisions for such bodies or otherwise intervene in the rights and duties of natural and legal persons in the area of public administration, who are acting under specific legislative provisions. This definition includes institutions such as social security or health insurance companies (§ 3 OA). Explicitly **exempt** from the Ombudsman's jurisdiction are the National Council, the President of the Slovak Republic, the Government, the Constitutional Court, the Supreme Audit Office, intelligence agencies, investigators of the Police Corps, the public prosecutor and courts. However, the Ombudsman may examine the state administration of courts and cases involving

disciplinary misdemeanours committed by judges (§ 3 (2) OA, infra V.2.). The meaning of a provision which exempts "matters of operational or mobilisation nature" from the Ombudsman's jurisdiction could not be established (§ 3 (3) OA).

The **standards of investigation** applied by the Public Defender include the fundamental rights and freedoms laid down in the Constitution or in ratified international treaties, as well the "principles of the democratic state" (§ 11 OA). He cannot conduct investigations based on the assumption of a violation of laws or principles of good administration. Anybody has the **right to complain** to the Public Defender (§§ 11, 13 OA). If the petition is filed for another person, the complainant must include the written approval of the person concerned (§ 15 (2) OA). The Defender may also act upon his **own initiative** (§ 13 (1) OA).

A **complaint** may be filed in writing, by telegram, facsimile or e-mail or can be given verbally and recorded in the minutes (§ 13 (2)). It shall clearly indicate the matter and the authority concerned and describe the desired action. The Ombudsman may only refuse to treat a complaint if the lack of information makes it impossible to deal with it (§ 13 (4) OA). In principle, he is under a **duty to investigate** cases (§ 14 (1) OA). However, anonymous complaints, complaints relating to events dating back more than **three years** or manifestly unfounded complaints *may* be rejected (§ 15 (2) OA). The Ombudsman *must* reject petitions relating to cases pending in court or cases that have been decided by a court. There is an exception for complaints relating to delays in judicial proceedings, however, not for complaints relating to disciplinary misconduct of judges. That is in contradiction to the definition of the Ombudsman's jurisdiction. The Public Defender must also refuse cases which are or have been under investigation by the public prosecutor or which concern a body not within his jurisdiction (§ 15 (1) OA).

Written complaints from persons deprived of or restricted in their personal liberty shall not be subject to official inspection if addressed to the Public Defender of Rights (§ 13 (5) OA). Natural persons may use their mother tongue in correspondence with the Public Defender of Rights. Costs of interpretation are to be borne by the state (§ 11 (2) OA).

The Ombudsman is subject to strict **confidentiality** regulations (§ 12 (1) OA). Upon request of the complainant, personal data shall be removed from the complaint while it is being processed (§ 13 (6), (7) OA).

A complaint is **free of charge**. The Ombudsman must inform the petitioner if he refuses to act upon the case, or alternatively must inform the petitioner of the outcome of an investigation.

V. Powers

V.1. Powers in Relation to Administrative Organs

The Public Defender of Rights is entitled to ask public administration bodies to provide him with **files and documents** necessary for his investigations, even if access to these documents is restricted. He may demand an **explana-**

tion concerning the subject of the complaint and question employees of public administration bodies. The Defender has the right to demand that the authorities carry out any measures within the law and he may participate in collegial meetings with the right to pose questions. He can **enter the premises** of public authorities and speak privately with persons restricted in their freedom or with children in residential care (§17 OA). If necessary for an investigation, the Defender may also request files and information from criminal proceedings cases, even though the bodies responsible for these cases are generally outside his jurisdiction. Even authorities not subject to his jurisdiction are obliged to **cooperate** with him (§ 25 OA).

If the Defender establishes that there has been a breach of fundamental rights and freedoms, he shall inform the responsible authority and provide them with a "**proposal of measures**". The relevant authority is obliged to inform the defender of its opinion and of the measures adopted within 20 days. If this is not done, or if the Public Defender disapproves of the measures taken, he shall report the situation to the relevant **superior body** or to the Government if such a body does not exist. A time limit of 20 days also applies to this authority. If the Public Defender does not consider the measures taken to be sufficient, he shall report to the **National Council** or to a body authorised by the National Council (§ 17 (5)–(8) OA).

If the Public Defender of Rights suspects that an infringement of fundamental rights and freedoms is brought about by an act, a generally binding legal regulation or an internal regulation issued by a public administration body, he can file a motion with the competent body for change or repeal of the relevant provisions. This body shall notify the Public Defender of the measures implemented on the basis of this motion (§ 21 (1), (2) OA). Laws and other general regulations can be appealed at the Constitutional Court (infra V.3.).

If, during investigations, the Public Defender finds facts indicating a crime or other offence, administrative misconduct or a disciplinary offence, he shall notify the body competent to initiate proceedings. The subsequent chain of action is the same as with general recommendations (§ 20 OA).

V.2. Powers in Relation to the Courts

Courts are only subject to the Ombudsman's control with regard to their administration. The Ombudsman's jurisdiction over judges extends only to cases involving disciplinary misdemeanours. In such a case he may demand the initiation of disciplinary proceedings. This definition includes cases of lengthy proceedings (infra VI.).

V.3. Powers in Relation to Legislative Organs

In the first quarter of each year the Public Defender of Rights is to present an **annual report** to the National Council containing his findings on the observance of fundamental rights and freedoms by public administration bodies and his proposals and recommendations for the correction of any problems. The Public Defender of Rights shall publish this activity report "through

internet and periodicals and, possibly, other information media" (§ 23 OA). If he has information indicating that an infringement is significant or relates to a significant number of persons, he can submit an **extraordinary report** to the National Council and he may propose this report for discussion in the next plenary session. According to the Ombudsman, annual reports are also regularly discussed in Parliament. Parliament shall also be informed about other cases in which the Ombudsman's recommendations were not sufficiently implemented (§§ 17 (7), 19 (5), 20 (5) OA).

If the Public Defender concludes that the continuing application of a legal provision or other regulation of general application could represent a threat to fundamental rights and freedoms, including those found within international treaties ratified by the Slovak Republic, he can **apply to the Constitutional Court** for the repeal of the relevant provisions or regulations (§ 21 (3) OA, Art 125 (1) Const).

However, the legislation does not provide the Defender with the right to submit recommendations to Parliament for the amendment of legislation. To date, such proposals have been submitted to the Parliamentary Committee for Human Rights, Nationalities and the Position of Women, as the committee responsible for matters concerning the Ombudsman.

V.4. Special Functions and Powers in the Field of Human Rights

All of the powers of the Public Defender of Rights are related to human rights. The Public Defender of Rights can **cooperate** with other entities active in the field of protection of rights and freedoms (§ 25 OA). He shall generally **inform the public about his activities** and results using the internet and other information media (§ 23 (3) OA).

The Slovakian National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*) is listed at the International Coordination Committee for National Human Rights Institutions as the national Slovakian institution but it is not accredited as being in conformity with the Paris Principles. Slovakia has not yet signed the OPCAT.

VI. Practice

To date there is only one report on the activities of the institution available in English. It covers the period from the founding of the institution until August 2005. Within this timeframe the institution received 7,756 complaints of which 7,233 could be concluded. In 12,656 cases the office provided people with legal advice. While during the first year only four infringements of rights and freedoms were found to have occurred, this number increased to 105 in the first eight months of 2005. The increase is attributed not only to a significant rise in the number of complaints, but also to better knowledge within the population as to the criteria applied by the Ombudsman. Out of 261 complaints which were considered to be founded, 233 stemmed from delays in proceedings, of which 146 occurred in courts. The other complaints

concerned the employment offices, social affairs and other administrative areas.

According to the institution, prisons and children's homes are regularly inspected *ex officio*. However, no information as to these inspections could be found in the report.

VII. Reform

In cooperation with the Parliamentary Committee for Human Rights, Nationalities and the Position of Women, the Public Defender of Rights elaborated and promoted the amendments described above (supra C.I.). However, the Ombudsman's proposal to extend the criteria of control to the legislation and principles of good administration was not implemented. The Ombudsman also asserts that the election requirements for Ombudsmen should include knowledge of the law and that the financial autonomy of the institution (supra II.) should be re-established.

VIII. Information

Constitution:
http://www.concourt.sk/A/A_ustava/ustava_a.pdf

Law (version 2001):
http://www.vop.gov.sk/act-on-the-public-defender-of-rights

Annual Report:
http://www.vop.gov.sk/en/reports/report2005.html

Internet:
http://www.vop.gov.sk/en/

Slovenia

Brigitte Kofler

A. Constitutional Background

The Slovenian Constitution entered into force on 23 December 1991 (as of 23 March 2003) and defines Slovenia as a Democratic Republic (Art 1). Slovenia is a unitary state with local self-government in its municipalities. Parliament consists of two chambers, the National Assembly with 90 deputies (Art 80) and the National Council with 40 members (Art 96). The President is the Head of State (Art 102) and is elected by the people in direct elections (Art 103 (1)).

The Supreme Court is the highest body of the judiciary (Art 127). On the lower levels, there are county courts, district courts and courts of appeals. In addition, there are specialised labor and social courts, and an administrative court that decides about the legality of acts of administrative organs. The administrative court's decisions may be appealed to the Supreme Court (Art 120 (3)). Furthermore, there is a Constitutional Court which decides *inter alia* about the constitutionality of laws, conflicts of competence and individual complaints about the violation of constitutionally guaranteed human rights and fundamental freedoms (*v* Art 60).

Part 2 contains a comprehensive list of human rights and fundamental freedoms. Under the headline "Economic and Social Relations" the Constitution also lists social rights, which however are not judiciable. Slovenia acceded to the Council of Europe on 14 May 1993 and ratified the European Convention on Human Rights in the year 1994.

B. Overview of Existing Ombudsman-Institutions

Slovenia's Ombudsman, the *Varuh človekovih pravic*, is a **parliamentary, national ombudsman-institution**. There are no comparable institutions on regional or local level (Q III).

C. Varuh človekovih pravic – Ombudsman of the Republic of Slovenia

I. History and Legal Basis

The Slovenian Ombudsman was preceded by the *Council for the Protection of Human Rights and Fundamental Freedoms*. The members of this Council were university professors, artists, journalists, priests and other specialists in the field of human rights. After the establishment of the sovereign state of Slovenia, the Slovenian President gave the Council the power to deal with

complaints in the field of human rights and vested it with certain investigative powers. The Council was declared independent by law and its members were elected by Parliament. The institution of the human rights Ombudsman, which has its constitutional basis in Art 159, assumed the Council's tasks on 1 January 1995. The Ombudsman's mission is to protect human rights and fundamental freedoms against the state bodies, local self-government bodies and bodies entrusted with public authorities (Art 1 OA).

The Ombudsman Act, *Zakon o varuhu človekovih pravic,* lays down detailed provisions concerning the legal status, duties and powers of the Ombudsman (Law No. 71/1993; hereinafter OA). In addition, there are *Rules of Procedure*, dealing with the Ombudsman's complaint-handling system.

II. Organisation

The Slovenian Ombudsman is a **monocratic body**. The law provides for two to four deputies who are appointed by Parliament (Art 15 (1) OA). Currently, there are four such deputies. A staff of 39 are employed at the Ombudsman's office (Q II). The seat of the Ombudsman is in Ljubljana (Art 10 (1) OA). The funds for the Ombudsman's work are allocated by the Parliament from the state budget (Art 5 (2) OA). The amount is allocated by Parliament upon a proposal made by the Ombudsman (Art 55 OA).

III. Legal Status

The Ombudsman is **elected** by the Parliament by a two-third majority of votes (Art 2 and Art 12 OA).

The Ombudsman is to be a citizen of the Republic of Slovenia and fulfill the same requirements as a judge of the Constitutional Court, hence is to be at least 40 years of age and a legal expert. Besides, there are no further qualification requirements (Art 11 OA and Art 163 (2) of the Constitution, Art 9 Law on the Constitutional Court, Law Gazette No. 15/94 as of Law Gazette No. 64/07).

Holding the office of the Ombudsman is **incompatible** with any state office or office in a political party or trade union as well as with functions and activities which are incompatible by law with the holding of any public office (Art 19 (1) OA). The Ombudsman is autonomous and performs the function **independently** (Art 4 OA) and may not be held liable for opinions or recommendations given while performing the function. Furthermore, the Ombudsman enjoys **immunity** insofar as being held in custody in the context of criminal proceedings instituted for having performed the duties only with the prior consent of the Parliament (Art 20 OA).

The Ombudsman's salary is equal to the **salary** of the President of the Constitutional Court, a Deputy Ombudsman's salary equals the salary of a judge of the Constitutional Court (Art 47 OA).

The **term** of office is six years and an incumbent may be re-elected once (Art 12 OA).

The Ombudsman may retire at any time or be subject to early dismissal when convicted of a criminal act and sentenced to imprisonment, or due to a permanent loss of ability to perform the duties of the office by two thirds of the present MPs voting upon a motion made by one third of MPs (Art 21 OA).

IV. Scope of Control

The Ombudsman's control extents to state bodies, local self-government bodies, and bodies entrusted with public authorities (Art 23 OA). Complaints concerning court or other legal proceedings may only be investigated in case of undue delay in the proceedings or evident abuse of authority (Art 24 OA).

His **control** criteria are the provisions of the Constitution and international legal acts on human rights and fundamental freedoms. While intervening the Ombudsman may invoke the principles of equity and good administration (Art 3 OA). This provision is interpreted to comprise the entire body of laws as well as principles of good administration (Q I).

Any person whose human rights or fundamental freedoms have been violated may lodge a petition with the Ombudsman. The Ombudsman may also demonstrate initiative by instituting proceedings in reference to individuals or may deal with more general issues relevant to the protection of human rights and fundamental freedoms and legal security of the citizens (Art 9 (2) and Art 26 OA). In any case, the consent by the aggrieved person is necessary (Art 26 (3) OA). Persons deprived of their liberty have the right to lodge a petition with the Ombudsman in a sealed envelope (Art 27 (3) OA).

Petitions are to be lodged in writing. Neither the form nor the assistance of a counselor is required for lodging a petition (Art 27 (2) OA). The Ombudsman may not institute proceedings if more than one year has elapsed from the wrong-doing or the last decision of a body, excepting when the office assesses that the petitioner has been late for justifiable reasons or the case is so relevant that an investigation should be launched notwithstanding the time lag (Art 32 OA). Whoever does not master Slovenian may lodge a petition with the Ombudsman in the native language of the petitioner (Art 2 (2) Rules of Procedure).

Proceedings before the Ombudsman are free of charge for the petitioners (Art 9 (3) OA).

Having received a petition, the Ombudsman is to screen it and decide whether to reject the complaint, give it a "fast-track" treatment or to launch a full investigation (Art 28 (1) OA). If a complaint is rejected, the complainant is to be advised about, if possible, another adequate way of settling the case (Art 28 (2) OA). The Ombudsman is to reject a petition particularly when it is obvious that no rights have been violated nor other maladministration done, the petition is incomplete, when proceedings are being conducted in the case before judicial bodies or all regular and extraordinary legal remedies have not been exhausted excepting on an assessment that it

would be useless for the petitioner to start or continue such proceedings or individuals would suffer great or irreparable damage in the meantime (Art 30 OA). "Fast-track" treatment may be given to a case when the actual situation and the standpoints of all parties concerned are already evident from the petition itself and the attached documents (Art 29 OA). When the Ombudsman decides to launch an investigation, the petitioner is to be informed and the body or bodies against which the petition has been lodged are to be required to produce all the necessary explanations and additional information (Art 33 (1) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

Upon the Ombudsman's request all bodies subject to the control are to furnish all information and data within their competence irrespective of the level of secrecy (Art 6, Art 33 OA). The Ombudsman may specify a deadline not shorter than eight days. If a body fails to furnish the required information or explanations by the deadline, it is immediately to communicate to the Ombudsman the reasons. The Ombudsman may directly inform its superior body about such delays. In addition, the ombudsman may report about this in a special report to Parliament and may publicise these facts (Art 33 OA). The rejection or ignoring of the Ombudsman's demands is an obstruction to the Ombudsman's work which constitutes a minor offence under Slovenian Law (Art 56 OA). Within the scope of the work, the Ombudsman has unrestricted access to all the data and documents within the competence of the state bodies but is to respect regulations on secrecy of data (Art 35 OA). The Ombudsman may summon any witness or expert in respect of the case being investigated (Art 36 (2) OA). The Ombudsman may enter any official premises of each state body, local self-government body or body entrusted with public authority and has the right to inspect prisons or other places where people are kept detained, and other institutions with restricted freedom of movement and talk to persons there in private (Art 42 OA). The President of Parliament, the Prime Minister, and the ministers are to grant personal audience to the Ombudsman within 48 hours of a request (Art 46 OA).

The Ombudsman may make **suggestions** and give **recommendations, opinions** and **critiques** to the bodies which are bound to consider them and respond within the deadline specified (Art 7 OA).

After an investigation has been completed, the Ombudsman is to draft a report on the finding of the facts and forward it to the parties concerned. Within the deadline set by the Ombudsman, they may communicate their comments or proposals to complete the finding of the facts stated in the draft report (Art 38 (1) OA). In urgent cases, the Ombudsman may abstain from forwarding the draft report to the parties concerned (Art 38 (2) OA). In the final report the Ombudsman is to state the assessment of the facts and circumstances of the individual case, and establish whether or not human

rights or fundamental freedoms have been violated, or some other maladministration has been done in the investigated case (Art 39 (1) OA).

At the same time a recommendation is to be made on the best remedy to rectify the wrong-doing. This may include the suggestion of compensation for the damage (Art 39 (2) OA).

If the body does not submit a report on adhering to the Ombudsman's recommendations within 30 days, or these are adhered to only partially, the Ombudsman may directly inform its superior body or respective ministry, submit a special report to the Parliament, or publicise these facts (Art 40 (2) OA). The Ombudsman may also publish the report and proposals in mass media at the expense of the body if the latter has not adequately responded to the proposals or recommendations (Art 40 (3) OA).

The Ombudsman may propose the initiation of **disciplinary proceedings** against the officials of the bodies who did the established maladministration that led to an injustice (Art 39 (3) OA).

Furthermore, the Ombudsman may lodge a **constitutional complaint** with the Constitutional Court in relation to an individual case after the previous consent of the person concerned (Art 38 Rules of Procedure). A constitutional complaint may in general be filed if individual acts violate human rights or fundamental freedoms (Art 50 Act on the Constitutional Court).

V.2. Powers in Relation to the Courts

The Ombudsman may investigate courts in case of undue delay in the proceedings or evident abuse of authority (Art 24 OA) and furthermore, may obtain the position of an *amicus curiae* to communicate to each body an opinion, from the aspect of protection of human rights and fundamental freedoms, about the case under investigation (Art 25 OA).

Lege non distinguente the possibility to lodge a constitutional complaint pursuant to Art 38 Rules of Procedure also exists if constitutional rights are violated by a court.

V.3. Powers in Relation to Legislative Organs

The Ombudsman may submit to the Parliament and Government initiatives for amending laws or other legal acts and may generally make suggestions to bodies subject to the control on how they could improve their work and conduct with clients (Art 45 OA). This right includes the right to request the implementation of international treaties (Q III).

In connection with an individual case being investigated, the Ombudsman may lodge an appeal for the assessment of constitutionality and legality of regulations and other general acts (Art 37 Rules of Procedure) and, in addition, has the right to be granted personal audience to the President of Parliament within 48 hours upon request (Art 46 OA).

The Ombudsman is to lay before Parliament general annual reports and special reports on the work (Art 5 (1) OA). During the debate on the general annual report in Parliament, the Ombudsman may present a summary of the

report and ensuing conclusions. The general annual report of the Ombudsman is promulgated (Art 44 OA).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is the main task of the Slovenian human rights Ombudsman, who may communicate to each body an opinion, from a human rights point of view, about the case under investigation, irrespective of the type or stage of proceedings which are being conducted by the respective body (Art 25 OA). Currently, the institution is not accredited as a National Human Rights Institution by the ICC.

VI. Practice

In 2004, the Ombudsman dealt with a total of 2,992 complaints, while 2,631 of these complaints arrived in 2004 alone. Compared to previous years the number of complaints has decreased slightly. All in all, 2,665 cases could be closed during the year 2004. The main part of complaints concern court and police proceedings (29.8%), administrative proceedings (16.3%) and social security issues (13.1%). Cooperation with the media is really important for the work of the Ombudsman. There are regular press conferences and press releases. In 2004, the Office also started to inform journalists about especially important cases. There are regular consultation days in various parts of the country. However, it is necessary to make an appointment for a consultation with the Ombudsman (Q III).

VII. Reform

In the annual report of 2004, the tenth annual report of the Slovenian Ombudsman, the incumbent gave a generally positive resume of the activities. A special problem is still seen in the duration of proceedings as well as a certain public intolerance towards aliens and the attitude towards discrimination issues (Q II) is critisised.

VIII. Information

Constitution & Law on the Constitutional Court:
http://www.us-rs.si (31.20.2007)

Ombudsman Act & By-laws:
Human Rights Ombudsman Act, http://www.varuh-rs.si (31.10.2007)

Annual Report:
Annual Report 2005, http://www.varuh-rs.si (31.10.2007)

Spain

Brigitte Kofler

A. Constitutional Background

Spain's current Constitution entered into force on 29 December 1978 (Law Gazette No. 1978/311). According to Art 1 (3) Spain is a parliamentary monarchy. The state is divided into 17 autonomous regions and two autonomous cities with certain legislative and executive powers and with varying degrees of autonomy (*v* Art 2).

The national Parliament, the *Cortes Generales*, consists of two chambers, the Congress and the Senate (Art 66 (1)). The King is the Head of Sate (Art 56 (1) Const). After each renewal of the Congress the King appoints the candidate as President of Government whom Congress has granted confidence by majority of votes (Art 99 (1) and Art 99 (3)). There is also a Council of State, a supreme consultative organ of Government.

In the judicial branch, the Supreme Court, with jurisdiction over the entire country, is the highest judicial body except for provisions concerning constitutional guarantees (Art 123 (1)). The Supreme Court also has an Administrative Chamber. The Constitutional Court decides appeals against the alleged unconstitutionality of acts and statutes (*recurso de inconstitutionalidad*), individual appeals against violation of constitutional rights (*recursos de amparo*) and conflicts of jurisdiction between state bodies and communities with self-government or between communities with self-government (Art 161).

Since 1977 Spain is a member of the Council of Europe. Spain ratified the European Convention on Human Rights in 1979. The rank of the Convention within the Spanish legal system is contentious; at the minimum, the Convention has the status of an ordinary law (Art 96 (1)). Part I of the Constitution contains a list of human rights.

B. Overview of Existing Ombudsman-Institutions

On the national level there is the Ombudsman-Institution of the *Defensor del Pueblo* (hereinafter referred to as Ombudsman) whose scope of control comprises state bodies on the national level (*v* B.IV.). Besides, regional Ombudsmen were established in several regions of Spain. Twelve of the seventeen autonomous regions have introduced regional Ombudsmen (Andalusia, Aragón, Asturias, Canarias, Castilla y Léon, Castilla-La Mancha, Catalunya, Valencia, Galicia, La Rioja, Navarra and Pais Vasco). In the remaining regions Petition Committees perform comparable functions. The regional Ombudsmen are to coordinate their functions with the national Ombudsman who may request their cooperation (Art 12 (1) and (2) OA).

C. El Defensor del Pueblo – Ombudsman

I. History and Legal Basis

The Ombudsman has his constitutional basis in Art 54 which states that a "Defender of the People" (*Defensor del Pueblo*) as high commissioner of Parliament is to defend the rights contained in Part 1 and for this purpose is to supervise the activity of the administration and report thereon to Parliament. More detailed provisions about the Ombudsman are stated in the Act on the Ombudsman, the *Ley Organica del Defensor del Pueblo* (Law No. 3/1981 as amended by Law No. 2/1992; hereinafter OA) as well as the *Reglamento de organización y funcionamiento del defensor del pueblo*. In addition, Law No. 36/1985 further clarifies the relation between the Ombudsman and the regional Ombudsmen in the autonomous regions.

The first Ombudsman took office in December 1981.

II. Organisation

The Ombudsman is a **monocratic body**. He may – after approval by both Houses of Parliament – appoint **two Deputy Ombudsmen** to whom he may delegate some of his duties and who can replace him in the event of his temporary incapacity or his dismissal (Art 8 (1) and (2) OA). The **financial resources** necessary for the operation of the institution constitute an item of the Parliamentary Budget (Art 37 OA).

III. Legal Status

The Ombudsman is elected by Parliament by a three-fifth majority (Art 2 (1) OA). Parliament appoints a Joint Congress-Senate Committee for liaison with the Ombudsman and for reporting thereon to the respective Plenums whenever necessary (Art 2 (2) OA). The Commission *inter alia* has the right to propose the candidate or candidates for the office of the Ombudsman (Art 2 (3) and (4) OA).

No special **qualification requirements** are stated in the Ombudsman Act. Any Spanish citizen who has attained legal majority and enjoys full civil and political rights may be elected Ombudsman (Art 3 OA). The office is **incompatible** with every elected office, political position or activity as well as public offices in general. Furthermore, the Ombudsman may not be a judge or a public prosecutor nor have a liberal profession or pursue business activities (Art 7 (1) OA). The same rules apply to the Deputy Ombudsmen (*v* Art 8 (4) OA).

The **term of office** of the Ombudsman is five years (Art 2 (1) OA).

The Ombudsman's term of office ends on resignation, expiration of the term, death or unexpected incapacity, flagrant negligence in fulfilling the obligations and duties or a criminal conviction (Art 5 (1) OA). In the event of death, resignation or expiration of the term the post is to be declared vacant by the Speaker of Congress. In all other cases it is to be decided by a three-

fifths majority of the members of each House of Parliament following debate and the granting of an audience to the Ombudsman (Art 5 (2) OA).

The Ombudsman performs the duties **independently** and according to the mandate without receiving instructions from anybody (Art 6 (1) OA).

The Ombudsman and Deputies enjoy **immunity**. They may not be arrested, subjected to disciplinary proceeding, fined, prosecuted or judged on account of opinions expressed or acts committed in the performance of the duties. In all other cases and while in office, the Ombudsman may not be arrested or held in custody excepting on being apprehended *flagrante delicto* (Art 6 (2), (3) and (4) OA).

IV. Scope of Control

The Ombudsman's **control** extends to activities of the administration (Art 1 OA). The term "administration" encompasses the activities of ministers, administrative organs, civil servants and any person acting in the service of the public administration (Art 9 (2) OA) with the exception of the administration of the judiciary as the judiciary does not fall under the Ombudsman's control. Further, the control of legislation is within the Ombudsman's remit since laws may be challenged at the Constitutional Court.

The **control criteria** are the rights laid down in Part I and Art 103 (1) of the Constitution (Art 9 (1) OA). Part 1 contains a list of fundamental rights whereas Art 103 (1) states principles for the functioning of public administration. According to this provision, public administration shall serve the general interest in a spirit of objectivity and act in accordance with the principles of efficiency, hierarchy, decentralisation, deconcentration and coordination, and in full subordination to the law. Although simple laws are not expressly laid down as control criteria, they are to be taken into account as far as they concern the said principles and constitutional rights (Q I).

The Ombudsman may start an investigation *ex officio* or in response to a request from the party affected (Art 9 (1) OA). Any individual who or legal entity which invokes a legitimate interest may address the Ombudsman without any restrictions whatsoever (Art 10 (1) OA). Furthermore, deputies and senators, investigatory committees or those connected with the general or partial defense of public rights and liberties may request the intervention of the Ombudsman (Art 10 (2) OA). In addition, the Attorney-General is to notify the Ombudsman of all possible administrative irregularities which are revealed in the performance of those duties (Art 25 (3) OA). Correspondence addressed to the Ombudsman from any institution of detention or confinement may not be subjected to any form of censorship whatsoever (Art 16 (1) OA).

Receipt of all complaints is to be acknowledged (Art 15 (2) OA). The Ombudsman is to reject anonymous complaints and may reject those which are perceived to be in bad faith or lack grounds or are an unfounded claim, and, in addition, those whose investigation might infringe the legitimate rights of a third party. This decision may not be appealed (Art 17 (3) OA).

All complaints submitted are to be signed by the party concerned, giving name and address in a document stating the ground for the complaint within a maximum of one year from the time of acquiring knowledge of the facts giving rise to it (Art 15 (1) OA). The Ombudsman may not investigate complaints that are pending in judicial proceedings (Art 17 (2) OA).

All actions by the Ombudsman are free of charge for the party concerned (Art 15 (2) OA). The persons concerned are to reply in writing, supplying whatever documents and supporting evidence they may consider appropriate within the period given which in no case may be less than ten days and which may be extended at their request by half the period originally granted (Art 20 (2) OA). The Ombudsman is to inform the party concerned of the results of the investigations (Art 31 (1) OA). The same applies to members of Parliament if they have requested an investigation (Art 31 (2) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

All public authorities are obligated to give preferential and urgent assistance to the Ombudsman in the investigations and inspections (Art 19 (1) OA). During the investigation the Ombudsman may appear at any office of public administration or any office delegated to provide a public service in order to verify any necessary information, hold relevant personal interviews or examine pertinent records and documents (Art 19 (2) OA).

Conversations which take place between the Ombudsman and prison inmates may not be interfered with (Art 16 (2) OA). Persistence in a hostile attitude or the hindering of the work of the Ombudsman may be the subject of a special report in addition to being emphasised in the appropriate section of the annual report (Art 24 (1) OA).

The Ombudsman is not empowered to modify or overrule the acts and decisions of the public administration (Art 28 (1) OA). Should the investigations reveal that the complaint was presumably the result of abuse, arbitrariness, discrimination, error, negligence or omission on the part of a civil servant, the Ombudsman may request the person concerned to state views on the matter and send a copy of this statement to the superior authority accompanied by any suggestions considered appropriate (Art 23 OA).

The Ombudsman may, in the course of these investigations, **give advice and make recommendations** to authorities and officials reminding them of their legal duties and make **suggestions** regarding the adoption of new measures. In all cases authorities and officials are obligated to reply in writing within a maximum period of one month (Art 30 (1) OA). If within a reasonable period appropriate steps are not taken or the authority fails to inform the Ombudsman of its reasons for non-compliance, the Ombudsman may inform the minister of the department concerned or the highest authority of the administration concerned.

If adequate justification is not forthcoming, the Ombudsman is to mention the matter in the annual or special report together with the names of the authorities or civil servants responsible for this situation (Art 30 (2) OA).

If action has been taken in connection with services rendered by private individuals with due administrative authorisation, the Ombudsman may urge the competent administrative organs to exercise their powers of inspection and sanction (Art 28 (3) OA). However, non-compliance with this provision does not entail any immediate legal consequences.

The Ombudsman may, *ex officio*, bring actions for liability against all authorities, civil servants and governmental or administrative agents including local agents (Art 26 OA). If knowledge of presumably criminal acts or behaviour is acquired, the Attorney-General is to be notified immediately (Art 25 (1) OA). The Attorney-General is to inform the Ombudsman of all possible administrative irregularities with which the public prosecutor becomes aware in the performance of those duties (Art 25 (3) OA).

V.2. Powers in Relation to the Courts

In regard to the judiciary, only the administration of the judiciary is under the Ombudsman's control. Whenever the Ombudsman receives complaints regarding the functioning of the administration of justice, these are to be referred to the public prosecutor to allow the latter to investigate their foundation and take appropriate legal action, or else to the General Council of the Judiciary according to the type of complaint involved independently of any reference that may be made in respect of the matter in the annual report to Parliament (Art 13 OA).

V.3. Powers in Relation Legislative Organs

The Ombudsman is entitled to lodge appeals alleging unconstitutionality as well as individual appeals for relief (Art 19 OA; Art 32 (1)b Law No. 2/1979 of 3 October 1979).

In addition, the Ombudsman may suggest modifications in the criteria employed in their drafting. If as a result of this investigation a conclusion is reached that rigorous compliance with a regulation may lead to situations that are unfair or harmful to persons thereby affected, the Ombudsman may suggest to the competent body that it be modified (Art 28 (1) and (2) OA).

Furthermore, the Ombudsman is to lay before Parliament an **annual report** (Art 32 (1) OA). An oral summary of the report is to be presented by the Ombudsman to the Plenums of both Houses. It is open to debate by the parliamentary groups in order that they may state their positions (Art 33 (4) OA). When the seriousness or urgency of the situation makes it advisable to do so, a **special report** may be submitted. The annual reports and, when applicable, the special reports, are to be published (Art 32 (2) and (3) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Ombudsman's **main task** is the protection of the constitutional rights of citizens. Hence, all the powers are to be seen in a human-rights context. However, there are no specific human rights powers. The Ombudsman is accredited as a National Human Rights Institution according to the Paris Principle with the *National Human Rights Institutions Forum* and Status A.

VI. Practice

During the year 2005, 39,750 people filed complaints with the Ombudsman, which means an increase of 37.1% compared to the previous year. Of these complaints 71.42% were investigated (Summary Annual Report 2005, 1). The **focus** of the monitoring lies with economic, health, social, education and cultural issues (Summary Annual Report 2005, 9). There is a **continual *ex officio* monitoring** of prisons and children's homes.

VII. Reform

The Ombudsman sees the most frequent practical problems in hostile or hindering attitudes by some administrative bodies. According to the Ombudsman a solution could be the improvement of the relations with local administration bodies and better promotion of the institution. In Q II the Ombudsman stated that the powers should also encompass mediation proceedings and be extended to the right to supervise private corporations which provide public and social services (Q II).

VIII. Information

Constitution & Ombudsman Act:
Organic Act regarding the Ombudsman,
http://www.defensordelpueblo.es/web_ingles/index.asp (31.10.2007)

Annual Report & *The Book of the Ombudsman:*
Summaries of Annual Reports 2003–2006,
http://www.defensordelpueblo.es/web_ingles/index.asp (31.10.2007)

D. Regional Ombudsman-Institutions

I. History and Legal Basis

Most regional ombudsman-institutions were established through regional laws in their respective region. In addition, the Ombudsman of Catalonya, the *Sindic de Greuges de Catalunya* is mentioned in Art 78 and 79 of the Regional Constitution of Catalonya. Most regional Ombudsmen in Spain were established during the 1980s shortly after the national institution of the *Defensor del Pueblo* had been established (*v Defensor del Pueblo Andaluz* in 1983; *Sindic de Greuges de Catalunya* in 1984; *Justicia de Aragón* in 1988,

Sindic de Greuges de la Comunitat Valenciana in 1993; *Procurador del Común de Castilla y Léon in* 1995).

II. Specific Features

All regional ombudsman-institutions are **monocratic** bodies. The number of deputies varies from one (Aragón, Castilla y Léon), to two (Valencia, Catalunya) and four (Andalusia). In some regions special tasks have been legally conferred upon the deputies (for example children's rights, Art 34 OA Catalunya) and in other regions the Ombudsman may delegate specific tasks to the deputies (Art 8 OA Andalusia, Art 33 Castilla y Léon).

All regional Ombudsmen are elected by their respective regional Parliament, usually be a three-fifth majority (excepting for the *Sindic de Greuges de la Comunitat Valenciana,* who is to be elected by two-thirds majority). The term of office is usually five years, the *Justicia de Aragón* is appointed for six years. In *Aragon* and *Valencia* the Ombudsman may not be dismissed. In some cases the incumbents do not enjoy immunity (*Aragon*; *Castilla y Leon*). However, in general, the regional Ombudsman Acts largely correspond to the national Act on the Ombudsman.

The Ombudsmen's **control** extends to regional administrative entities including all persons and institutions that are dependent on such entities or carry out public functions (*v* Art 1 OA Valencia). Further, local authorities in the respective regions are subject to being monitored (*v* Art 10 (1) OA Andalusia; Art 2 OA Castilla y Léon; Art 1 OA Catalunya; Art 2 OA Aragón).

The **control criteria** are rights laid down in the national and respective regional Constitution (*v* Art 78 Const Catalunya; Art 1 OA Valencia). The monitoring procedure largely corresponds to the procedure on the national level. However, the right of members of Parliament to refer cases to the Ombudsman is not laid down in all Ombudsman Acts (but in Art 12 (1)a and b Catalunya). In addition, the powers of the regional Ombudsman are very similar to those of the *Defensor del Pueblo* but not as extensive. In particular, regional Ombudsmen do not have the power to challenge laws and regulations at the Constitutional Court. Like the national Ombudsman the *Sindic de Greuges de Catalunya* and the *Procurador del Común de Castilla y Léon* may mention the authorities and the names of officials who obstruct their work in their report (Art 24 OA Catalunya).

Practical problems are the often delayed responses of the authorities subject to the Ombudsman's control (*v* Q II Andalusia) as well as the fact that many authorities, especially local authorities, are not aware of the institutions and their tasks (*v* Q II Catalunya). The number of complaints received in 2005 is between 2000 and 4000 per institution (*v* Castilla y Léon 2617, Catalunya 3617). Certain institutions, usually prisons, children's homes or psychiatric hospitals are continually monitored by the Ombudsman ***ex officio***.

Sweden

Joachim Stern

A. Constitutional Background

The Swedish Instrument of Government (*Regeringsformen)* was fundamentally revised in 1974 (KK 1974:152 as amended by SFS 1998:1437, hereafter Const). It is the central constitutional document next to the Freedom of the Press Act, the Fundamental Law on the Freedom of Expression and the Act of Succession. As Sweden is a constitutional monarchy the King, as Head of State, has only very limited powers. The country is a unitary state.

The unicameral Parliament (*Riksdag)* consists of 349 members who are elected every four years. Based upon a proposition from the speaker of the Riksdag the members vote for a Prime Minister, who then appoints the other members of Government (Chap 6 Const).

The Swedish Constitution does not adhere to the principle of separation of powers. However, a distinction between courts and administrative authorities is made nonetheless (Chap 1 § 8 Const). Administrative authorities are to a large extent independent. In fact no public authority, including, the *Riksdag* or the decision-making bodies of local authorities, may determine how an administrative authority shall decide a particular case relating to the exercise of public authority vis-à-vis a private subject, a local authority or relating to the application of law (Chap 11 § 7 Const). Administrative decisions can be appealed to the administrative courts and finally to the Supreme Administrative Court (*Regeringsrätten*). Only in a few areas can decisions be appealed to superior authorities and to the Government. This is in accordance with a low-levelled responsibility of ministers.

The Supreme Court (*Högsta domstolen*) is the court of last instance in civil and criminal matters. The right to appeal to the Supreme Court and the Administrative Supreme Court is subject to a wide range of limitations. There is no court with the jurisdiction to conduct constitutional review. If a court or another public body finds that a provision conflicts with a rule of fundamental law or other superior statute, or finds that a procedure laid down in law has been disregarded in any important respect when the provision was made, the provision may not be applied. If the provision has been approved by the *Riksdag* or by the Government, however, it may only be waived if the error is manifest (Chap 11 § 14 Const).

The Constitution contains an extensive charter of fundamental rights and freedoms (Chap 2) but allows for wide limitations by acts of Parliament. The Freedom of the Press Act, dating back to 1766, gives any person the right to access administrative records, and permits any official to inform the public on any subject. Together with the Fundamental Law on the Freedom of Expression it is at the base of a highly transparent public administrative system.

Sweden is a founding member of the Council of Europe. The ECHR was ratified in 1952 and in 1995 it was transformed into the national legal order as an act of Parliament. The Constitution states that "no act of law or other provision may be adopted which contravenes Sweden's undertakings under the ECHR" (Chap 2 § 23 Const). In other words, courts and other authorities must give priority to the Convention.

B. Overview of Existing Ombudsman-Institutions

The *Riksdagens Justitieombudsmän* – "Justice Representatives of the *Riksdag*" – are Sweden's **national parliamentarian ombudsman-institution** with a general mandate. No similar body exists on either a regional or local level.

The Chancellor of Justice is the governmentally appointed counterpart, acting also as legal counsellor to the Government. Since 1998, the Chancellor's responsibilities no longer include the treatment of individual complaints but instead are limited to uncovering systematic problems within the public administration. The Chancellor also acts as a legal representative of the Government in civil law cases and as a special prosecutor in cases involving violations of the freedom of the press and the freedom of expression.

Starting in the 1980's, specialised ombudsman-institutions have been created whose purpose is to watch over the implementation of certain laws, mainly in the sphere of non-discrimination. The incumbents of these institutions are appointed by the Government, but are – like any other official – independent from it. These institutions include the Equal Opportunities Ombudsman (*Jämställdhetsombudsmannen, JämO,* 1980), the Ombudsman against Ethnic Discrimination (*Ombudsmannen mot etniska diskriminering, DO*, 1986), the Disability Ombudsman (*Handikappombudsmannen, HO*, 1994), as well as the Ombudsman against Discrimination on Grounds of Sexual Orientation (*Ombudsmannen mot diskriminering på grund av sexuell läggning, HomO*, 1999). Unlike his colleagues, the Ombudsman for Children (*Barnombudsmannen, BO*, 1993) does not accept individual complaints. Since all of these specialised institutions are themselves subject to scrutiny by the *justitieombudsmän*, they will not be discussed further here.

C. Riksdagens Justitieombudsmän (JO – also Riksdagens Ombudsmän) – Parliamentary Ombudsmen

I. History and Legal Basis

In 1809, Sweden was the first country to establish a parliamentarian ombudsman-institution. In order to illuminate its current competencies one has to go further back in history and examine its development. At the turn of the 18th century the Swedish administration fell into disarray after the King had been absent for a long period of time. The King thus created an office, led by the *Kungens Högste Ombudsman* – the King's Highest Authorised Person. The function of the latter was to ensure that laws and other regulations were

abided by and to prosecute officials and judges who were disregarding their duties. The office was later renamed *justitiekantsler* – Chancellor of Justice. From 1766 on, the Estates of the Parliament nominated the incumbent, until the King reclaimed this right in a period of absolute monarchy.[264]

In 1809, the Estates represented in the *Riksdag* were successful in establishing their own Ombudsman and embodying it in the newly written Constitution. This *justititeombudsman* was provided with the same duties and competencies as the Chancellor of Justice and was intended to supervise the King, his offices and courts for the *Riksdag*. These essential characteristics remain the same today.

In 1915, a special Ombudsman for the military authorities was established but abolished when, in 1968, the number of *justitieombudsmän* was increased to three. Since 1986 their number remains at four. The protection of fundamental rights and freedoms was declared an explicit task of the institution in 1974 (IV. infra) and it is now embodied in Chapter 12 of the Instrument of Government titled "Parliamentary Control" (Chap 12 Art 6, Art 8 Const).

The Riksdag Act (hereafter RA)[265] contains further provisions concerning the Ombudsmen (Chap 8 Art 11, Chap 9 Art 8 RA), as does the Act with Instructions for the Parliamentary Ombudsmen (hereafter OA)[266]. Moreover an administrative regulation[267] defines the areas of responsibilities between the Ombudsmen and regulates other organisational concerns.

II. Organisation

The Institution of *Justitieombudsmän* is a **collegial body**. The Parliament individually appoints **four Ombudsmen**, one of them as Chief Parliamentary Ombudsman (*Chefsjustitieombudsman*). The Ombudsmen have separate areas of responsibility. In important matters, especially in matters concerning investigations *ex officio* as well as legislative recommendations, the Ombudsmen have to consult with the Chief Ombudsman who has the power to decide who is to deal with a case and who can take over a case. The Chief Ombudsman is also the administrative director of the office. In the case of absence his oldest colleague carries out his functions (§ 16 OA).

Since 1995 the *Riksdag* may additionally elect one or several **Deputy Ombudsmen** if an Ombudsman is prevented by illness or some other special grounds from performing his duties for a considerable period of time, as well as if a need arises for the services of a Deputy Ombudsman for some other reason. A Deputy Ombudsman is appointed for a period of two years (Chap 8 Art 11 RA). The Chief Parliamentary Ombudsman has the power to

---

[264] *André*, Roles for the Ombudsmen. View from Sweden, in *Rautio (ed)*, Parliamentary Ombudsman of Finland. 80 Years, 2000, 36.

[265] Riksdagsordningen, Act No. 1974/153.

[266] Lag med instruktion för Riksdagens ombudsmän, Act No. 1986/765 as amended by SFS 2000:424.

[267] Arbetsordning för Riksdagens ombudsmannaexpedition – Administrative Directive.

decide whether a Deputy Ombudsman shall serve as an Ombudsman (§ 15 (3) OA).

At present, two Deputy Ombudsmen are in office and the institution employs 54 people. The Chief Parliamentary Ombudsman appoints officials within the Ombudsmen's secretariat and other staff insofar as he has not delegated these functions to an administrative director. No provisions concerning the financing of the institution could be found.

III. Legal Status

The Ombudsmen are individually elected by the members of the *Riksdag* by simple majority based upon a proposal from the Constitutional Committee for a period of four years (Chap 12 Art 6 (1) Const; Chap 8 Art 11 (4) RA). There are no special or formal **requirements** needed although as an unwritten rule, the candidates have to be highly qualified judges.[268] Deputy Ombudsmen are additionally required to have previously served as a Parliamentary Ombudsman. Although not provided for in the law, in practice the position is considered to be **incompatible** with memberships or functions in political parties, unions as well as all public or private offices.

Upon the recommendation of the Constitutional Committee, the *Riksdag* may **remove** an Ombudsman or Deputy Ombudsman who has lost the confidence of the *Riksdag* (Chap 8 Art 11 (4) RA). In this case as well as in other cases of early termination the *Riksdag* shall elect a successor for a new four-year term of office (Sec 8 Art 11 (5) RA).

The decision to institute proceedings against an Ombudsman for an offence committed in the execution of his official functions or duties may be made by no other body than the Committee on the Constitution of the *Riksdag*. In this regard the Ombudsmen enjoy **immunity**. Proceedings against them are held before the Supreme Court even in the first instance.[269]

Furthermore, the Ombudsmen are **independent** and are not bound by instructions. Their **remuneration** is determined by the administration of the *Riksdag* and at present amounts to 79,000 SEK (~ 8,500 EUR) per month which is about 50% higher than the salary of a member of the *Riksdag* and about 25% lower than that of a minister (Q III).

IV. Scope of Control

It is the **purpose of the institution** to supervise that those who exercise public authority obey the laws and other statutes as well as fulfil their obligations in other respects (§ 1 OA). The Ombudsmen are to ensure in particular that the courts and public authorities in the course of their activities obey the injunction of the Instrument of Government, objectivity and impartiality. Also, they are meant to ensure that the fundamental rights and freedoms of citizens are not encroached upon in public administration (§ 3 OA).

---

[268] *Wieslander*, The Parliamentary Ombudsman in Sweden, 1999, 37.

[269] Chap 3 Sec 3 Code of Judicial Procedure SFS 1942:740 as amended by SFS 1998:605.

The Ombudsmen's **jurisdiction** covers state and municipal authorities, officials and employees of these authorities, as well as individuals whose employment or assignment involves the exercise of public authority. The mandate of the Ombudsmen also covers officials and those employed by public enterprises while carrying out, on behalf of such an enterprise, activities in which through the agency of the enterprise the Government exercises decisive influence (§ 2 OA). The Ombudsmen shall not intervene against a subordinate official who has no independent powers, unless there are exceptional reasons for doing so (§ 8 OA). Within the armed forces the supervision extends only to commissioned officers with the rank of second lieutenant or above, and to those of corresponding rank (§ 2 OA).

The law explicitly **excludes** members and the administration of the *Riksdag*, members of policy-making municipal bodies, the Chancellor of Justice as well as the National Bank (*Riksbank*) except to the extent of their involvement in exercise of the powers of the National Bank to make decisions in accordance with the Act on the Regulation of Currency and Credit (§ 2 (3) OA). In compliance with the limited influence in administrative decisions, the Government and its ministers are not subject to control. However, the *Riksdag* may oblige the Ombudsmen to institute criminal proceedings against members of the Government as well as against officials of the *Riksdag* (infra V.1.).

The entire legal order, the principles of objectivity and impartiality as well as other standards of good administration are defined as **criteria for exercising a control**. In this regard, the Ombudsmen shall verify that measures taken by officials are, independent of the question of legality, not otherwise "erroneous or inappropriate" (§ 3, § 6 OA). The Ombudsmen may initiate a control following **complaints** made by the public "and by other means such as inspections and other such inquiries as the Ombudsmen may find necessary". The incumbents thus have the power to conduct investigations on their **own initiative** (§ 5 OA). The Ombudsmen should not initiate inquiries into circumstances, which date back **two or more years**, unless there are exceptional grounds for doing so (§ 20 OA).

Complaints should be made in **writing** and indicate which authority the complaint relates to, the action which the complainant is referring to, the date of the action, as well as the name and address of the complainant. If the complainant possesses documents of significance in dealing with and assessing the case, they shall be appended. A person deprived of his liberty may write to the Ombudsmen without being prevented by restrictions on sending letters and other documents (§ 17 OA).

If an issue can appropriately be investigated and appraised by an authority which has not previously reviewed the matter, the Ombudsmen may refer the complaint to that authority or to the Chancellor of Justice only after his prior agreement (§ 18 OA). This does **not** mean though that a complaint to the Ombudsmen is **subsidiary**.

The Ombudsmen shall **inform** a complainant without delay as to whether his complaint has been rejected, filed, referred to some other agency

or has been made the subject of an inquiry (Art 19 OA). The Ombudsmen have to carry out the investigative measures required in appraising complaints and other cases (§ 21 OA). Nonetheless, they are not obliged to carry out an investigation (Q I).

V. Powers

V.1. Powers in Relation to Administrative Organs

Any person under their jurisdiction shall provide the Ombudsmen with any information and reports they may request. An Ombudsman shall have access to the minutes or other documents of any court or authority and may be present at the deliberations, however, without the right to express an opinion (Chap 12 Art 6 Const, § 21 (4) OA). Public prosecutors are to assist an Ombudsman if requested to do so. The Ombudsmen may carry out inspections and such other inquiries as they may find necessary (§ 5 OA).

If someone does not fulfil his obligation to cooperate with the Ombudsmen, the latter can impose penalties of up to SEK 10,000 (~ 1,100 EUR). There is also the right to issue written cautions (Art 21 (2), (3) OA).

An investigation is concluded with an **adjudication**, which states an opinion as to whether a measure taken by an authority or official was conducted in breach of the law, some other statute or was otherwise erroneous or inappropriate. No duty to respond to such adjudication is provided for. The Ombudsmen can also make statements intended to promote uniform and appropriate application of the law (§ 6 (1) OA).

If an official has committed an error, the Ombudsmen may report the matter to those empowered to decide on **disciplinary measures**.

If an official has committed a criminal offence in disregarding the obligations of his office or his commission, the Ombudsman may initiate legal proceedings, acting as an **extra-ordinary prosecutor**. Violations of the Freedom of the Press Act or the right of freedom of expression are excluded from this, since prosecution of such offenses is reserved to the Chancellor of Justice.

Even though members of the Government as well as the personnel of the *Riksdag* are excluded from the Ombudsmen's control, committees of the *Riksdag* may decide that the Ombudsmen must support them in investigations against these persons and to prosecute them (§ 10 OA, Chap 12 § 3 Const).

The Ombudsmen have special powers concerning individuals with an official authorisation to practice within the medical profession, as a dentist, in retail trade in pharmaceutical products, or as a veterinary surgeon: If such a person has displayed gross incompetence in his professional activities, shown himself in some other way obviously unsuitable to practice, or has abused his powers, the Ombudsmen may submit a report to the authority empowered to decide on the revocation of the authorisation or request the imposition of a probationary period. In the proceedings that follow such a report, the Ombudsmen have the right to submit their opinion and to be present if oral

questioning occurs (§ 6 (3) OA). The Ombudsmen may appeal the decision in a court of law, acting on behalf of the public (§ 7 OA).

V.2. Powers in Relation to the Courts

The Ombudsmen have the same powers in relation to judges as in relation to other public officials (supra V.1.). Prosecution for a criminal act committed in the exercise of their functions and proceedings for the removal from office of members of the Supreme Court or the Supreme Administrative Court are to be instituted by the Ombudsmen or the Chancellor of Justice, acting as special prosecutors (Chap 12 Art 6 Const, § 9 OA).

V.3. Powers in Relation to Legislative Organs

Until November 15th, each year, the Ombudsmen have to submit an **annual report** to the *Riksdag* on the discharge of their duties, covering the period from the beginning of July to the end of June (§ 11 OA). The report is then discussed in the Constitutional Committee and is published.

Even though not provided for in the law, the Ombudsmen can "in principle" issue special reports (Q II). The Ombudsmen are to contribute to **remedying deficiencies in legislation**. If, during the course of their supervisory activities, reason is given to raise the question of amending legislation or of some other measure by the state, the Ombudsmen may then make such representations to the *Riksdag* or the Government (§ 4 (1) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The Ombudsmen have no specific functions or powers in the field of human rights protection. However, ensuring that fundamental rights and freedoms of citizens are not encroached upon in public administration is rather an inherent function of the institution.

The specialised ombudsman-institutions are, with the exception of the Ombudsman for Children, accredited as NHRI according to the Paris Principles. The designation of the Parliamentary Ombudsmen as NPM in the light of the ratification of the OPCAT is currently under discussion.

VI. Practice

From July 2005 to June 2006 the *Justitieombudsmän* responded to 6,008 new cases, including 89 cases opened *ex officio*. The Ombudsmen commented on legal proposals 115 times.

Cases concerning prisons were heading the statistics, amounting to 912 complaints, followed by 756 cases concerning social matters and 539 cases concerning police forces. More than half of the complaints were refused without conducting further investigations. In 653 instances authorities were criticised for their actions and in six cases disciplinary or criminal proceedings were initiated. However, two of these cases were discontinued while still in the stage of pre-trial investigations. There is no permanent control *ex*

officio but certain institutions like prisons, refugee homes, children's homes and psychiatric institutions are inspected on an irregular basis.

VII. Reform

The *Justitieombudsmän* consider their powers to be sufficient but complain that an increasing number of complaints reduce their capacity to perform investigations on their own initiative and inspections on site. There are plans to restructure the annual report according to concerned rights rather than according to concerned authorities (Q II).

VIII. Information

Constitution:
http://www.riksdagen.se/templates/R_Page____6307.aspx

Law:
http://www.jo.se/Page.asp?MenuId=37&MainmenuId=12&ObjectClass=DynamX_Documents&Language=en

Annual Report 2005/2006 (including an English summary):
http://www.riksdagen.se/webbnav/index.aspx?nid=3451&dok_id=GU04JO1&rm=2006/07&bet=JO1

Internet :
http://www.jo.se

Switzerland

Brigitte Kofler

A. Constitutional Background

The groundwork for the current Constitution of Switzerland was laid with the promulgation of the Constitution of 12 September 1848, which was subsequently revised in 1866, 1874 and again in 1999. The current text was approved by popular and cantonal vote on 18 April 1999 and entered into force on 1 January 2000. Switzerland is a democratic federal republic which consists of 26 cantons. These cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution (Art 3). In every canton legislative, executive and judicial bodies are established. The Federal Parliament has two Chambers, the House of Representatives and the Senate (Art 148 (2)). The House of Representatives is composed of 200 representatives who are elected directly by the people for a term of four years (Art 149). The Senate consists of 46 delegates of the cantons (Art 150).

The Federal Government, the *Bundesrat*, is the highest governing and executive authority of the Confederation (Art 174). The seven members of the Federal Government are elected by the Federal Parliament after each full renewal of the House of Representatives. Furthermore, the Federal Parliament elects one of the members of the Federal Government as President of the Confederation for a term of one year (Art 175 (2) Const).

The cantons enjoy sovereignty in the field of the judiciary. Hence, there are 26 different systems of court organisation and procedural codes. On the federal level, there is a Federal Court (*Bundesgericht*), which rules as a court of last resort on civil and criminal cases tried before the cantonal courts. In addition, the Federal Court deals with individual complaints alleging the violation of constitutional rights and is competent to rule on various subjects concerning disputes between the cantons or between a canton and the Federation (Art 189).

Two further federal Courts have been recently established, the Federal Criminal Court and the Federal Administrative Court (Art 191).

Title 2 contains a list of fundamental rights, civil rights and social goals. The fundamental rights reflect the rights contained in the UN Pact on Civil and Political Rights and the European Convention on Human Rights, whereas the rights contained in the UN Pact on Economic, Social and Cultural rights are only described as "social goals". Since 1963 Switzerland is a member of the Council of Europe and has ratified the European Convention on Human Rights on 28 November 1974.

B. Overview of Existing Ombudsman-Institutions

In Switzerland, no ombudsman-institution exists on the **federal level**. However, there are **regional Ombudsmen** in the Cantons of Zurich (C.), Basel-City (D.) and Basel-Landscape (E.). In the Cantons of Zug and Waadt provisional institutions have been established, a *Vermittler in Konfliktsituationen* in the Canton of Zug as well as a *médiateur administrative* and a *médiateur en matière d'administration judiciare* in the Canton of Waadt. Besides, there are similar **local institutions** in Bern, Winterthur, St. Gallen and Zurich (F.).

C. Ombudsperson des Kantons Zürich – Ombudsman Zurich

I. History and Legal Basis

Since the entry into force of the new Constitution of the Canton of Zurich on 1 January 2006, the *Ombudsperson* is mentioned in Art 81. Already since 1959 the Law governing administrative jurisdiction (*Verwaltungsrechtspflegegesetz des Kantons Zürich*; hereinafter OA) contains more detailed provisions concerning the Ombudsman in its Art 87 to 94 (Act of 24 May 1959).

The institution was founded on 25 September 1977 and commenced activities in 1979.

II. Organisation

The Ombudsman is a **monocratic** body. The Cantonal Council, the *Kantonsrat*, which is the Parliament of the canton, determines the number of deputies. Currently, one deputy has been appointed. The deputies officiate only in case that the Ombudsman cannot timely fulfil the obligations (§ 87 (2) OA). At the moment, three persons are on staff at the Ombudsman's office. The Office drafts its own budget which then is to be approved by the Cantonal Council.

III. Legal Status

The Ombudsman and deputies are elected by the Cantonal Council for a **term** of four years by absolute majority (§ 87 (1) OA).

The act does not state any special **qualification requirements**.

The office of the Ombudsman is **incompatible** with other state offices and all other professional activities in general. The Ombudsman is independent (§ 81 (3) OA), however, does not enjoy i**mmunity**.

The **early dismissal** of the Ombudsman is not possible.

IV. Scope of Control

The Ombudsman's **control** extends to authorities and offices of the canton and districts as well as the dependent and independent cantonal institutions.

Further, certain communities have subjected themselves to the control.[270] The Bank of the Canton of Zurich and the Cantonal Power Station (§ 89 (2) OA) as well as the Cantonal Council and church synods and authorities with judicial independence in as much as these are not an active part of the justice administration are exempt from the control. Furthermore, the Ombudsman may not investigate the activities of other authorities with regard to the preparation, issue, amendment, repeal or approval of generally binding instructions in appeal procedures excepting in the case of denial or delay of justice and other violations of official obligations (§ 90 OA).

The **control criteria** are legality and the principles of good administration as the Ombudsman is to clarify whether the authorities have proceeded legally and fairly (§ 89 (1) OA). The Ombudsman may intervene upon complaint by a party or take the initiative (§ 91 OA), however, he is not obligated to investigate a complaint. There are **no special formal requirements** or **time limits** for a complaint. The review may encompass open as well as closed matters (§ 91 (1) OA).

The services of the Ombudsman are **free of charge** (§ 94 OA). The Ombudsman is to maintain secrecy to the same degree when dealing with the complainant, authorities concerned or others (§ 92 (4) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The authorities whom the Ombudsman is dealing with in a particular case are obligated to provide information and hand over files unless legal provisions stipulate otherwise. The authorities are entitled to comment (§ 92 OA). In addition, the Ombudsman has access to the premises of authorities (§ 7 OA). Non-compliance with this duty to co-operate with the Ombudsman may be enforced through the courts. Last, the Ombudsman does not have any coercive competences but primarily acts as an intermediary.

The Ombudsman is not authorised to give instructions. On the basis of a review, the Ombudsman may give advice to the complainant regarding further actions, discuss the matter with the authorities or, if necessary, issue a **written recommendation** for the attention of the authorities under review. The Ombudsman also sends recommendations to the administrative body to whom the latter reports, the complainant and other involved parties who should be informed as well as to other interested cantonal authorities.

In addition, the Ombudsman may file **criminal charges** if necessary or recommend to the competent authority to initiate disciplinary proceedings. This happens rarely, about once or twice a year, but then receives a great deal of attention among the authorities (Q II).

---

[270] See the list at the Ombudsman's homepage, http://www.ombudsmann.zh.ch/gemeindezuständigkeit.html#Gemeindezuständigkeit.

V.2. Powers in Relation to the Courts

The judiciary is not subject to the Ombudsman's control excepting the administration of the judiciary.

V.3. Powers in Relation to Legislative Organs

The Ombudsman is to issue an **annual report** on the activity to the Cantonal Council (§ 87 (3) OA) and may participate in the debates of the Cantonal Council in respect of the report. The report has standardised chapters, but there is no separate section concerning human rights (Q II). The Ombudsman may also render a **special report**, which has, however, never happened in practice.

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is regarded as an important task of the Ombudsman, however, there are no specific powers in this field.

VI. Practice

The **focus** of the Ombudsman's tasks lies with social problems, traffic, tax and public service employment issues. There is no continual monitoring *ex officio*.

VII. Reform

Apart from the wish for a separate Ombudsman Act, there are currently no reform plans.

VIII. Information

Constitution:
Bundesverfassung, http://www.admin.ch/ch/d/sr/1/101.de.pdf (31.10.2007)
Verfassung des Kantons Zürich, http://www.zhlex.zh.ch (31.10.2007)

Ombudsman Act:
Verwaltungsrechtspflegegesetz des Kantons Zürich,
http://www.ombudsmann.zh.ch/gesetzestexte.htm (31.10.2007)

Annual Report:
Annual Reports 1978 to 2006,
http://www.ombudsmann.zh.ch/taetigkeitsberichte.html (31.10.2007)

D. Ombudsstelle des Kantons Basel-Stadt – Ombudman of the Canton Basel-City

I. History and Legal Basis

The regional Ombudsman Basel-City has its legal basis in the Law on the Commissioner for Complaints (Ombudsman) of the Canton Basel-City, the *Gesetz betreffend die Beauftragte/den Beauftragten für das Beschwerdewesen (Ombudsman) des Kantons Basel-Stadt* (Act of 13 March 1986; hereinafter OA Basel-Stadt). The question of whether an ombudsman-institution should be established was subject to a referendum in 1984 where the people voted in favour of the institution. As a consequence, the first incumbent was elected in 1988.

II. Specific Features

The *Ombudsman Basel-Stadt* is elected by the Great Council, the *Grosser Rat*, which is the Parliament of the Canton of Basel-City by absolute majority for a term of six years (§ 2 (1) OA Basel-Stadt). In principle, the Ombudsman is a **monocratic** body, but the Parliament may elect two persons as Ombudsmen who then are to share the office (§ 2 (2) OA Basel-Stadt).

The Ombudsman's **control** extends to all administrative organs and institutions as long as they do not engage in private activities. However, the Ombudsman may not monitor Parliament, religious institutions, notaries as well as judicial authorities with exception of the administration of justice (§ 4 OA Basel-Stadt).

The **control criteria** are constitutional and other rights of the individual as well as the principles of good administration (§ 1 (1) OA Basel-Stadt). Authorities are obligated to assist and support the Ombudsman. The Ombudsman may also conduct on-site inspection and consult experts (§ 7 (2) OA Basel-Stadt).

After an investigation, the Ombudsman may give advice to Parliament about the further handling of a certain case and, in addition, may discuss the issue with the authority concerned or, if necessary, issue a written **recommendation** to the authority. Such a recommendation is to be delivered to the superior authority, the complainant and, if the Ombudsman deems necessary, to other cantonal authorities which might have an interest in the affair (§ 8 (2) OA Basel-Stadt).

E. Ombudsman des Kantons Basel-Landschaft – Ombudman of the Canton Basel-Landscape

I. History and Legal Basis

The *Ombudsman Basel-Landschaft* has its legal basis in §§ 88 and 89 of the Cantonal Constitution and in the Ombudsman Act (Act of 23 June; hereinafter OA Basel-Landschaft). The institution exists since September 1989.

II. Specific Features

The Ombudsman is **elected** by the *Landrat*, the Parliament of the Canton of Basel-Landscape, by absolute majority (§ 3 OG). The Ombudsman is a **monocratic** body. A deputy Ombudsman is only appointed when the Ombudsman is absent (§ 7 OG).

The Ombudsman is to submit an annual activity report to the *Landrat* and may also issue individual reports (*Einzelberichte*) at any time (§ 12 OG). Furthermore, the Ombudsman may orally present any concerns to the *Landrat*, the *Regierungsrat*, the Cantonal Court and the local authorities (§ 13 OG).

The Ombudsman's **control** extents to the administration of the canton, local communities within the canton, cantonal and local institutions and enterprises, as well as private institutions exercising governmental authority. Judicial authorities are only subject to control in so far as the administration of the judiciary is concerned (§ 2 OG). Authorities and assembles are excluded from the control with respect to their legislative functions. Furthermore, the church and recognised religious communities are not subject to being monitored and the Ombudsman may not investigate the dealings of authorities with respect to appeals procedures (§ 2 (2) OG).

The **control criteria** are legality, correctness and utility (§ 1a OG). Every authority is obligated to provide information and documents (§ 9 (2) OG) though the Ombudsman is to respect the same duty of confidentiality as the authority providing the information (§ 9 (2) OG). Authorities have the right to be heard (§ 9 (3) OG). After conducting an investigation, the Ombudsman may give the complainant advice in respect of further activities, talk the issue over with the authority concerned or, if necessary, render a written recommendation to the authority concerned (§ 10 OG).

III. Information

Constitution:
Verfassung des Kantons Basel Landschaft,
http://www.baselland.ch/docs/recht/sgs_1-1/100.0.pdf (31.10.2007)

Ombudsman Act:
Gesetz über den Ombudsman, http://www.pfeffingen.ch/docs/recht/sgs_1-2/160.0.pdf (31.10.2007)

Annual Report:
Annual Reports 1994–2006,
http://www.baselland.ch/docs/gerichte/ombudsman/main-ombuds.htm (31.10.2007)

F. Ombudsstelle der Stadt Zürich – Ombudman of the City of Zurich

I. History and Legal Basis

The Ombudsman-Institution of the City of Zurich, the *Ombudsstelle der Stadt Zürich,* has its legal basis in the Municipal Code of Zurich, the *Gemeindeordnung der Stadt Zürich* (Act of 26 April1979 as of 15 March 1998; hereinafter GemO). The Ombudsman-Institution is a local institution which began its activities on 1 November 1971. The Commissioner for Complaints is to draft a budget for the institution which is to be approved by the local Council.

In this context, the Ombudsman-Institution of the City of Zurich is presented as an example for further local Ombudsmen in Switzerland (*v* B.).

II. Organisation

The Ombudsman-Institution is headed by the **monocratic** body of the Ombudsman who is also referred to as Commissioner for Complaints (*Beauftragter in Beschwerdesachen*). Also, one deputy is appointed (*v* Art 39 (5) GemO). Currently, three persons are on staff at the office (Q II).

III. Legal Status

The Ombudsman and a deputy are **elected** by the local council, the Parliament of Zurich, by absolute majority (Art 35 (1)h GemO).

There are no legal **qualification requirements** but typically the Ombudsman has a university degree in law, relevant professional experience or is trained as a mediator.

The office of the Ombudsman is **incompatible** with functions in a political party or union as well as with any state office and professional activities that could lead to conflicts of interest. The Ombudsman is independent and may not receive instructions from any person (Art 39 (3) GemO) though however, does not enjoy **immunity**. The term of office is four years and the incumbent may be re-elected.

The Ombudsman may not be dismissed.

IV. Scope of Control

The **control** extends to all administrative activities of the authorities of the city of Zurich and to private entities with public authority (Q I).

The **control criteria** are the laws and the principles of equity (Art 39 (2) GemO).

The Ombudsman may only investigate upon a complaint and may not initiate an investigation. Any person may file a complaint with the Ombudsman (Art 39 (1) GemO) which the office is obligated to examine. There are no formal requirements or deadlines.

The review may encompass open as well as closed matters.

Filing a complaint is **free of charge**. The Ombudsman is to respect the duty of confidentiality (Art 39 (3) GemO).

V. Powers

V.1. Powers in Relation to Administrative Organs

In the course of investigations, the Ombudsman may at any time request information and files from authorities and carry out on-site inspections (Art 39 (3) GemO). After conducting the investigation, a statement on the issue is to be sent to the parties involved as well as the respective superior authority (Art 39 (2) GemO).

V.2. Powers in Relation to the Courts

In principle, the Ombudsman may not influence legal decisions or proceedings in any way but may request information concerning legal proceedings.

V.3. Powers in Relation to Legislative Organs

The Ombudsman is to render an annual report to the local council (Art 39 (4) GemO) where the Ombudsman is to point out deficiencies in the laws and administrative activity, and call for changes and improvements (Art 39 (4) GemO). The Ombudsman may participate in parliamentary debates in respect of the report (Art 25 (2) GemO). The annual report is pre-examined by a commission of the local council, discussed within the local council and, later, published (Art 37 (3) GemO).

V.4. Special Functions and Powers in the Field of Human Rights

Although not expressly part of the control criteria, the protection of human rights plays an important role in the work of the Ombudsman (Q III). However, there are no special powers in this field.

VI. Practice

In 2006, the Ombudsman's office received 445 cases (Q III). The focus of the activity lies with social issues and police measures such as arrest and inspections as well as tax issues. There is no continual monitoring *ex officio*.

VII. Reform

Occasionally, it is difficult for the Ombudsman to obtain the necessary information from institutions and individuals concerned. For the future, the Ombudsman would wish for the power to act *ex officio* (QII).

VIII. Information

Ombudsman Act:
Municipal Code of Zurich, http://www.stadt-zuerich.ch/internet/ombudsstelle/home/rechts grundlagen.html (31.10.2007)

Annual Report:
Annual Reports 1996-2006, http://www.stadt-zuerich.ch/internet/ombudsstelle/home/jahresberichte.html (31.10.2007)

Ukraine

Joachim Stern

A. Constitutional Background

The 1996 Constitution declares Ukraine a "sovereign and independent, democratic, social, law-based state" (Art 1 Constitution of 28/6/1996; hereafter Const). Ukraine is a unitary state; the territory is divided into 24 administrative units (*oblasts*) and the Autonomous Republic of Crimea.

The unicameral Parliament (*Verkhovna Rada*) consists of 450 members who are elected every four years on the basis of universal, equal and direct suffrage (Art 75–76 Const). The Head of State is the President who is also elected directly by the people and serves a five-year term of office (Art 102 Const). The Government (*Cabinet of Ministers*) is composed of the Prime Minister, four Deputy Prime Ministers and other ministers (Art 114 Const) and is "the highest body in the system of bodies of executive power" (Art 113 Const).

The Supreme Court of Ukraine is the highest judicial body of general jurisdiction in the court system. Other courts of general jurisdiction are Local Courts and Courts of Appeal (Art 125 (2) Const). There are also commercial and administrative courts. The Constitutional Court decides on the constitutionality of laws and other acts of Parliament as well as acts of the President, Government or the Crimean Parliament. Only the Supreme Court, a minimum of 45 members of Parliament, the Crimean Parliament and the Representative of Human Rights have the right to appeal to the Court (Art 150 (1) Const). However, anyone can request an authentic interpretation of the Constitution and laws (Art 150 (2) Const).

Chapter II of the Constitution contains an extensive charter of "Human and Citizens' Rights, Freedoms and Duties". The Constitution provides that human and citizens' rights and freedoms are protected by the courts (Art 55). Ukraine has been a member to the Council of Europe since 1995; the ECHR was ratified in 1997.

B. Overview of Existing Ombudsman-Institutions

The "Authorised Human Rights Representative of the *Verkhovna Rada*" is Ukraine's national ombudsman-institution with a general mandate. There are no similar bodies on a regional or local level.

C. Уповноваженим Верховної Ради України з прав людини – Parliament Commissioner for Human Rights

I. History and Legal Basis

The constitutional framework for the institution of the Human Rights Representative was established in the 1996 Constitution (Art 55, 85, 101 and 150 Const). The Law on the Ukrainian Parliamentary Representative for Human Rights of December 23, 1997 (hereafter OA) further lays down the powers and organisational requirements of the institution. The Act entered into force on the day of its publication. The first Representative was elected in April 1998.

II. Organisation

The Parliamentary Representative is a **monocratically organised** institution. The Representative can appoint **delegates** "within the allocated funds approved by the *Verkhovna Rada*". The activities and scope of authority of the delegates is determined by the Ombudsman (Art 11 (1) OA). The Representative has a "secretariat" – a legal entity which is responsible for "securing his activity". The Representative's budget is part of the state budget. The Representative shall write his budget, submit it to the Parliament for approval and then must comply with these budgetary outlays (Art 12 OA). The Ministry of Finances is involved in this procedure (Q I).

III. Legal Status

The Representative is appointed to his post by Parliament in a secret ballot by a simple majority of members of Parliament (at least 226 votes; Art 5 (1), 6 (4) OA). Candidates can be **nominated** by the Chairman of Parliament or by a minimum of one quarter of its members (Art 6 (1) OA). They are **required** to hold Ukrainian citizenship, have a minimum age of forty years, a good command of the state language, high moral qualities, a clear criminal record, experience in human rights protection, and must have been resident in Ukraine for the last five years (Art 5 OA).

The holding of office is **incompatible** with a representative mandate, any other position in bodies exercising state power, the performance of any other work, whether paid or unpaid, and whether in the public or the private sector. Activities as a scholar, teacher or of a creative kind are exempted from this rule. The Representative cannot be a member of any political party (Art 8 OA).

The **term of office** is five years (Art 5 (4) OA). The office is **terminated automatically** if the Representative refuses to carry out his duties any longer, that is he submits a statement of resignation; by the entry into force of a criminal verdict against him; or by declaration of a court that the incumbent Representative is missing or dead (Art 9 (1) OA). The removal from office is to be declared by a resolution of Parliament (Art 9 (6) OA).

A premature **removal** from office may take place by parliamentarian majority vote if the Commissioner violates his oath, takes part in activities incompatible with the office, loses his Ukrainian citizenship or is unable to comply with duties for a period exceeding four months due to health conditions or loss of the ability to work (Art 9 (2) OA). A parliamentary commission shall conclude whether such grounds for dismissal exist. Upon the application of the Chairmen of the *Verkhovna Rada* or of one fourth of its deputies, Parliament may then remove the Representative from his post. The authority of the Representative cannot be terminated or restricted in the event of the dissolution of the *Verkhovna Rada*, or the end of its term, the declaration of martial law or a state of emergency (Art 4 (3) OA).

The Representative is **independent** from other state bodies and officials in the exercise of his duties (Art 4 (2) OA) and enjoys **immunity** from liability for criminal and administrative violations (Art 20 (3) OA).

Upon the expiration of his term he shall be provided with the job or post which he held prior to his election or another equivalent job or post at the same enterprise or, if this is not possible, at another enterprise, institution, or organisation (Art 20 (4) OA).

IV. Scope of Control

The Representative exercises parliamentary control over the observance of constitutional rights and freedoms of humans and citizens (Art 101 Const). The legislation further defines this assignment as "permanent control" and includes "every individual's rights on the territory of Ukraine and within its jurisdiction" (Art 1, 3 OA). Subject to the Representative's control are state bodies or bodies of local self-government, their officials and officers (Art 2 OA). Numerous rights of the Representative can also be exercised vis-à-vis associations of citizens, enterprises, institutions and organisations, irrespective of their forms of ownership (Art 14, 15 OA; infra V.1.). Courts are not generally subject to the Representative's jurisdiction, as he is required to reject complaints which relate to cases being examined by a court (Art 17 (4) OA). However, the Representative has certain rights towards the judiciary (infra V.2.).

The **standards for an investigation** by the Representative are any provision found within the entire legal system. The Act expressly names the Constitution, the laws of Ukraine and international agreements.

A Ukrainian citizen, irrespective of his dwelling place, a foreigner or a stateless person who is within Ukrainian territory, can raise a **complaint** personally or through a representative. The Representative can also act upon an appeal of members of Parliament or on his **own initiative** (Art 16, 17 OA). Persons under any form of detention can petition the Representative in writing and restrictions that apply to their general correspondence shall not apply in this case. The letter shall be dispatched to the Commissioner within twenty-four hours (Art 21 (3) OA).

Complaints can be filed in **written** form and must be submitted within **one year** of the disclosure of the violation. This time limit can be extended to two years in exceptional circumstances (Art 17 OA). The Representative is not under a duty to investigate. However, he must lay down reasons as to why he refused to investigate a case (Art 17 (5) OA). The complaint to the Ombudsman is free of charge. The Representative is not entitled to disclose information obtained during an investigation that concerns the personal life of a petitioner or other persons related to the petition, without their prior consent (Art 14 (4) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

The Representative has the right to visit bodies of state power and bodies of local self-government without any obstruction. He is to be received without delay by the highest public officials and can attend sessions of Government. He has access to any documents, including classified and secret documents and he may also obtain copies of these. The Representative has the right to visit at any time all places of detention, holding cells, other facilities where convicts are imprisoned and facilities where medical treatment and rehabilitation are forcefully applied, including psychiatric hospitals. He also has the right to interview persons residing there. The authority involved must support him in his work and submit oral and written explanations (Art 13 OA). These rights of the Representative do not only relate to public authorities, but also to "associations of citizens, enterprises, institutions, organisations, irrespective of their forms of ownership". Any refusal to cooperate or the deliberate concealment of information or provision of false information shall incur liability. The Representative can himself impose a fine (Art 188/19 Code of Administrative Infringements, date of publication unknown). Interference with his activities is also punishable by imprisonment for a term of up to three years and up to five years if committed by an official (Art 344 Criminal Code, date of publication unknown).

After conducting an investigation the Representative can direct a **response** to the relative authority, including the private organisations listed above, recommending that they "take respective measures" (Art 13 (1)1 OA). The person concerned must rectify the violation of rights within one month (Art 15 (3) OA).

The Representative is authorised to appeal to the Constitutional Court to declare acts of the Government or of the President unconstitutional if they concern human and citizens' rights and freedoms (Art 13 (3) OA).

V.2. Powers in Relation to the Courts

The Representative can attend any court session in any stage of the proceedings. If sessions are held behind closed doors, he must require the consent of the person who was intended to be protected by the exclusion of the public (Art 13 (2) and (9) OA). The Chairmen of Higher Courts must receive the

Ombudsman without delay. The Representative can also appeal to a court for the protection of the rights and freedoms of persons who are unable to do so for themselves due to health or other reasons. He may also attend judicial proceedings personally, or through a delegate, in accordance with the procedures established by law (Art 13 (10) OA). It could not be established which rights the Ombudsman can exercise during the proceedings.

V.3. Powers in Relation to Legislative Organs

The Representative has the right to **apply to the Constitutional Court** with a request to invalidate laws and other acts of Parliament if they are not in conformity with the Constitution and concern human and citizens' rights and freedoms (Art 13 (3) OA). Like any person, he can also demand an authentic interpretation of the Constitution and laws (Art 15 OA).

During the first quarter of every year, the Representative shall provide the *Verkhovna Rada* with an **annual report** regarding the observance and protection of human and citizens' rights and freedoms in Ukraine and on the problems discovered in legislation concerning human and citizens' rights and freedoms. The Representative can provide the Parliament with a **special report** on certain issues "should the need arise". Reports are to be published by the *Verkhovna Rada* which is also required to adopt a resolution on these reports (Art 18 OA). The Representative can attend parliamentary sessions any time (Art 13 (2) OA).

An express function of the Representative is to "facilitate the process of bringing legislation of Ukraine on human and citizens' rights and freedoms into accordance with the Constitution of Ukraine and international standards in this area" (Art 3 (4) OA). In order to achieve this purpose, he may suggest the amendment and enactment of laws.

V.4. Special Functions and Powers in the Field of Human Rights

The Representative shall not only protect human and citizen's rights and freedoms *ex post* but also act to prevent the violation of these rights or their continuing violation. Among his functions is the duty to improve and further develop international cooperation in this field, to prevent any forms of discrimination with regard to the implementation of these rights, as well as to encourage legal knowledge among the population (Art 3 OA). The Representative shall participate in the preparation of reports on human rights submitted by Ukraine to international organisations in accordance with ratified international agreements (Art 19 OA), such as reports relating to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, or the Convention on the Rights of the Child (see AR 1998/1999).

A board of advisors may be formed to assist the Representative by offering consultation, conducting scientific investigations as well as examining proposals on how to improve the human rights situation (Art 10 (4) OA). This board is to be made up of persons with practical experience in the protection of human and citizens' rights and freedoms.

The designation of the institution as NPM under the OPCAT is under consideration. The office of the Representative is not accredited as NHRI according to the Paris Principles.

VI. Practice

Currently, only the first annual report of the institution is available in English covering the period of 1998/1999. According to this report, the institution received 16,019 complaints in 1999, of which 15,671 were individual complaints and 348 collective appeals signed by a total of nearly 13,000 people. The majority of complaints were categorised as concerning "civic rights" such as the right to fair judicial protection, unlawful actions of employees of law enforcement bodies, failures to execute court decisions in good time, or violations of the right to acquire Ukrainian citizenship or residence permits. According to the institution, prisons, refugee camps, children's homes and psychiatric institutions are regularly inspected. However, NGOs have raised concerns regarding the irregularity of these visits, suggesting that this impacts on the effectiveness of the visits in deterring the violation of rights.[271] A special report has been prepared on the protection of rights of Ukrainian citizens living abroad.

VII. Reform

The existence of any recent plans to reform the institution is not known. In the Annual Report 1998/99, the Representative demanded an expansion of his powers in the field of civil and criminal court proceedings, in particular the right to appeal against unlawful judgments.

VIII. Information

Constitution:
http://www.rada.gov.ua/const/conengl.htm

Law:
http://www.ombudsman.kiev.ua/zakon-ue.htm

Annual Report (1998/99):
http://www.ombudsman.kiev.ua/de1_zm.htm

Internet:
http://www.ombudsman.kiev.ua

---

[271] http://www.apt.ch/component/option,com_docman/task,doc_download/gid,124/Itemid,59/lang,en/ 116 (24/7/2007).

United Kingdom of Great Britain and Northern Ireland

Brigitte Kofler

A. Constitutional Background

The Constitution of the United Kingdom is no single written document but consists mainly of customary law, statutes with a "constitutional" character and common law, that is case law. There is no technical difference between ordinary statutes and law considered "Constitutional Law". The United Kingdom is a unitary state which is divided into the four constituent countries of England, Scotland, Wales, and Northern Ireland. The *Government of Wales Act* of 31 July 1998, the *Scotland Act* of 19 November 1998 and the *Northern Ireland Act* of 19 November 1998 conferred a certain regional autonomy upon the three countries. Each now has its own Parliament and executive. Gibraltar has the status of a Crown Colony of the United Kingdom. Each is further subdivided for the purposes of local government. The United Kingdom is a Constitutional Monarchy with a parliamentary form of government. Parliament consists of an upper house, the House of Lords, and a lower house, the House of Commons. The *House of Commons* has 646 deputies who are elected by the people on the basis of a majority vote. The House of Lords consists of 731 members with the majority being *Life Peers*. The Head of State is the Monarch who is to give royal assent to every bill passed by the two houses. The Monarch appoints the Prime Minister who is the leader of the largest party in the House of Commons. The Prime Minister then chooses a cabinet.

In matters of criminal and civil law the Appellate Committee of the House of Lords is the highest court in England, Wales and Northern Ireland. It is also the Supreme Court for all civil cases under Scots law but Scotland has its own supreme criminal court, the High Court of Justiciary.

The *Constitutional Reform Act 2005* provides for the establishment of a Supreme Court of the United Kingdom to whom the powers of the Law Lords will be transferred. There is no specialised Constitutional Court. Traditionally no distinction was made between public law and private law. Legal protection against acts of administrative bodies is provided either by ordinary courts by way of judicial review or by certain quasi-judicial institutions, the so-called tribunals.

The United Kingdom is party to all major international human rights treaties including the European Convention on Human Rights. The Human Rights Act 1998 aims at giving "further effect" in UK law to the rights

contained in the Convention and introduced a national remedy for breach of a Convention right.[272]

B. Overview of Existing Ombudsman-Institutions

The *UK Parliamentary Commissioner* is the **national parliamentary ombudsman-institution** for Great Britain and Northern Ireland which currently also holds the office of the *Health Service Ombudsman* for England. In addition, there are regional and local ombudsman-institutions in England, Wales, Scotland, Northern Ireland and Gibraltar and, furthermore, numerous non-parliamentary Ombudspersons and complaints commissions. For instance, the *Scottish Prisons Complaints Commissioner* receives complaints from prisoners concerning their treatment in Scottish prisons.

C. Parliamentary and Health Service Commissioner

I. History and Legal Basis

The UK Ombudsman was legally established by the *Parliamentary Commissioner Act 1967* and commenced activities in the same year. The idea to create an Ombudsman in the UK first came up in the context of the *Chrichel Down Affair* in 1954. At that time 725 acres of agricultural land at *Crichel Down* were expropriated by the Air Ministry during WW II with the promise that the land would be returned to its owners after the war. However, when war was over, the land was handed over to the Ministry of Agriculture who vastly increased the cost of the land and leased it out although the heirs of the former land owner wanted the land back. This case was regarded as a typical instance of maladministration, which, though undesirable, was never illegal. A Commission, which was created after the case became public, proposed that an ombudsman-institution should be established to deal with similar cases.

The institution is considered to be part of the unwritten Constitution of the United Kingdom.[273]

II. Organisation

The UK Ombudsman is a **monocratic** body. The Ombudsman chooses and appoints **one deputy**. The Ombudsman's office currently has a staff of around 300 employees.

III. Legal Status

The Parliamentary Commissioner is not elected by Parliament but appointed by the Monarch for an indefinite period. In principle, the Ombudsman va-

---

[272] *v Grabenwarter*, Europäische Menschenrechtskonvention², 2005, 19.

[273] First Report from the House of Commons Select Committee on the Parliamentary Commissioner, 1990–1991 HC 129 December 19 1990 XIII.

cates office on completing the year of service in which the age of sixty-five is attained (§ 1 (3) OA). There are **no legal qualification requirements.** Parliament is not directly involved into the appointment procedure but may without giving reasons dismiss an incumbent with absolute majority of votes. In addition, a person appointed to be the Commissioner may request to be relieved of office (§ 1 (3) OA) and the Monarch may declare the office to have been vacated if satisfied that the incumbent is incapable for medical reasons of performing the duties of office (§ 1 (3)A OA).

The Commissioner is **independent** though, however, this is not expressly stated in the Ombudsman Act. There also are no provisions concerning incompatibilities. The Ombudsman enjoys **immunity** only with respect to issues which are referred to in the reports to Parliament.

The **salary** is determined by resolution of the House of Commons (§ 2 (1) OA).

IV. Scope of Control

The Ombudsman's **control** basically extends to all administrative organs of central Government. Schedule 2 of the Ombudsman Act contains a list of all authorities and entities which are subject to the control (§ 4 (1) OA). Schedule 3 lists matters which are exempt including certain aspects of foreign policy and actions taken in matters relating to contractual or other commercial transactions.

The control criterion is good administration. The Ombudsman investigates instances of maladministration. The term "maladministration" is not defined by law (§ 5 (1)a OA).

The Ombudsman only starts an investigation upon complaint by a member of the public who claims to have sustained injustice in consequence of maladministration and not on the initative of the office (§ 5 (1) OA). The person aggrieved is to be resident in the United Kingdom or has been in the United Kingdom when the event occurred (§ 6 (4) and (5) OA). This requirement does not apply with respect to other ombudsman-institutions in the United Kingdom (*v* D.-H.). The complaint is to be made to a member of the House of Commons and is then referred to the Commissioner with a request to conduct an investigation thereon (§ 5 (1) OA).

The complaint is to be in writing and filed not later than twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint unless the Commissioner considers that there are special circumstances which justify a later investigation (§ 6 (3) OA).

The Ombudsman is under no obligation to investigate every complaint and may not conduct an investigation if the person aggrieved has or had a right of appeal, reference or review to or before a tribunal or by way of proceedings in any court of law. Notwithstanding, the Ombudsman may conduct an investigation if satisfied that in the particular circumstances it is not reasonable to expect the complainant to resort or have resorted to it (§ 5 (2) OA).

Filing a complaint with the Ombudsman is **free of charge**.

The Ombudsman is to afford to the principal officer of the department or authority concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint (§ 7 (1) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

During an investigation the Ombudsman may require any person to furnish information or produce documents relevant to the investigation and has the same powers as a court in respect of the attendance and examination of witnesses, and the production of documents.

If any person without lawful excuse obstructs the Ombudsman or is guilty of any act or omission in relation to an investigation under this Act which, if that investigation were a proceeding in a court, would constitute contempt of court, the Ombudsman may certify the offence to court (§ 9 (1) OA).

The Ombudsman is to send to the member of the House of Commons by whom the request for investigation was made a **report** of the results of the investigation and also to send a report to the principal officer of the department or authority concerned and to any other person who is alleged in the relevant complaint to have taken or authorised the action complained of (§ 10 (1) and (2) OA). The act does not state any deadlines for the authorities to reply to the report.

If it appears that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, the Ombudsman may lay before each House of Parliament a special report upon the case (§ 10 (3) OA) and may recommend that **disciplinary or penal proceedings** be introduced against any official in the reports.

V.2. Powers in Relation to the Courts

The Ombudsman may not monitor court decisions, but is entitled to investigate the administration of the judiciary as far as actions of *non-judicial staff* and *non-judicial functions* are concerned. During ongoing proceedings the Ombudsman may require information concerning the proceedings and in case of sufficient legal standing, may participate in court proceedings. This might be the case if one of the decisions of the Ombudsman is challenged by judicial review.

V.3. Powers in Relation to Legislative Organs

The Ombudsman may issue recommendations concerning amendments of laws and is to submit to each House of Parliament an annual **general report** on the performance of the functions under this Act, and may from time to time submit to each House of Parliament such other reports with respect to

those functions as deemed necessary (§ 10 (4) OA). The general report is published. The *Parliamentary Administration Select Committee* may examine the report and question the Ombudsman about it. If injustice has not been, or will not be, remedied, a **special report** may be submitted to Parliament in respect of a specific case (§ 10 (3) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is not regarded as an independent task of the Ombudsman but these principles indirectly influence the actions and decisions.

VI. Practice

The focus of the Ombudsman's control lies with social and general procedural issues. The number of complaints received increased during the last years but is still rather low in an international context. So, in 2004/05 2,728 complaints were received (Annual Report 2005). Usually the recommendations are complied with and therefore it was rarely necessary to issue a special report under § 10 (3) of the Parliamentary Commissioners Act.

VII. Reform

At the moment there are plans to amend the Laws of the *Health Service Commissioner* and the *Local Government Ombudsmen* to facilitate cooperation among these institutions. Further, the ombudsman-institutions in England are to be enabled to issue general guidelines and advice to administrative organs.[274]

VIII. Information

Ombudsman-Act:
Parliamentary Commissioner Act 1967, http://www.statutelaw.gov.uk

Annual Report:
Annual Report 2005, http://www.ombudsman.org.uk/pdfs/ar_05.pdf

D. Commission for Local Administration in England

I. History and Legal Basis

The *Local Government Act 1974* (hereinafter LGA) provides for the legal basis of the Commission for Local Administration in England. The Commission is a regional institution which exists since 1974. In most parts of the

---

[274] *Consultation Paper of the Cabinet Office "Reform of Public Sector Ombudsman Services in England"*, http://www.cabinetoffice.gov.uk/propriety_and_ethics/documents/ombudsmen_reform.pdf.

United Kingdom the respective ombudsman-institutions are also competent to monitor local government entities, but in England these competences fall to the Commission for Local Administration.

II. Specific Features

The Commission consists of three members, who are referred to as "Local Government Ombudsmen", and the Parliamentary Commissioner of the UK (§ 23 LGA). The three members have divided the territory of England in three areas with each of them being exclusively competent for one area (§ 23 (8) LGA).

The **control** of the Ombudsmen extends to administrative activities on the local government level (§ 25 LGA). In principle, a person may only file a complaint with an Ombudsman if the authority concerned was informed before and the authority consented to an investigation of the Ombudsman. If the authority concerned refuses to give consent, the Ombudsman may still start an investigation if deemed necessary (§ 26 (3) LGA). In addition to their general power to issue reports after concluding an investigation, the Local Government Ombudsmen are also entitled to issue general *guidance on good practice notes*. So far, six guidebooks have been published.[275] Their focus of the monitoring lies with education, housing, town planning and building regulation.

E. The Scottish Public Services Ombudsman

I. History and Legal Basis

The *Scottish Public Services Ombudsman* was legally established by the *Scottish Public Services Ombudsman Act 2002* of 21 March 2002 (hereinafter Scot OA). The *Scottish Public Services Ombudsman* is a regional ombudsman-institution. The office first opened in 2002 after the Scottish Parliament and Scottish authorities had been established under the *Devolution Settlement* of the *Scotland Act* and, hence, an own Ombudsman was considered to be necessary.

II. Specific Features

The Scottish Ombudsman is appointed by the Monarch after nomination by the Scottish Parliament (Art 1 (1) Schott OA). Currently there are three deputy Ombudsmen (Art 1 (2) and (3) Schott OA) and 40 people are on staff at the office (Q II).

The **control** of the Scottish Ombudsman extends to all persons and authorities listed in Schedule 2 of the Scot OA. According to Schedule 2 basically all administrative activities of Scottish entities including public companies are subject to the Ombudsman's control (Art 3 and Schedule 2 Scot OA). In particular, the Ombudsman may also investigate *local authorities*

[275] *V* Guidance on Good Practice Notes, http://www.lgo.org.uk/guidance.htm.

and certain health care providers. During the last years the Ombudsman's control was further extended to new institutions (for example, *Further and Higher Education [Scotland] Act 2005*). Any person may make a complaint to the Ombudsman directly, either in person or through an authorised representative.

The **focus** of the monitoring lies with town planning and housing as well as health care issues. It is regarded as a deficit of the institution that the Ombudsman cannot take up cases on the initiative of the office (Q II). From April 2005 to March 2006 the Ombudsman received 1,724 complaints and 1,974 queries.

F. Public Services Ombudsman for Wales

I. History and Legal Basis

The legal basis of the *Public Services Ombudsman for Wales* is the *Public Services Ombudsman (Wales) Act 2005* (Act of 7 April 2005; hereinafter Wales OA). The *Public Services Ombudsman for Wales* is a regional institution. Since the office opened only in April 2006 the institution is the youngest regional ombudsman-institution.

II. Specific Features

The Ombudsman for Wales is a **monocratic** body. **No deputies** are appointed. Currently, about 40 people are on staff at the office (Q II). The Ombudsman is appointed by the Head of State upon proposal of the *Secretary of State* of the Welsh Government who is to consult with the Welsh Parliament (Art 1 Schedule 1 Wales OA).

The office is incompatible with the membership in any political party or union, any state office as well as all professional activities (Art 5 Schedule 1 Wales OA). The term of office is seven years (Art 3 (1) Schedule 1 Wales OA). Re-appointment is not possible (Art 3 (2) Schedule 1 Wales OA). An incumbent may request to be removed from office early or the Secretary of State, after consultation with Parliament, may request so should the Ombudsman be unable to perform the tasks due to health reasons or has committed major errors of judgment (Art 3 Schedule 1 Wales OA).

In principle, the **control** extends to all administrative activity of public entities in Wales, including local authorities and certain health **authorities** (*local government*; Art 8 and Schedule 3 Wales OA). Complaints may be filed directly with the Ombudsman.

In 2006 the Ombudsman received 1,438 complaints and regards it as a flaw of the institution that investigations may not be commenced on the initiative of the office (Q II).

G. Northern Ireland Assembly Ombudsman

I. History and Legal Basis

In Northern Ireland, two regional ombudsman-institutions exist since 1996, the *Northern Ireland Ombudsman,* whose legal basis is the *Ombudsman (Northern Ireland) Order 1996* (Statutory Instrument 1996 No. 1298 [N.I. 8]; hereinafter *Ombudsman Order*) and the *Commissioner for Complaints* based on the *Commissioner for Complaints (Northern Ireland) Order 1996* (Statutory Instrument 1996 No. 1297 [N.I. 7]; hereinafter *Commissioner for Complaints Order*). In practice, one person holds both offices simultaneously (hereinafter referred to as Ombudsman even if, in a legal sense, powers of the Commissioner are concerned).

II. Specific Features

The Ombudsman is a **monocratic** body. **No deputies** are appointed. Currently, 22 people are on staff at the Ombudsman's office (Q II). The Ombudsman is appointed by the Head of State upon a proposal of Parliament (§ 4 (1) *Ombudsman Order*; § 3 (3) *Commissioner for Complaints Order*). The office is **incompatible** with membership or functions in a political party or union as well as with any state office or activity in the public sector.

The authorities and institutions **subject to the control** are listed in Schedule 2 of the *Ombudsman Order* and Schedule 2 of the *Commissioner for Complaints Order* (Art 8 *Ombudsman Order*; Art 7 *Commissioner for Complaints Order*). The *Ombudsman Order* basically lists the regional authorities of Northern Ireland, whereas the *Commissioner for Complaints Order* contains local authorities and health care authorities in Northern Ireland. Hence, in principle all administrative activities of public entities in Northern Ireland fall within the Ombudsman's control, but as with the *Parliamentary Commissioner for the UK* there are certain exceptions.

Complaints filed under the *Ombudsman Order* are to be supported by a deputy of Parliament (§ 9 (2) *Ombudsman Order*), while complaints under the *Commissioner for Complaints Order* may be filed directly with the Ombudsman. If the Ombudsman concluded that maladministration has occurred under the *Commissioner for Complaints Order,* the complainant subsequently may address the court with a claim for damages (§ 16 (1) *Commissioner for Complaints Order*). In addition, the Ombudsman may request the *Attorney General* to apply for an injunction on an impression that the instance of maladministration has been existing for a longer period or will continue to exist in future (§ 17 *Commissioner for Complaints Order*).

The **focus** of the Ombudsman's work lies with social issues, traffic issues, health care, housing, education and complaints of public sector employees.

H. Public Services Ombudsman Gibraltar

I. History and Legal Basis

The institution of the Public Services Ombudsman of Gibraltar exists since 1999. The reason for its establishment was the wish to strengthen the rights of the citizens of Gibraltar. Its legal basis is the *Public Services Ombudsman Ordinance 1998* of 10 December 1998 (hereinafter Gib OA).

II. Specific Features

The Ombudsman is a **monocratic** body without any deputies. Currently there is a staff of four people. The Ombudsman is appointed by the Government of Gibraltar. The Parliament of Gibraltar is to confirm the appointment within 30 days (§ 3 (3) Gib OA). The office is **incompatible** with functions in a political party or union as well as state offices (§ 6 (1) Gib OA). The term of office is not fixed in time but declared at the appointment of a new candidate (§ 3 (1) Gib OA: *from time to time*, § 3 (4) Gib OA). The Ombudsman may be dismissed by Parliament if unable to perform the functions due to health reasons (§ 5 (4) Gib OA).

The authorities and entities **subject to the control** are listed in a Schedule to the Ombudsman Act and basically comprise the authorities of Gibraltar (Schedule Gib OA).

The focus of the monitoring lies with property and housing issues. The Ombudsman of Gibraltar also favours an extension of the powers to be able to commence an investigation on the initiative of the office (Q II).

Uzbekistan

Brigitte Kofler

A. Constitutional Background

Uzbekistan's current Constitution entered into force on 8 December 1992. It states in its Art 1 that Uzbekistan is a sovereign Democratic Republic. The state is divided into nine regions and the Republic of Karakalpakstan (Art 68). Parliament, the *Oily Majlis*, consists of two Chambers, the Legislative Chamber and the Senate (Art 76 (2)). Members of the Legislative Chamber are elected by the people for a term of five years. In 1999 and 2004 the OSCE conducted limited election observation missions to observe parliamentary elections and both times concluded that the elections had not complied with international standards (OSCE/ODIHR, Limited Election Observation Mission Report (2005), http://www.osce.org/documents). The majority of the members of the Senate are elected by parliamentary state bodies (Art 117 (3)). Sixteen further members are appointed by the President of the Republic from among citizens with large practical experience and special merits in the sphere of science, art, literature, manufacture and other state or public activity (Art 77(3)). The President of the Republic, who is the Head of State, is elected directly by the citizens for a term of seven years (Art 90 (2)). One and the same person may not be the President for more than two consecutive terms (Art 90 (1)). In spite of this constitutional provision, Islam Karimow is Uzbekistan's President since March 1990.

The judicial system in the Republic of Uzbekistan consists of the Constitutional Court, the Supreme Court, the Higher Economic Court as well as courts on regional and district level (Art 107). The Supreme Court is the supreme judicial body for civil, criminal and administrative proceedings (Art 110 (1)). The Constitutional Court of the Republic of Uzbekistan hears cases relating to the constitutionality of acts of the legislative and executive authorities (Art 108 (1) Const). However, there is no individual complaint procedure regarding the violation of constitutional rights. In the Autonomous Republic of Karakalpakstan an independent judicial system exists on a provisional basis (*v* Art 107).

Uzbekistan is not a member of the Council of Europe. Part 2 Const contains a catalogue of fundamental rights, political as well as social rights.

B. Overview of Existing Ombudsman-Institutions

The Ombudsman of Uzbekistan, the *Olij Majlisi Vakil* is a **national, parliamentary Ombudsman**. It has decentralised offices in all regions of the country. There are no comparable institutions on the local level.

C. Olij Majlisi Vakil – Authorised Person of Oliy Majlis for Human Rights

I. History and Legal Basis

The Ombudsman Institution was founded upon initiative of the President on 23 February 1995. Its **legal basis** is the "Law on the Authorised Person of the *Oliy Majlis* of the Republic of Uzbekistan for Human Rights" (Act of 24 April 1997, No. 4–5 as of 27 August 2004, No. 669-II).

Deficits in the existing mechanisms of human rights protection gave reason for the establishment of an ombudsman-institution. The Ombudsman's task is to supplement the existing forms of protection of human rights and freedoms and to promote the improvement of the legislation on human rights and especially its conformity with the norms of international law. Furthermore, the Ombudsman should promote international cooperation in human rights protection and facilitate public comprehension and awareness in the area of human rights (Art 1 (2) OA).

II. Organisation

The Ombudsman is a **monocratic body**. Upon a proposal from the Ombudsman, Parliament appoints a deputy Ombudsman (Art 5 (1) OA). A *Commission on observance of constitutional human rights and freedoms* was set up to assist the Ombudsman in the activities (Art 20 OA). Currently, there is a staff of nine at the office on full-time basis (Q II).

III. Legal Status

The Ombudsman is **elected** by both chambers of Parliament upon proposal of the President (Art 3 (1), (2) and (3) OA).

A candidate is to be a citizen of Uzbekistan with permanent residence in Uzbekistan for more than five years and a minimum age of 25 years (Art 4 OA).

The Ombudsman is **independent** from other state agencies and officials (Art 2 (2) OA) and enjoys **inviolability** and may not be arrested, imprisoned or subjected to an administrative proceeding nor may criminal proceedings be instituted against him without the consent of Parliament (Art 18 OA).

The office of the Ombudsman is **incompatible** with the membership in a political party. Furthermore, the Ombudsman may not engage in any other paid activity except for scientific and educational purposes (Art 8 OA).

The **term of office** is five years and depends on the parliamentary term.

Parliament may accept the resignation of the incumbent or dismiss the incumbent due to declining health, on a conviction and in case of being elected to and assigned a post which is incompatible with the duties (Art 9 OA). The required quorum for the dismissal is not mentioned in the respective legal provisions.

IV. Scope of Control

The Ombudsman's control extends to state agencies, enterprises, institutions, organisations and officials (Art 1 (1) OA). Matters falling under the competences of the courts are exempted from the control (Art 10 (3) OA).

The **control criteria** are the Constitution, laws and other legislative acts, international treaties to which Uzbekistan is a party as well as generally accepted human rights principles and norms of international law (Art 2 (1) OA).

The Ombudsman may either **start** investigations upon complaint or take action on the initiative of the office. Any person may file a complaint with the Ombudsman (Art 10 (1) OA). In addition, the Ombudsman may investigate complaints filed by third persons including NGOs if the affected person consents (Art 10 (2) OA). A complaint is to include personal data of the complainant and documents and evidence to proof the substance of the complaint (Art 11 (1) OA).

The Ombudsman only is to consider complaints filed within one year after the complainant became aware of the violation of rights or the adoption of the last decision on the issue (Art 11 OA).

The Ombudsman is not obligated to investigate every complaint received, but is to indicate reasons for rejecting a complaint (Art 13 OA). In such a case the Ombudsman may show the complainant ways and methods how to protect the rights, refer the complaint to a competent body or provide the complainant with access to documents, decisions and other materials relating to the affected rights (Art 13 OA).

Before filing a complaint with the Ombudsman the complainant is to **exhaust other remedies** and be dissatisfied with the decisions made thereon (Art 11 OA).

A complaint is not subject to any state fee (Art 12 (2) OA). The Ombudsman is to inform the complainant about the results of the investigation (Art 16 (1) OA).

V. Powers

V.1. Powers in Relation to Administrative Organs

During an investigation the Ombudsman may seek assistance from the state agencies, may request documents, materials and other information from officials and has access to all state premises including the right to meet with and interview detainees (Art 14 OA). Any impediment of the activity renders liable the respective person (Art 14 (4) OA).

At the end of an investigation the Ombudsman may forward a conclusion with recommendations as to the restoration of the violated rights to the respective authority. In this context the Ombudsman may recommend that a case be finalised by the competent organ, a decision be changed, nullified or at least justified or an additional decision be taken (Art 17 OA). The respective authority is to consider these recommendations within one month (Art 16 OA).

If someone has violated human rights, the Ombudsman is to appeal to the relevant authorities in order to hold this person to account (Art 13 (9) OA).

V.2. Powers in Relation to the Courts

The Ombudsman may not consider matters pending before a court (Art 10 (3) OA) but may participate in court proceedings with the status of an observer.

V.3. Powers in Relation to Legislative Organs

The Ombudsman may recommend changes and amendments to existing laws (V.4.).

The Ombudsman is to present an annual report to the sessions of the Chambers of Parliament and this report is to be published (Art 7 (1) and (2) OA).

V.4. Special Functions and Powers in the Field of Human Rights

The protection of human rights is the main task of the Ombudsman-Institution. The Ombudsman is to promote the improvement of national legislation on human rights and its conformity with international law. Furthermore, the Ombudsman should enhance international cooperation in human rights protection and increase public comprehension and awareness of human rights (Art 1 (2) OA) and, in addition, is to participate in the preparation of annual reports of the Republic of Uzbekistan on the implementation of international treaties in the field of human rights (Art 7 (3) OA). Currently the Ombudsman does not have the status of a National Human Rights Institution according to the UN Paris Principles.

VI. Practice

During the year 2006 the Ombudsman, according to a statement from the office, received more than 6,000 complaints (Q III). For lack of access to annual reports or further information, no further statements may be made about the practical work of the Ombudsman. Acceptance among the population is regarded as high by the Ombudsman (Q I). However, the *Organisation Mondiale Contre la Torture* (OMTC) characterises the Ombudsman's activity as "declarative and of no importance to the human rights protection in Uzbekistan". In particular, OMCT concludes that the institution has been "largely ignored by potent bodies and caused disappointment among citizens".[276]

---

[276] OMCT, Denial of Justice in Uzbekistan, An assessment of the human rights situation and national system of protection of fundamental rights, 2005, 34, http://www.omct.org/pdf/omct_europe/2005/omct-las_uzb_report_04_05.pdf 7.8.2007.

VII. Reform

The incumbent Ombudsman currently sees problems in the work due to a **lack of cooperation** from the authorities within the control. So, documents and materials are often delivered delayed and there is no reaction to recommendations issued by the Ombudsman. The Ombudsman would approve of an **extension of powers** to control pending administrative and court proceedings (Q II).

VIII. Information

Constitution:
Press Service of the President of the Republic of Uzbekistan,
http://www.press-service.uz (31. 10. 2007)

Ombudsman Act:
Law on the Ombudsman,
http://www.ioi-europe.org (31. 10. 2007)

Part Three: Tables and Diagrams

I. Preface

1. Subject Matter of the Study – Geographical Survey

2. Subject Matter of the Study – Tabular Survey

a) Main Institutions – National (47)[277]

Albania – *Avokati i Popullit* – People's Advocate 2000

Andorra – *Institució del Raonador del Ciutadà* – Citizen's Advocate 1997

Armenia – *ՀՀ Մարդու իրավունքների պաշտպան* – Human Rights Defender of the Republic of Armenia 2004

Austria (Nat) – *Volksanwaltschaft* – Austrian Ombudsman Board 1977

---

[277] Explanations: * not appointed by parliament, ** state/organisation not being member of the Council of Europe

Azerbaijan – *Azərbaycan Respublikasının İnsan Hüquqları üzrə Müvəkkili* – Commissioner for Human Rights 2002

Belgium (Fed) – *College van de federale ombudsmannen – Collège des médiateurs fédéraux* – College of the Federal Ombudsmen 1995

Bosnia and Herzegovina (HR) – *Ombudsman za ljudska prava Bosne i Hercegovine* – Human Rights Ombudsman of Bosnia and Herzegovina 1996

Bulgaria – Омбудсман на Република България – Ombudsman of the Republic of Bulgaria 2005

Croatia – *Pučki pravobranitelj* – Ombudsman 1994

Cyprus – *Γραφείο Επιτρόπου Διοικήσεως (Ομπουτσμαν)* – Office of the Commissioner for Administration (Ombudsman) 1991

Czech Republic – V*eřejný ochránce práv* – Public Defender of Rights 2000

Denmark – *Folketingets Ombudsmand* – Parliamentary Commissioner for Civil and Military Administration in Denmark 1955

Estonia – *Õiguskantsler* – Chancellor of Justice ..... 1999[278]

European Union (EU) – *Europäischer Bürgerbeauftrager* – European Ombudsman** 1993

Finland (Parl) – *Eduskunnan oikeusasiamies* – Parliamentary Ombudsman 1920

France – *Médiateur de la République* – Mediator of the Republic* 1973

Georgia – *Sakhalkho damtsvelis aparati* – Public Defender of Georgia 1998

Germany (Pet) – *Petitionsausschuss des Bundestages* – Petitions Committee 1949

Greece – Συνήγορος του Πολίτη – Greek Ombudsman 1995

Hungary – *Állampolgári Jogok Országgülési Biztosa'* – Parliamentary Commissioner for Civil Rights 1995

Iceland – *Umboðsmaður Alþingis* – Office of the Ombudsman 1988

Ireland – *Oifig an Ombudsmain* – Office of the Ombudsman 1984

Israel – רוביצה תונולת ביצנו הנידמה רקבמ **–** *Mevaker HaMedina – Netziv Tlunot HaTzibur* – State Comptroller and Ombudsman** 1971

---

[278] The insitution exists since 1993 and has been assigned with the function of the ombudsman in 1999.

Kazakhstan – *Уполномоченный по правам человека в Республике Казахстан* -Commissioner for Human Rights of the Republic of Kasachstan*, ** 2002

Kyrgyzstan – *Новости Института Омбудсмена (АКЫЙ-КАТЧЫ)* – Ombudsman (Akyakatchy) ** 2002

Latvia – *Tiesībsargs* – Legal Protection ..... 1995[279]

Liechtenstein – *Beratungs- and Beschwerdestelle* – Office of Advice and Complaints* 1976

Lithuania – *Seimo kontrolierių įstatymą,* – Seimas Ombudsmen's office of the Republic of Lithuana..... 1995

Luxembourg – *Médiateur du Grand-Duché de Luxembourg* – Ombudsman..... 2004

Former Yugoslavian Republic of Macedonia – *Naroden Pravobranitel* – Ombudsman..... 1997

Malta – *Uffiċċju ta' l-Ombudsman* – Office of the Ombudsman 1995

Moldova – *Avocatii parlamentari – Centrul Pentru Drepturile Omului Din Republic of Moldova* – Centre for Human Rights of Moldova – Parliamentary Advocates 1998

Montenegro – *Zaštitnik ljudskih prava i sloboda u Republici Crnoj Gori* – Protector of Human Rights and Freedoms 2003

Netherlands (Nat) – *Nationale ombudsman* – National Ombudsman..... 1982

Norway – *Sivilombudsmannen* – Parliamentary Ombudsman for Public Administration 1963

Poland – *Rzecznik Praw Obywatelskich* – Commissioner for Civil Rights Protection 1987

Portugal – *Provedor de Justiça* – Ombudsman 1976

Romania – *Advocatul Poporului* – People's Advocate..... 1997

Russian Federation – *Уполномоченный по правам человека в Российской Федерации* – Commissioner for Human Rights in the Russian Federation 1998

Serbia – *Zaštitnik građana* – Protector of Citizens (Civic Defender)..... 2007

Slovakia – *Verejný ochranca práv* – Public Defender of Rights 2002

Slovenia – *Varuh človekovih pravic* – Human Rights Ombudsman of the Republic of Slovenia..... 1995

---

[279] The institution was established unter the name of *Valsts Cilvēktiesību Birojs* – Latvian National Human Rights Office and essentially modified in 2007.

b) Additional National Institutions with General Mandate

– survey-like acquisition of particularities (1)

c) Institutions with Special Mandate

– survey-like acquisition of particularities (10)

Poland (Child) – *Rzecznik Praw Dziecka* – Commissioner for the Rights of the Child 2000

d) Regional Institutions (24)

– survey-like acquisition of particularities (24)

Belgium – *Médiateur de la Région Wallonne – Médiateur der wallonischen Region* – Mediator for the Walloon Region 1995

Belgium – *Service du médiateur de la Communauté française* – Ombudsman for the French Community 2002

Belgium – *Vlaamse Ombudsdienst* – Flemish Ombudsman Service 1991

Cyprus – *Yüksek Yönetim Denetçisi* – The Office of Ombudsman of the TRNC 1997

Germany – *Bürgerbeauftragter des Landes Rheinland-Pfalz* – Ombudsman of Rhineland-Palatinate 1974

Germany – *Bürgerbeauftragter Mecklenburg-Vorpommern* – Ombudsman of Mecklenburg – Western Pomerania 1995

Germany – *Bürgerbeauftragter Thüringen* – Ombudsman of Thuringia 2000

Italy – *Difensore Civico della Provincia autonoma di Bolzano-Alto Adige* – Ombudsman of the Autonomous Province of Bolzano – South Tyrol 1985

Serbia – *Institucioni i Ombudspersonit në Kosovë – Institucija Ombudspersona na Kosovu* – Ombudsperson Institution in Kosovo 2000

Serbia – *Pokrajinski ombudsman Autonomne Pokrajine Vojvodine* – Ombudsman of the Autonomous Province of Vojvodina 2003

Spain – *Defensor del Pueblo Andaluz* 1983

Spain – *Justicia de Aragón* 1988

Spain – *Procurador del Común de Castilla y Léon* 1995

Spain – *Sindic de Greuges de Catalunya* 1984

Spain – *Sindic de Greuges de la Comunitat Valenciana* 1993

Switzerland – *Ombudsman des Kantons Basel-Landschaft* – Ombudsman of the Canton Basel-Landscape 1979

Switzerland – *Ombudsstelle des Kantons Basel-Stadt* – Ombudsman of the Canton Basel – City 1986

Switzerland – *Ombudsstelle der Stadt Zürich* – Ombudsman of the City of Zurich 1971

United Kingdom – *Commission for Local Administration in England* 1974

United Kingdom – *Northern Ireland Assembly Ombudsman* 1996

United Kingdom – *Public Services Ombudsman for Wales* 2006

United Kingdom – *Public Services Ombudsman Gibraltar* 1999

United Kingdom – *Scottish Public Services Ombudsman* 2002

e) Institutions, which Have Been Additionally Included in the Analysis – Questionnaires (6)

Belgium (Ge) – *Ombudsvrouw Stad Gent and OCMW* – Ombudswoman City of Gent and OCMW 1995

Denmark (Grl) – *Inatsisartut Ombudsmandiat – Landstingets Ombudsmand* – Parliamentary Ombudsman of Greenland 1995

Italy (Tosc) – *Difensore Civico della Regione Toscana* – Regional Ombudsman of Toscana 1995

Italy (VdA) – *Difensore Civico della Valle d'Aosta* – Regional Ombudsman of the Aosta-Valley 1992

Netherlands (Am) – *Gemeentelijke Ombudsman Amsterdam* – Municipal Ombudsman of Amsterdam 1987

Spain (CaLe) – *Procurador del Común de Castilla y León* **–** Ombudsman of Castilla y León 1995

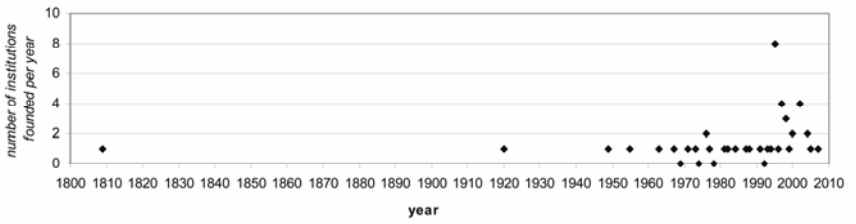
f) Due to the Lacking Ombudsman Institutions not Included Member States of the Council of Europe (3)

Monaco

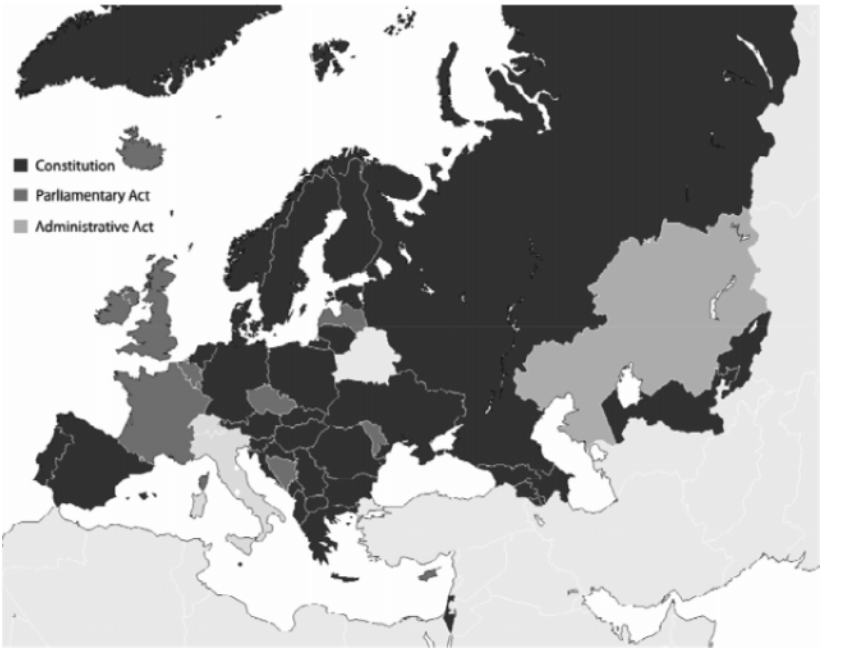
San Marino

Turkey

3. Dates of Establishment



4. Constitutional Embodiment of the Institution



Constitution/Constitutional Law (33)

Albania
Armenia
Austria
Azerbaijan
Bulgaria
Croatia
Denmark
Estonia
European Union*
Finland
Georgia
Germany
Greece
Hungary
Israel
Kyrgyzstan
Lithuania
FYR Macedonia
Malta
Montenegro
Netherlands
Norway
Poland
Portugal
Romania
Russland
Serbia
Slovakia
Slovenia
Spain
Sweden
Ukraine
Uzbekistan

Simple Act of Parliament (12)

Andorra
Belgium
Bosnia and Herzegovina
Cyprus
Czech Republic
France
Iceland
Ireland
Latvia
Luxembourg
Moldova
United Kingdom

Regulation/Decree (2)

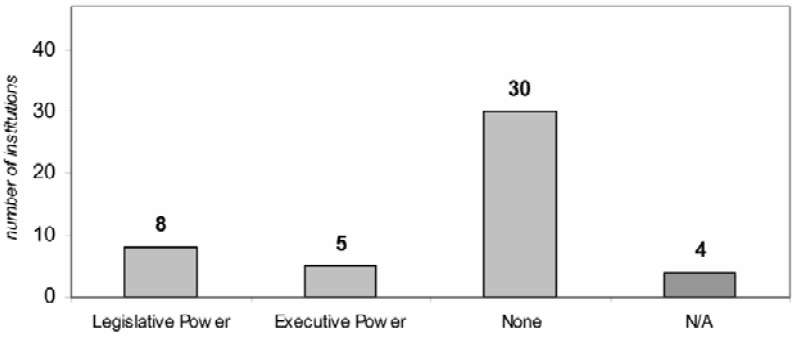
Kazakhstan
Liechtenstein

No National Institution (2)

Italy
Switzerland

* embodied in primary law

5. Which State Power Do the Ombudsmen Associate Themselves to?



Legislative Power

Andorra
Austria
Belgium
Czech Republic
Germany
Hungary
Lithuania
Norway

Executive Power

Albania
Ireland
Liechtenstein
FYR Macedonia
Malta

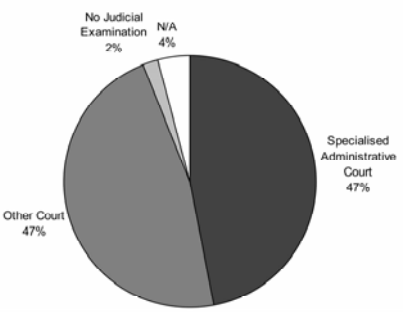
No Association

Armenia
Azerbaijan
Bosnia and Herzegovina
Croatia
Denmark
Estonia
EU
Finland
France
Georgia
Greece
Israel
Kazakhstan
Latvia
Luxembourg
Moldova
Netherlands
Poland
Portugal
Romania
Russian Federation
Slovakia
Slovenia
Spain
Sweden
Ukraine
United Kingdom
Uzbekistan

No Indications

Bulgaria
Kyrgyzstan
Montenegro
Serbia

6. Is a Judicial Examination of the Administration Provided (Administrative Jurisdiction)?



Specialised Administrative Jurisdiction

Austria
Belgium
Bulgaria
Croatia
Czech Republic
Estonia
Finland
France
Germany
Greece
Italy
Kazakhstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Netherlands
Poland
Portugal
Slovenia
Sweden
Switzerland
Ukraine

Examination by other Courts

Albania
Andorra
Armenia
Azerbaijan
Bosnia and Herzegovina
Cyprus
Denmark
EU
Hungary
Iceland
Ireland
Israel
FYR Macedonia
Malta
Moldova
Norway
Romania
Russian Federation
Serbia
Slovakia
Spain
United Kingdom
Uzbekistan

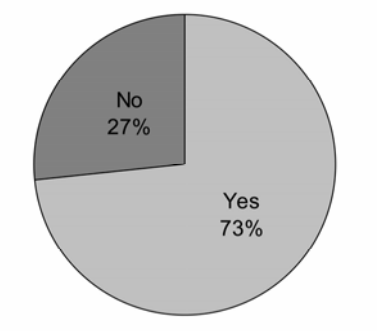
No Judicial Examination

Georgia

No Indications

Kyrgyzstan
Montenegro

7. Is there a Specialised Constitutional Court?



Yes

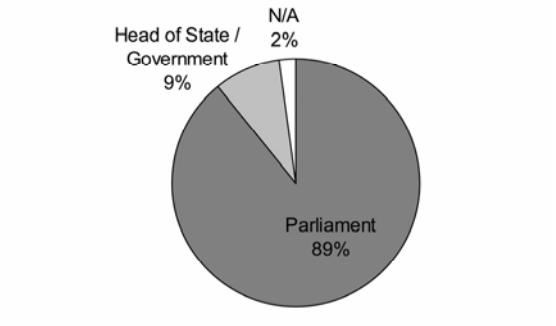
Albania
Andorra
Armenia
Austria
Azerbaijan
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Czech Republic
EU
France
Georgia
Germany
Hungary
Italy
Kazakhstan
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Ukraine
Uzbekistan

No

Cyprus
Denmark
Estonia
Finland
Greece
Ireland
Israel
Netherlands
Norway
Sweden
Switzerland
United Kingdom

II. Organisation

8. Which Organ Is Assigned with the Appointment of the Ombudsman?



Parliament

Albania
Andorra
Armenia
Austria (Nat)
Azerbaijan
Belgium (Fed)
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
EU
Finland
Georgia
Hungary
Iceland
Ireland
Israel
Kyrgyzstan
Latvia
Lithuania
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Netherlands (Nat)
Norway
Poland
Portugal
Romania
Russia
Serbia
Slovakia
Slovenia
Spain (Nat)
Sweden
Ukraine
Uzbekistan

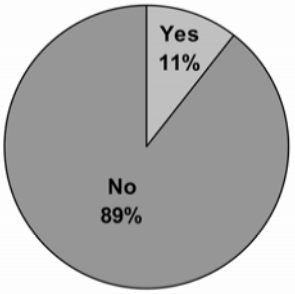
Head of State/Government

France
Kazakhstan
Liechtenstein
United Kingdom (Parl)

Not Classifiable

Germany

9. Does the Term of Office of the Ombudsman Depend on the Term of Office of Parliament?



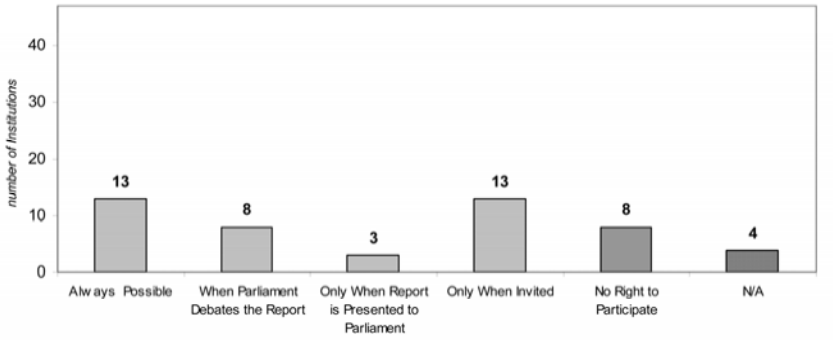
Yes

Denmark
EU
Germany
Norway
Uzbekistan

No

Albania
Andorra
Armenia
Austria
Azerbaijan
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Estonia
Finland
France
Georgia
Greece
Hungary
Iceland
Ireland
Israel
Kazakhstan
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Netherlands
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Sweden
Ukraine
United Kingdom

10. Is the Ombudsman Entitled to Participate in Parliamentary Plenary and Committee Meetings?



(Within His Field of Responsibility) Always Possible

Armenia
Azerbaijan
Belgium
Czech Republic
Estonia
Finland
Germany
Hungary
Kazakhstan
Lithuania
Luxembourg
Portugal
Moldova

When Parliament Debates the Report

Austria
Croatia
Cyprus
Georgia
FYR Macedonia
Netherlands
Slovenia
Spain

Only when Report is Presented to Parliament

France
Greece
Latvia

Only when Invited

Albania
Andorra
Cyprus
Denmark
EU
France
Ireland
Israel
Norway
Poland
Romania
Slovakia
United Kingdom

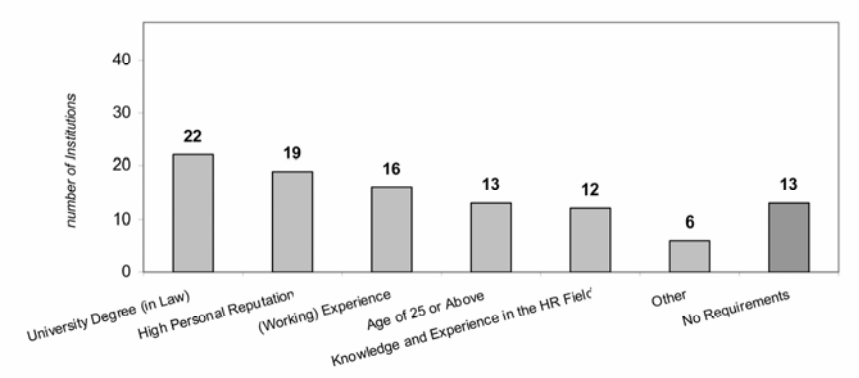
No Right to Participate

Bosnia and Herzegovina
Iceland
Liechtenstein
Malta
Russian Federation
Sweden
Ukraine
Uzbekistan

No Indications

Bulgaria
Kyrgyzstan
Montenegro
Serbia

11. Which Qualifications Do the Incumbents Have to Show?



University Degree in Law

Azerbaijan
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Denmark
Estonia
Finland
Hungary
Iceland
Kazakhstan
Lithuania
Luxembourg
FYR Macedonia
Montenegro
Norway
Poland
Moldova
Romania
Serbia
Slovenia

High Personal Reputation

Albania
Armenia
Azerbaijan
Bosnia and Herzegovina
Cyprus
Estonia
Greece
Hungary
Latvia
Lithuania
Luxembourg
FYR Macedonia
Moldova
Montenegro
Poland
Portugal
Serbia
Slovakia
Ukraine

* Not taken into account were additional requirements of appointment like nationality, active or passive voting rights or residence in the particular state.

(Working) Experience

Albania
Belgium
Croatia
Cyprus
Estonia
Hungary
Iceland
Kazakhstan
Latvia
Lithuania
Luxembourg
FYR Macedonia
Poland
Romania
Serbia
Slovakia

Minimum Age

Armenia
Azerbaijan
Cyprus
Czech Republic
Iceland
Latvia
Moldova
Norway
Russian Federation
Slovakia
Slovenia
Ukraine
Uzbekistan

Knowledge/Experience in the Field of Human Rights

Albania
Azerbaijan
Bosnia and Herzegovina
Croatia
Hungary
Kazakhstan
FYR Macedonia
Moldova
Montenegro
Russian Federation
Serbia
Ukraine

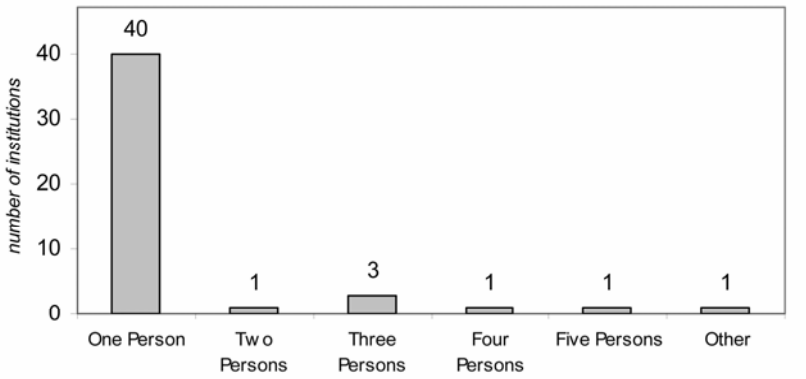
Other

Belgium
Estonia
EU
Germany
Luxembourg
Ukraine

No Requirements

Andorra
Austria
France
Georgia
Ireland
Israel
Kyrgyzstan
Liechtenstein
Malta
Netherlands
Spain
Sweden
United Kingdom

12. How many Incumbents Are Appointed to the Function of the Ombudsman?



One Person

Albania
Andorra
Armenia
Azerbaijan
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
EU
Finland
France
FYR Macedonia
Georgia
Greece
Hungary
Iceland
Ireland
Israel
Kazakhstan
Kyrgyzstan
Latvia
Liechtenstein
Luxembourg
Malta
Montenegro
Netherlands
Norway
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Ukraine
United Kingdom
Uzbekistan

Two Persons

Belgium

Three Persons

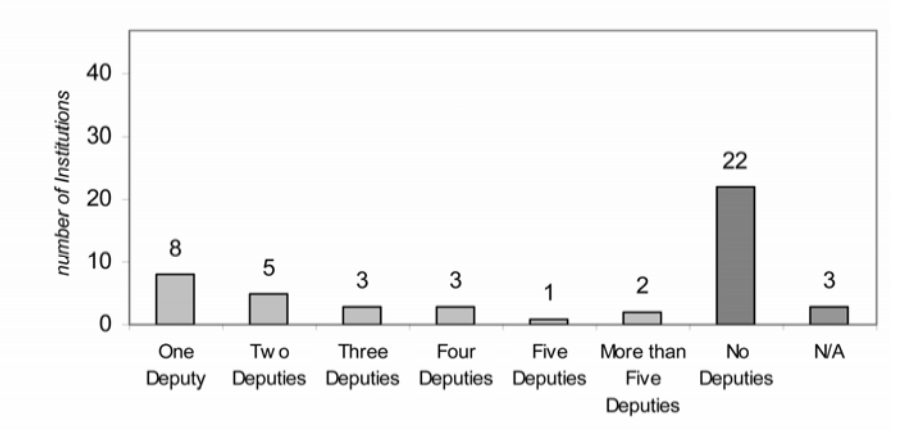
Austria
Bosnia and Herzegovina
Moldova

Four Persons
Sweden

Five Persons
Lithuania

Other
Germany

13. How many Deputies Are Appointed?



One Deputy

Armenia
Bulgaria
Czech Republic
Georgia
Hungary
Netherlands
United Kingdom
Uzbekistan

Two Deputies

Estonia
Finland
Poland
Portugal
Spain

Three Deputies

Albania
Croatia
Moldova

Four Deputies

Romania
Serbia
Slovenia

Five Deputies

Greece

More than Five Deputies

FYR Macedonia
Germany

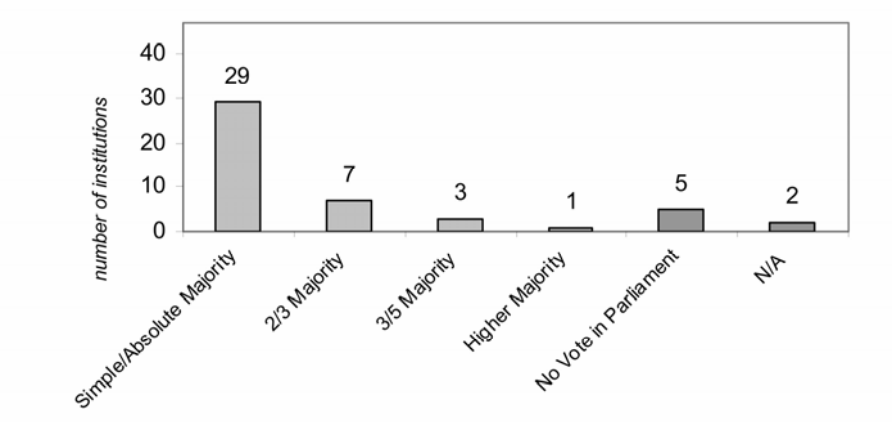
No Deputies

Andorra
Austria
Azerbaijan
Belgium
Cyprus
Denmark
EU
France
Icreland
Ireland
Israel
Kazakhstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Norway
Russian Federation
Slovakia
Sweden
Ukraine

No Indications

Bosnia and Herzegovina
Kyrgyzstan
Montenegro

14. Which Majority Is Required for the Election of the Ombudsman?



Simple/Absolute Majority

Austria
Belgium
Bulgaria
Croatia
Czech Republic
Denmark
Estonia
EU
Finland
Georgia
Iceland
Israel
Kyrgyzstan
Latvia
Lithuania
Luxembourg
FYR Macedonia
Moldova
Montenegro
Netherlands
Norway
Poland
Romania
Russian Federation
Serbia
Slovakia
Sweden
Ukraine
Uzbekistan

2/3 Majority

Andorra
Azerbaijan
Bosnia and Herzegovina
Hungary
Malta
Portugal
Slovenia

3/5 Majority

Albania
Armenia
Spain

Higher Majority

Greece

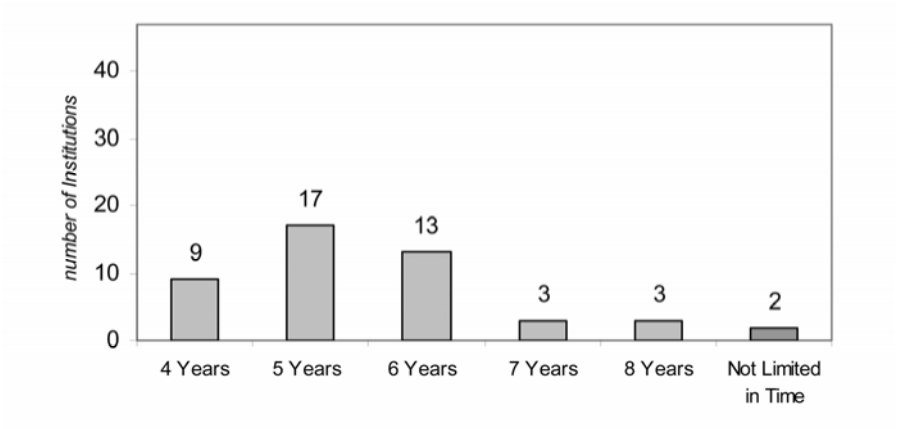
No Vote in Parliament

France
Germany
Kazakhstan
Liechtenstein
United Kingdom

No Indications

Cyprus
Ireland

15. How Long Is the Ombudsman's Term of Office?



4 Years

Denmark
Finland
Germany
Greece
Iceland
Latvia
Norway
Portugal
Sweden

5 Years

Albania
Bulgaria
EU
Georgia
Kazakhstan
Kyrgyzstan
Lithuania
Malta
Moldova
Poland
Romania
Russian Federation
Serbia
Slovakia
Spain
Ukraine
Uzbekistan

6 Years

Andorra
Armenia
Austria
Belgium
Bosnia and Herzegovina
Cyprus
Czech Republic
France
Hungary
Ireland
Montenegro
Netherlands
Slovenia

7 Years

Azerbaijan
Estonia
Israel

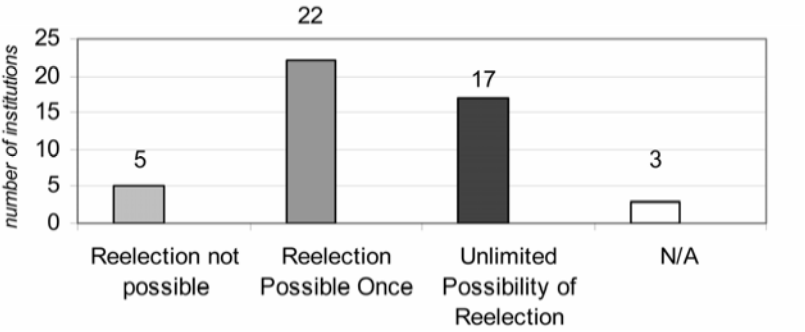
8 Years

Croatia
Luxembourg
FYR Macedonia

Not Limited in Time

Liechtenstein
United Kingdom

16. Can the Term of Office of the Ombudsman Be Renewed?



Reelection not Possible

Andorra
Azerbaijan
France
Israel
Luxembourg

Reelection Possible Once

Armenia
Austria (Nat)
Belgium (Fed)
Bosnia and Herzegovina
Bulgaria
Czech Republic
Georgia
Hungary
Ireland
Kazakhstan
Kyrgyzstan
FYR Macedonia
Malta
Moldova
Montenegro
Poland
Portugal
Romania
Russia
Serbia
Slovakia
Slovenia

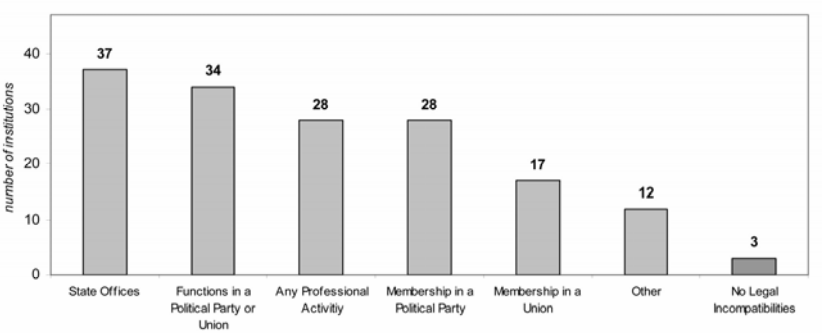
Unlimited Possiblity of Reelection

Albania
Croatia
Cyprus
Denmark
Estonia
EU
Finland
Germany (Pet)
Iceland
Latvia
Lithuania
Netherlands (Nat)
Norway
Spain (Nat)
Sweden
Ukraine
Uzbekistan

No Indications/Not Applicable

Greece
Liechtenstein
United Kingdom (Parl)

17. Which Activities is the Office of the Ombudsman Incompatible with?



State Offices

Albania
Andorra
Armenia
Austria
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Estonia
EU
Finland
France
Georgia
Germany
Hungary
Iceland
Israel
Kazakhstan
Kyrgyzstan
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Norway
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Ukraine
Uzbekistan

Functions in a Political Party or Union

Albania
Andorra
Armenia
Azerbaijan
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Estonia
Latvia
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Norway
Poland
Portugal
Romania

EU
Georgia
Hungary
Iceland
Israel
Kazakhstan
Kyrgyzstan
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Ukraine
Uzbekistan

Any Professional Activity

Andorra
Austria
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Estonia
EU
Georgia
Greece
Hungary
Iceland
Ireland
Israel
Kazakhstan
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Netherlands
Norway
Portugal
Serbia
Spain
Ukraine
Uzbekistan

Membership in a Political Party

Andorra
Armenia
Azerbaijan
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Estonia
Georgia
Hungary
Iceland
Israel
Kazakhstan
Kyrgyzstan
FYR Macedonia
Malta
Moldova
Montenegro
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Spain
Ukraine
Uzbekistan

Membership in a Union

Andorra
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Iceland
Kazakhstan
Kyrgyzstan
FYR Macedonia
Malta
Moldova
Poland
Portugal
Romania
Russian Federation
Spain

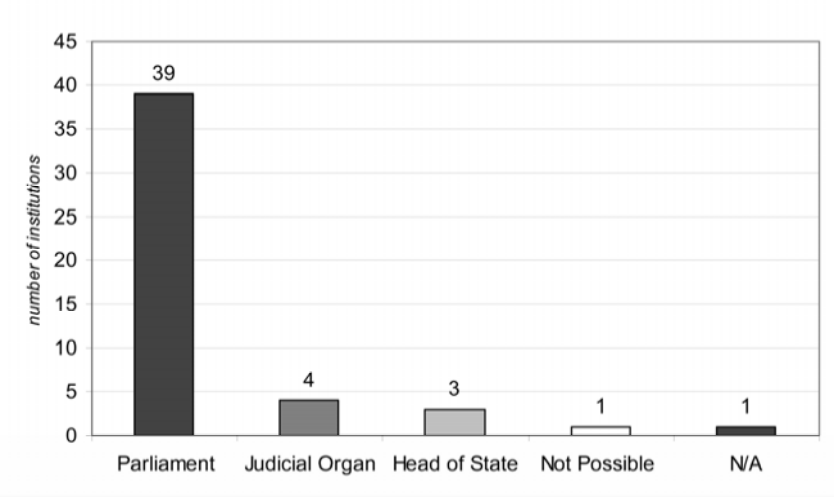
Other

Belgium
Denmark
Finland
Hungary
Iceland
Ireland
Israel
Latvia
Lithuania
Romania
Slovakia
Slovenia

No Incompatibilities

Liechtenstein
Sweden
United Kingdom

18. Which Organ Can Relieve the Ombudsman from Office?



Parliament

Albania
Andorra
Armenia
Azerbaijan
Belgium (Fed)
Bosnia and Herzegovina
Bulgaria
Croatia
Czech Republic
Denmark
Finland
Georgia
Greece
Hungary
Iceland
Ireland
Israel
Kyrgyzstan
Latvia
Lithuania
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Netherlands (Nat)
Norway
Poland
Portugal
Romania
Russia
Serbia
Slovakia
Slovenia
Spain (Nat)
Sweden
Ukraine
United Kingdom (Parl)
Uzbekistan

Judicial Organ

Cyprus
Estonia
EU
France

Head of State

Kazakhstan
Liechtenstein
Uzbekistan

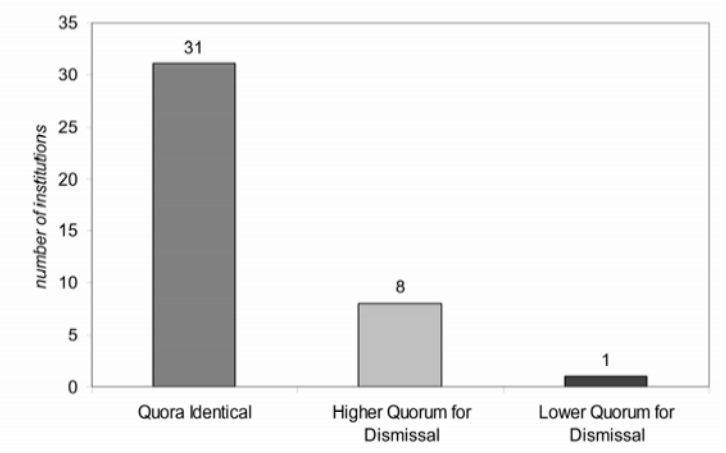
Not Possible

Austria

Not Answerable

Germany

19. Which Majority Is Required for the Dismissal of Office?



Identical Quora for the Appointment and Dismissal

Albania
Andorra
Azerbaijan
Belgium (Fed)
Bosnia and Herzegovina
Bulgaria
Croatia
Czech Republic
Denmark
Georgia
Greece
Hungary
Ireland
Latvia
Lithuania
Luxembourg
FYR Macedonia
Malta
Moldova*
Montenegro
Netherlands (Nat)
Portugal
Romania
Russia
Serbia
Slovakia
Slovenia
Sweden
Ukraine
Uzbekistan

Higher Quorum for Dismissal

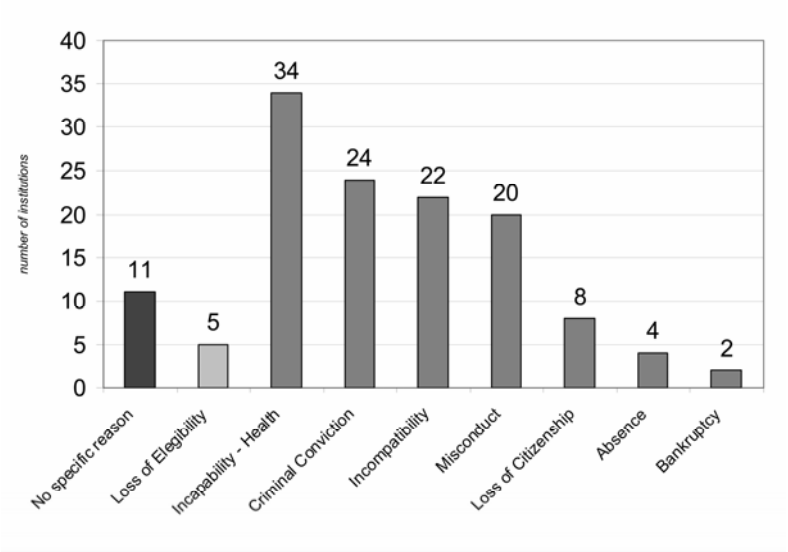
Finland
Icland
Israel
Kyrgyzstan
Moldova*
Norway
Poland
Spain (Nat)
United Kingdom (Parl)**

Lower Quorum for Dismissal

Armenia

* Differentiation according to reasons of dismissal (see state report).
** The Parliament is not involved in the process of appointment.

20. For what Reason is the Dissmissal of Office Admissible?



No Specific Reason – Loss of Confidence

Belgium (Fed)
Croatia
Denmark
Finland
Iceland
Lithuania
Moldova
Netherlands (Nat)
Norway
Sweden
United Kingdom (Parl)

Loss of Eligibility

Bulgaria
Czech Republic
EU
Portugal
Slovakia

Incapability – Health

Albania
Andorra
Armenia
Azerbaijan
Belgium (Fed)
Bosnia and Herzegovina
Bulgaria
Cyprus
Estonia
France
Lithuania
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Netherlands (Nat)
Poland
Romania
Russia

Georgia
Greece
Hungary
Ireland
Kazakhstan
Kyrgyzstan
Latvia
Serbia
Slovakia
Slovenia
Spain (National)
Ukraine
United Kingdom (Parl)
Uzbekistan

Criminal Conviction

Andorra
Armenia
Azerbaijan
Belgium (Fed)
Bosnia and Herzegovina
Bulgaria
Czech Republic
Georgia
Hungary
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
FYR Macedonia
Moldova
Montenegro
Netherlands (Nat)
Russia
Serbia
Slovakia
Slovenia
Spain (Nat)
Ukraine
Uzbekistan

Incompatibility

Albania
Andorra
Armenia
Azerbaijan
Belgium (Fed)
Bosnia and Herzegovina
Bulgaria
Czech Republic
Georgia
Hungary
Kazakhstan
Kyrgyzstan
Luxembourg
Montenegro
Netherlands (Nat)
Portugal
Romania
Russia
Serbia
Slovakia
Ukraine
Uzbekistan

Misconduct

Andorra
Bulgaria
Cyprus
EU
Hungary
Ireland
Israel
Kazakhstan
Kyrgyzstan
Latvia
Luxembourg
FYR Macedonia
Malta
Montenegro
Netherlands (Nat)
Poland
Romania
Serbia
Spain (National)
Ukraine

Loss of Citizenship

Armenia
Croatia
Georgia
Kyrgyzstan
Montenegro
Netherlands (Nat)
Serbia
Ukraine

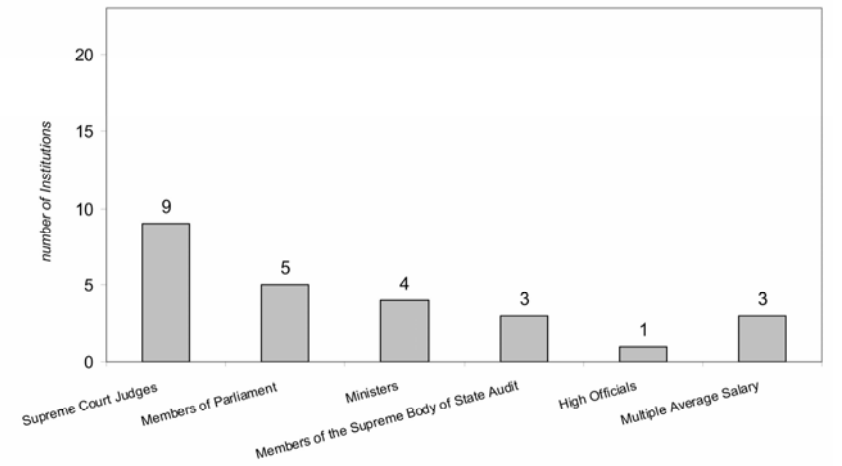
Absence

Albania
Andorra
Kazakhstan
Lithuania

Bankruptcy

Ireland
Netherlands (Nat)

21. What is the Remuneration of the Ombudsman Oriented to?



Supreme Court Judges

Albania
Armenia
EU
Lithuania
Malta
Moldova
Montenegro
Serbia
Slovenia

Members of Parliament

Austria
Azerbaijan
Germany
Kyrgyzstan
Slovakia

Ministers

Hungary
Poland
Portugal
Romania

Members of the Supreme Board of State Audit

Belgium
Cyprus
Czech Republic

High Officials

Luxembourg

Multiple Average Salary

Bulgaria
Estonia
Latvia

22. How many Persons Does the Ombudsman Institution Employ?

1. National respectively Supranational Institutions

Albania	45	
Andorra	3	
Armenia	36	
Austria	65	
Azerbaijan	57	
Bosnia and Herzegovina	46	
Croatia	14	
Cyprus	44	
Czech Republic	86	[280]
Denmark	84	
Estonia	41	
European Union	55	
Finland CJ	38	
Finland Parl.	56	
France	397	[281]
Georgia	60	
Germany	80	
Greece	181	
Hungary	137	
Iceland	11	
Ireland	44	
Israel	91	
Latvia	23	
Liechtenstein	1	
Lithuania	40	
Luxembourg	8	
FYR Macedonia	66	
Malta	15	
Netherlands	130	
Norway	42	
Poland	250	
Portugal	110	
Moldova	29	
Romania	90	
Russian Federation	14	
Slovakia	40	
Slovenia	39	
Spain	160	
Sweden	54	

[280] Reference date 31.12.2005.
[281] Including all Delegates in the entire state territory.

United Kingdom	300 [282]
Uzbekistan	9

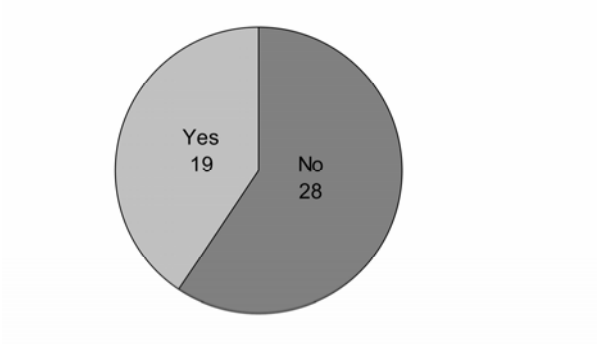
2. Regional Institutions

Austria	
Tyrol	6,5
Vorarlberg	3
Belgium	
Flanders	13
Wallonia	14
Ghent	5
Bosnia and Herzegovina	
Srpska	32
Denmark	
Greenland	10
Germany	
Rhineland-Palatinate	15
Italy	
Aosta Valley	5
Basilicata	3
Lombardy	20
South Tyrol	5,5
Netherlands	
Amsterdam	18
Serbia	
Kosovo	54
Vojvodina	20
Spain	
Andalusia	62
Catalonia	77
Switzerland	
Canton Zurich	3,1
City of Zurich	3
Turkey	
Northern Cyprus	14
United Kingdom	
Scotland	40
Wales	40
Gibraltar	5

[282] Including the Health Service Ombudsman.

III. Access to the Institution

23. Does the Complaint Have to Be Submitted in Written Form?



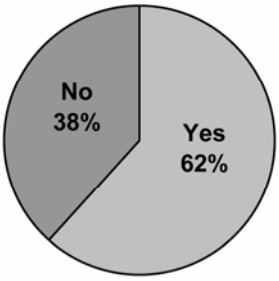
Yes

Andorra
Bosnia and Herzegovina
Finland
Germany
Greece
Iceland
Israel
Kazakhstan
Kyrgyzstan
Lithuania
Moldova
Montenegro
Netherlands
Romania
Russian Federation
Slovenia
Spain
Sweden
United Kingdom

No

Albania
Armenia
Austria
Azerbaijan
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
EU
France
Georgia
Hungary
Ireland
Latvia
Liechtenstein
Luxembourg
FYR Macedonia
Malta
Norway
Poland
Portugal
Serbia
Slovakia
Ukraine
Uzbekistan

24. Are there Deadlines for the Lodging of a Complaint before the Ombudsman?



Yes

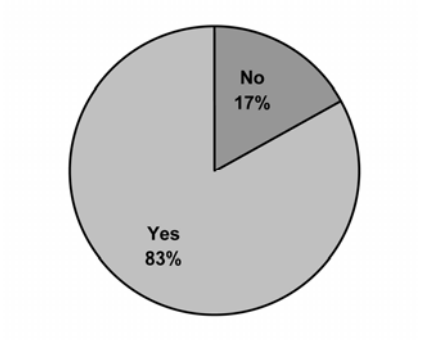
Armenia
Azerbaijan
Cyprus
Denmark
EU
Finland*
Greece
Hungary
Iceland*
Ireland
Israel
Kazakhstan
Kyrgyzstan
Lithuania
FYR Macedonia*
Malta*
Moldova
Montenegro*
Netherlands*
Norway
Romania
Russian Federation
Serbia
Slovenia*
Spain
Sweden*
Ukraine
United Kingdom*
Uzbekistan

No

Albania
Andorra
Austria
Belgium**
Bosnia and Herzegovina**
Bulgaria
Croatia
Czech Republic**
Estonia**
France
Georgia
Germany
Latvia
Liechtenstein
Luxembourg
Poland
Portugal
Slovakia**

* However, the particular Act on the Ombudsman provides that the Ombudsman can abstain from the meeting a time limit under certain circumstances.
** However, the particular Act on the Ombudsman empowers the Ombudsman to refuse the investigation of a complaint whose causation dates back too long.

25. Can the Ombudsman Act ex Officio?



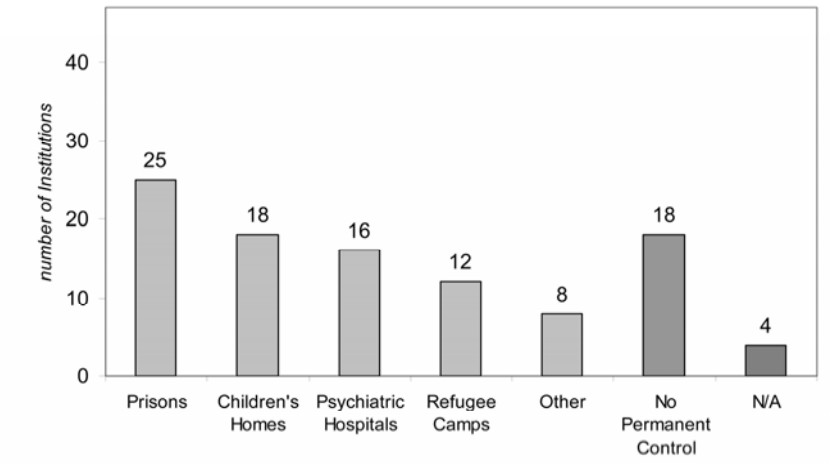
No

Azerbaijan
Belgium
Germany
Israel
Kyrgyzstan
Liechtenstein
Luxembourg
United Kingdom

Yes

Albania
Andorra
Armenia
Austria
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
EU
Finland
France
Georgia
Greece
Hungary
Iceland
Ireland
Kazakhstan
Latvia
Lithuania
FYR Macedonia
Malta
Moldova
Montenegro
Netherlands
Norway
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Sweden
Ukraine
Uzbekistan

26. Are Certain Institutions Permanently Controlled ex Officio?



Prisons

Albania
Andorra
Armenia
Azerbaijan
Bosnia and Herzegovina
Croatia
Czech Republic
Denmark
Estonia
Finland
Georgia
Kazakhstan
Latvia
Lithuania
FYR Macedonia
Moldova
Norway
Poland
Portugal
Russian Federation
Slovakia
Slovenia
Spain
Ukraine
Uzbekistan

Children's Homes

Albania
Andorra
Azerbaijan
Bosnia and Herzegovina
Czech Republic
Estonia
Finland
Georgia
Kazakhstan
Latvia
FYR Macedonia
Moldova
Poland
Slovakia
Slovenia
Spain
Ukraine
Uzbekistan

Psychiatric Hospitals

Albania
Azerbaijan
Bosnia and Herzegovina
Croatia
Czech Republic
Denmark
Estonia
Finland
Georgia
Kazakhstan
Latvia
FYR Macedonia
Norway
Poland
Slovenia
Ukraine

Refugee Camps

Albania
Azerbaijan
Bosnia and Herzegovina
Croatia
Czech Republic
Denmark
Latvia
FYR Macedonia
Norway
Poland
Slovenia
Ukraine

Other

Albania
Denmark
Estonia
Kazakhstan
Latvia
Lithuania
Moldova
Russian Federation

No Permanent Control

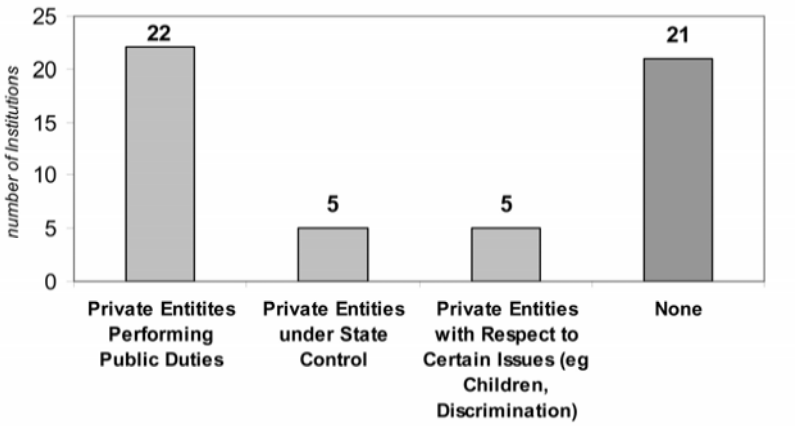
Austria
Belgium
Cyprus
EU
France
Germany
Greece
Hungary
Iceland
Ireland
Israel
Liechtenstein
Luxembourg
Malta
Netherlands
Romania
Sweden
United Kingdom

No Indications

Bulgaria
Kyrgyzstan
Montenegro
Serbia

IV. Subject of the Investigation

27. Can Non-Governmental Legal Entities Be Controlled?



Private Legal Entities Performing Public Duties

Albania
Bosnia and Herzegovina
Bulgaria
Croatia
Estonia
Finland
France
Germany
Hungary
Iceland
Israel
Latvia
Lithuania
FYR Macedonia
Moldova
Norway
Serbia
Slovakia
Slovenia
Spain
Sweden
Uzbekistan

Private Legal Entities under State Control

Greece
Israel
Malta
Portugal
Sweden

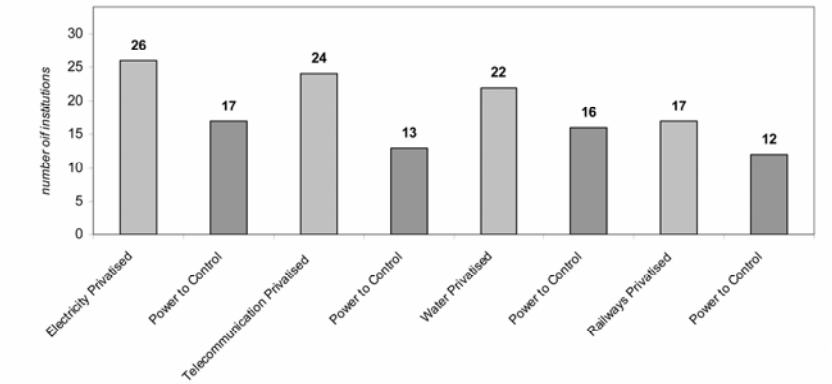
Private Legal Entities with Respect to Certain Issues (e.g. Children, Discrimination)

Cyprus
Estonia
Greece
Latvia
Portugal

None/Only Particular Institutions upon Explicit Authorisation

Andorra
Armenia
Austria
Azerbaijan
Belgium
Czech Republic
Denmark
EU
Georgia
Ireland
Kazakhstan
Kyrgyzstan
Liechtenstein
Luxembourg
Montenegro
Netherlands
Poland
Romania
Russian Federation
Ukraine
United Kingdom

28. Which Non-Governmental Legal Entities Can Be Controlled?



Electricity Supply (Partly) Privatised

Albania
Armenia
Azerbaijan
Czech Republic
Estonia
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Kazakhstan
Lithuania
FYR Macedonia
Malta
Moldova
Netherlands
Norway
Poland
Portugal
Romania
Sweden
United Kingdom
Uzbekistan

Power to Control

Albania
Azerbaijan
Finland
France
Greece
Hungary
Kazakhstan
Lithuania
FYR Macedonia
Malta
Moldova
Norway
Poland
Portugal
Romania
Sweden
Uzbekistan

Telecommunication Privatised

Albania
Armenia
Croatia
Czech Republic
Estonia
Finland France
Georgia
Germany
Greece
Hungary
Iceland
Kazakhstan
Lithuania
FYR Macedonia
Malta
Moldova
Netherlands
Norway
Poland
Portugal
Romania
Sweden
United Kingdom

Power to Control

Albania
Croatia
Finland
Germany
Greece
Hungary
Kazakhstan
FYR Macedonia
Norway
Poland
Portugal
Moldova
Sweden

Water Supply (partly) Privatised

Armenia
Azerbaijan
Czech Republic
Estonia
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Kazakhstan
Lithuania
Malta
Moldova
Norway
Poland
Portugal
Romania
United Kingdom

Power to Control

Azerbaijan
Finland
France
Georgia
Greece
Hungary
Ireland
Kazakhstan
Lithuania
Malta
Moldova
Norway
Poland
Portugal
Romania
Uzbekistan

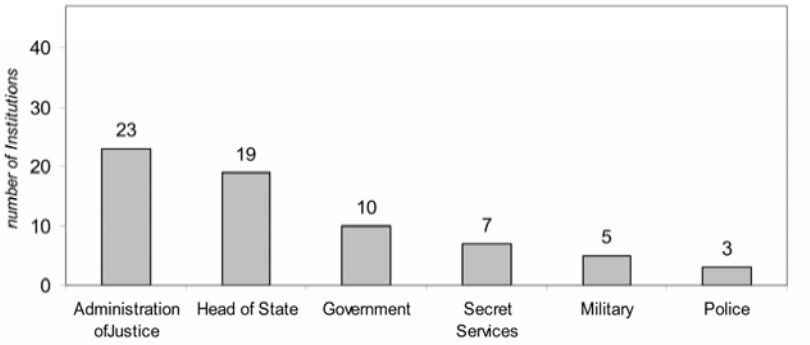
Railway Privatised

Albania
Czech Republic
Estonia
Finland
Georgia
Germany
Greece
Hungary
Kazakhstan
Lithuania
Malta
Netherlands
Norway
Poland
Portugal
Romania
United Kingdom

Power to Control

Albania
Finland
Georgia
Germany
Greece
Hungary
Kazakhstan
Lithuania
Norway
Poland
Portugal
Romania

29. Are Certain Domains of Administration Excluded from the Ombudsman's Control?



Administration of Justice

Andorra
Armenia
Belgium
Bulgaria
Croatia Latvia
Cyprus
Denmark
Estonia
France
Germany
Greece
Hungary
Iceland
Ireland
Liechtenstein
Lithuania
Malta
Netherlands
Norway
Romania
Russian Federation
Serbia

Head of State

Albania
Azerbaijan
Belgium
Croatia
Cyprus
Germany
Hungary
Israel
Kazakhstan
Lithuania
Luxembourg
Malta
Netherlands
Norway
Romania
Serbia
Slovakia
Sweden
Czech Republic

Government

Cyprus
Czech Republic
Israel
Kazakhstan
Lithuania
Malta
Romania
Serbia
Slovakia
Sweden

Secret Services

Belgium
Czech Republic
France
Greece
Israel
Malta
Slovakia

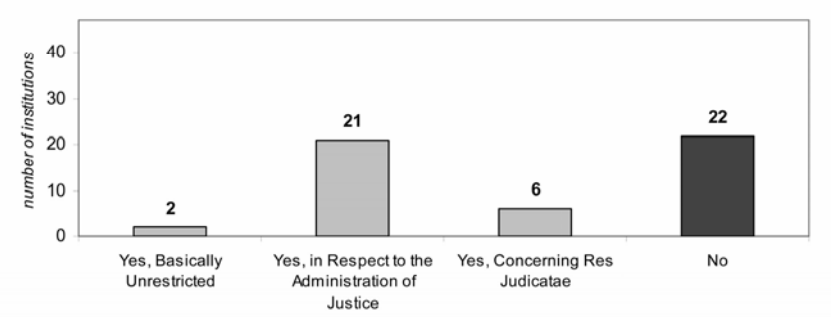
Military

Ireland
Israel
Malta
Norway
Slovakia

Police

Belgium
Ireland
Slovakia

30. Are Courts Subject to the Ombudsman's Control?



Yes, Basically Unrestricted

Finland
Sweden

Yes, with Respect to the Administration of Justice

Albania
Austria
Azerbaijan
Bosnia and Herzegovina
Czech Republic
EU
Israel
Lithuania
Luxembourg
FYR Macedonia
Moldova
Montenegro
Poland
Portugal
Slovakia
Slovenia
Spain
Ukraine
United Kingdom
Uzbekistan

Yes, Concerning Res Judicatae

Albania
Georgia
Kazakhstan
Kyrgyzstan
Luxembourg
Russian Federation

No

Andorra
Armenia
Belgium
Bulgaria
Croatia
Cyprus
Denmark
Estonia
France
Germany
Greece
Hungary
Iceland
Ireland
Latvia
Liechtenstein
Malta
Netherlands
Norway
Romania
Serbia

31. To which Extent is the Administration of Justice Subject to the Ombudsman's Control?

Administration of Justice in General

Albania
Austria
Bosnia and Herzegovina
Czech Republic
EU
Finland
Israel
Kazakhstan
Portugal
Spain
Sweden

Proceedings

Albania
Azerbaijan
Luxembourg
FYR Macedonia
Montenegro
Slovenia

Misconduct of Judges

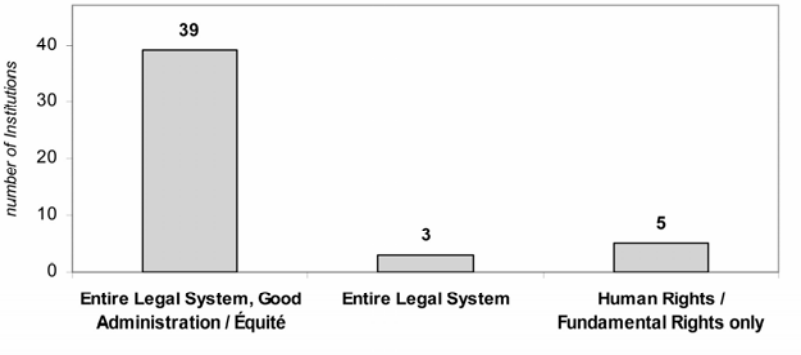
FYR Macedonia
Montenegro
Slovakia
Slovenia

Delays in Executions

Azerbaijan
Montenegro

V. Standard of Investigation

32. What Is the Ombudsman's Standard of Investigation?



Entire Legal System, Good Administration/Équité

Albania
Andorra
Austria
Belgium
Bosnia and Herzegovina
Czech Republic
Denmark
Estonia
EU
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Israel
Latvia
Liechtenstein
Lithuania
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Netherlands
Norway
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Sweden
United Kingdom

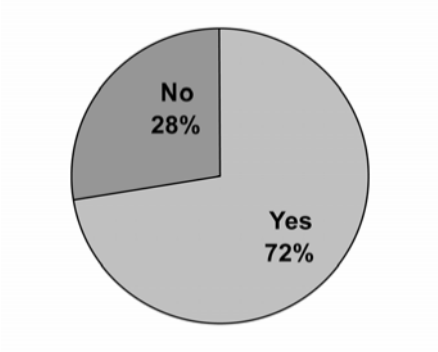
Entire Legal System

Armenia
Bulgaria
Kyrgyzstan

Human Rights/Fundamental Rights only

Azerbaijan
Georgia
Kazakhstan
Ukraine
Uzbekistan

33. Are Human Rights an Explicit Standard of the Ombudsman's Control?



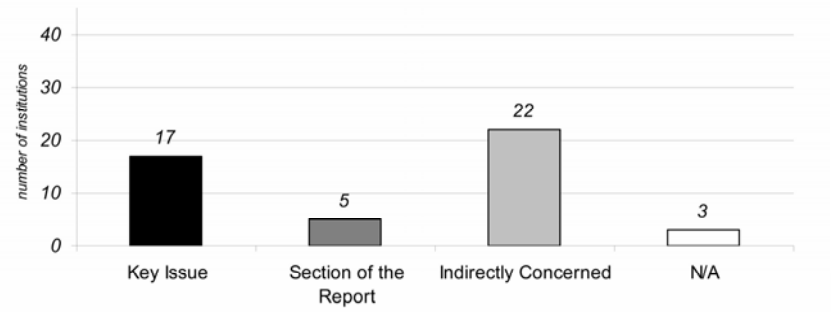
Yes

Albania
Andorra
Armenia
Azerbaijan
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Estonia
Finland Georgia
Greece
Hungary
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
Luxembourg
FYR Macedonia
Moldova
Montenegro
Norway
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Sweden
Ukraine
Uzbekistan

No

Austria
Belgium
Denmark
EU
France
Germany
Iceland
Ireland
Israel
Liechtenstein
Malta
Netherlands
United Kingdom

34. Does the Ombudsman's Activity Report Include a Separate Part on Human Rights?



Human Rights are the Key Issue of the Report

Albania
Armenia
Azerbaijan
Bosnia and Herzegovina
Croatia
Estonia
Georgia
Kazakhstan
Kyrgyzstan
Latvia
Moldova
Montenegro
Poland
Russian Federation
Slovenia
Ukraine
Uzbekistan

Human Rights are Examined in a Separate Section of the Report

Austria
Cyprus
Greece
FYR Macedonia
Norway

Human Rights are Indirectly Concerned in the Report

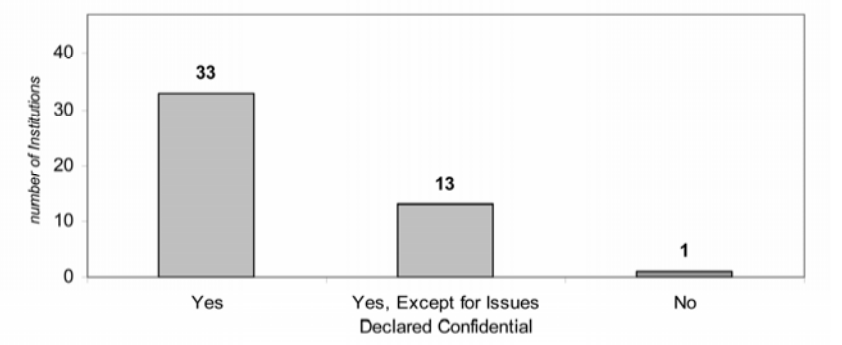
Andorra
Belgium
Czech Republic
Denmark
EU
Finland
France
Germany
Hungary
Iceland
Ireland
Israel
Lithuania
Luxembourg
Malta
Netherlands
Portugal
Romania
Slovakia
Spain
Sweden
United Kingdom

Unascertainable/No Reports

Bulgaria
Liechtenstein
Serbia

VI. Powers

35. Are the Administrative Organs Obliged to Assist the Ombudsman?



Yes

Albania
Armenia
Austria
Azerbaijan
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Czech Republic
Denmark
Estonia
Finland
Georgia
Hungary
Ireland
Israel
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
FYR Macedonia
Moldova
Montenegro
Norway
Poland
Romania
Russian Federation
Serbia
Slovenia
Sweden
Ukraine
United Kingdom
Uzbekistan

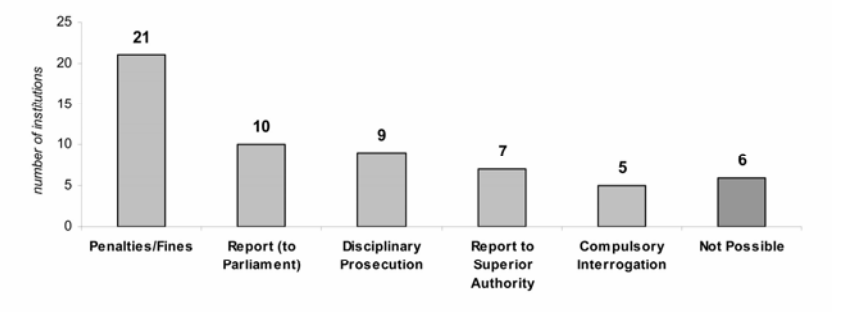
Yes, Except for Issues Declared Confidential

Andorra
Cyprus
EU
France
Germany
Greece
Iceland
Luxembourg
Malta
Netherlands
Portugal
Slovakia
Spain

No

Liechtenstein

36. Can the Duty of Assistance Be Enforced (under Compulsion)?



Infliction of Penalties/Fines

Albania
Armenia
Austria
Bulgaria
Cyprus
Finland
Georgia
Ireland
Israel
Latvia
Lithuania
Malta
Moldova
Portugal
Russian Federation
Slovenia
Spain
Sweden
Ukraine
United Kingdom
Uzbekistan

Report (to Parliament)

Belgium
Bosnia and Herzegovina
EU
France
Kazakhstan
Kyrgyzstan
FYR Macedonia
Montenegro
Slovenia
Spain

Disciplinary Prosecution

Albania
Bosnia and Herzegovina
Estonia
France
Greece
Latvia
Portugal
Serbia
Sweden

Report to Superior Authority

Andorra
Bosnia and Herzegovina
Czech Republic
Montenegro
Romania
Slovakia
Slovenia

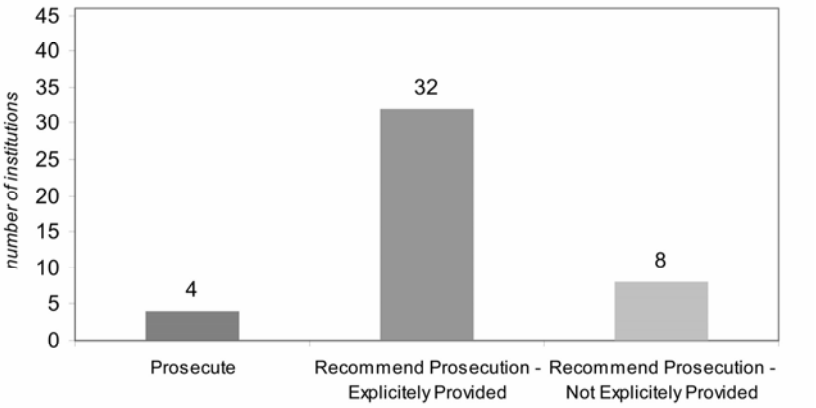
Compulsory Interrogation

Denmark
Germany
Iceland
Netherlands
Norway

Not Possible

Azerbaijan
Croatia
Hungary
Liechtenstein
Luxembourg
Poland

37. Can the Ombudsman Initiate Criminal Proceedings?



Initiate Criminal Proceedings Himself

Bosnia and Herzegovina
Finland
Poland
Sweden

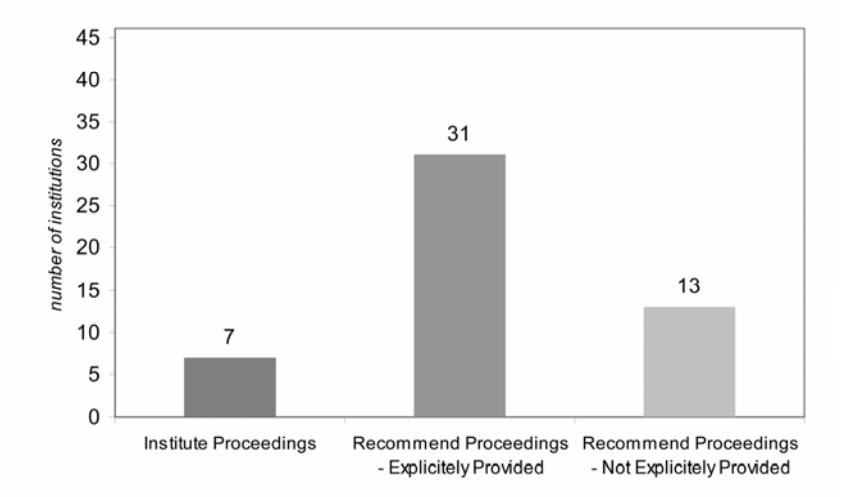
Recommend Criminal Proceedings (Explicitly Provided by Law)

Albania
Armenia
Azerbaijan
Belgium (Fed)
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Estonia
EU
Finland
France
Georgia
Greece
Hungary
Iceland
Israel
Kazakhstan
Kyrgyzstan
Lithuania
FYR Macedonia
Malta
Moldova
Norway
Portugal
Russia
Serbia
Slovakia
Spain (Nat)
Ukraine
Uzbekistan

Recommend Criminal Proceedings (Not Explicitly Provided by Law)

Austria (Nat)
Denmark
Germany (Pet)
Latvia
Luxembourg
Montenegro
Slovenia
United Kingdom (Parl)

38. Can the Ombudsman Initiate Disciplinary Proceedings?



Institute Disciplinary Proceedings Himself

Bosnia and Herzegovina
Estonia
France
Greece
Lithuania
Poland
Sweden

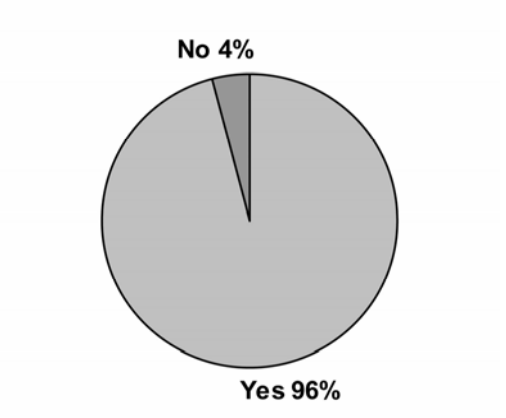
Recommend Disciplinary Proceedings (Explicitly Provided by Law)

Armenia
Azerbaijan
Belgium (Fed)
Bosnia and Herzegovina
Croatia
Cyprus
Czech Republic
Estonia
EU
Finland
France
Georgia
Greece
Hungary
Iceland
Kazakhstan
Lithuania
FYR Macedonia
Malta
Moldova
Montenegro
Norway
Portugal
Russia
Serbia
Slovakia
Slovenia
Spain (Nat)
Sweden
Ukraine
Uzbekistan

Recommend Disciplinary Proceedings (Not Explicitly Provided by Law)

Albania
Andorra
Austria (N)
Bulgaria
Denmark
Germany (Pet)
Ireland
Israel
Kyrgyzstan
Latvia
Luxembourg
Netherlands (Nat)
United Kingdom (Parl)

39. Does an Annual Activity Report Have to Be Submitted to Parliament?



Yes

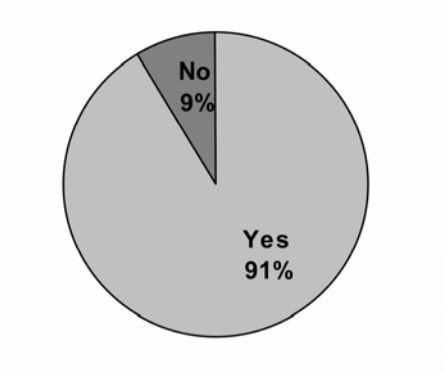
Albania*
Andorra
Armenia
Austria
Azerbaijan
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus*
Czech Republic
Denmark
Estonia
EU
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Israel
Kyrgyzstan
Latvia
Lithuania
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Netherlands
Norway
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Sweden
Ukraine
United Kingdom
Uzbekistan

No

Kazakhstan
Liechtenstein

* The activity report is submitted to the head of state, whereas a copy of it is presented to the parliament.

40. Can Special Reports Be Submitted?



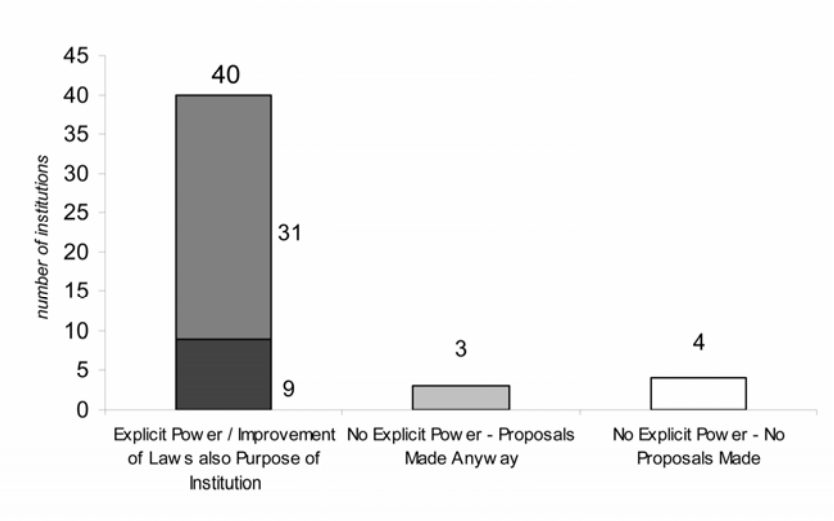
Yes

Albania
Andorra
Armenia
Azerbaijan
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
EU
Finland
France
Georgia
Germany
Greece
Iceland
Ireland
Israel
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
Luxembourg
FYR Macedonia
Malta
Moldova
Montenegro
Netherlands
Norway
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Sweden
Ukraine
United Kingdom
Uzbekistan

No

Austria
Estonia
Hungary
Liechtenstein

41. Is the Ombudsman Empowered to Submit Legislation Proposals?



Explicit Power to Submit Legislation Proposals

Albania
Andorra
Armenia
Austria
Azerbaijan
Bosnia and Herzegovina
Croatia
Czech Republic
Denmark
Estonia
EU
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Lithuania
Luxembourg
FYR Macedonia
Malta
Moldova
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden

Explicit Power to Submit Legislation Proposals – Improvement of Laws Is also Purpose of the Institution

Kazakhstan
Kosovo
Kyrgyzstan
Latvia
Russia
Serbia
Ukraine
Uzbekistan

Montenegro

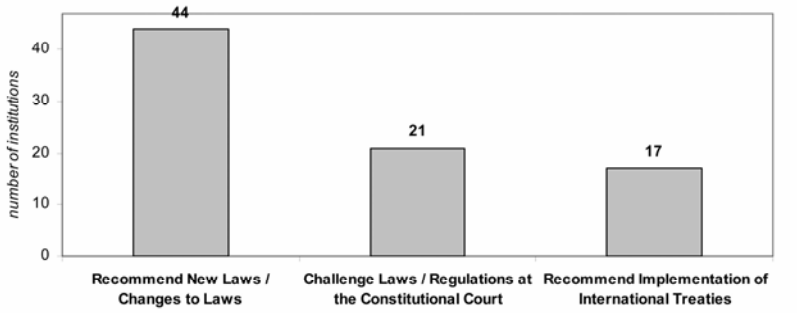
No Explicit Powers – Proposals Are Made Anyway

Belgium
Cyprus
Ireland

No Explicit Power – No Proposals Are Made

Israel
Liechtenstein
Netherlands
United Kingdom

42. Which Powers with Respect to Legislation Exist?



Recommend New Laws/Changes to Laws

Albania
Andorra
Armenia
Austria
Azerbaijan
Belgium
Bosnia and Herzegovina
Croatia
Cyprus
Czech Republic
Denmark
Estonia
EU
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Israel
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
FYR Macedonia
Malta
Moldova
Montenegro
Netherlands
Norway
Poland
Portugal
Romania
Russian Federation
Serbia
Slovakia
Slovenia
Spain
Sweden
Ukraine
United Kingdom
Uzbekistan

Challenge Laws/Regulations before the Constitutional Court

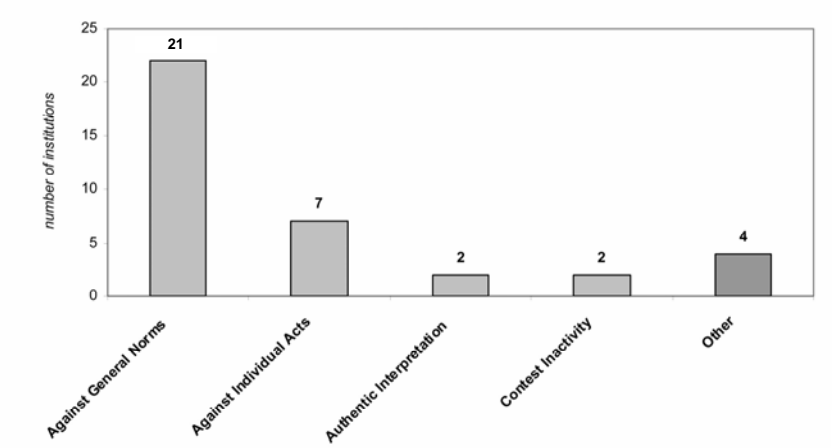
Albania
Armenia
Austria
Croatia
Czech Republic
Moldova
Montenegro
Poland
Portugal
Romania

Estonia
Georgia
Hungary
Kyrgyzstan
Latvia
FYR Macedonia
Russian Federation
Slovakia
Slovenia
Spain
Ukraine

Recommend Implementation of International Treaties

Albania
Armenia
Azerbaijan
Croatia
Estonia
Finland
France
Germany
Greece
Hungary
Kazakhstan
Kyrgyzstan
FYR Macedonia
Malta
Moldova
Ukraine
Uzbekistan

43. Does the Ombudsman Have Powers of Appeal before the Constitutional Court?[283]



Contestation of General Norms

Albania
Armenia
Austria
Croatia
Czech Republic
Estonia
Georgia
Hungary
Kyrgyzstan
Latvia
FYR Macedonia
Moldova
Montenegro
Poland
Portugal
Russian Federation
Slovakia
Slovenia
Spain
Ukraine

Contestation of Individual Acts

Armenia
Bosnia and Herzegovina
Hungary
Poland
Russian Federation
Slovenia
Spain

Authentic Interpretation

Hungary
Ukraine

[283] Only national institutions with powers before the constitutional court.

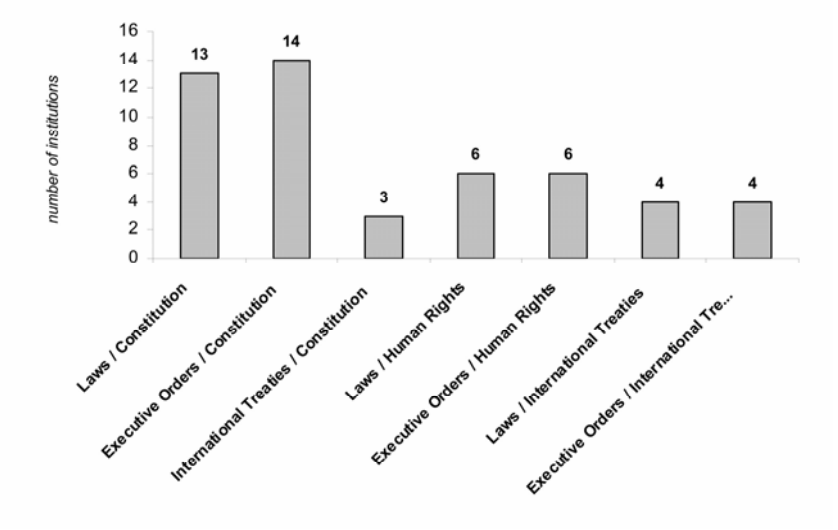
Contestation of Inactivity

Hungary
Portugal

Other

Georgia
Kyrgyzstan
Poland
Romania

44. Which Standards Apply to the Contestation of General Provisions before the Constitutional Court?



Laws/Constitution

Albania
Croatia
Estonia
Hungary
Latvia
FYR Macedonia
Moldova
Montenegro
Poland
Portugal
Romania
Spain
Ukraine

Executive Orders/Constitution

Austria
Croatia
Czech Republic
Estonia
Hungary
Latvia
FYR Macedonia
Moldova
Montenegro
Poland
Portugal
Romania
Slovenia
Ukraine

International Treaties/Constitution

Albania
Latvia
Poland

Laws/Human Rights

Armenia	Moldova
Georgia	Russian Federation
Kyrgyzstan	Slovakia

Executive Orders/Human Rights

Albania	Moldova
Armenia	Serbia
Kyrgyzstan	Slovakia

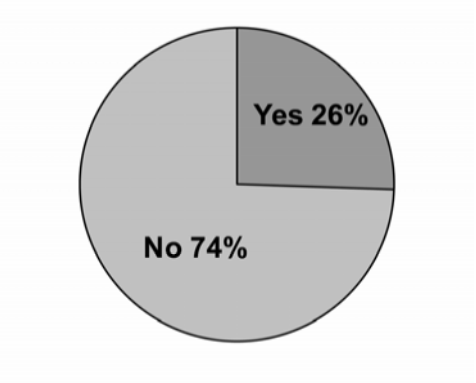
Laws/International Treaties

Hungary	Moldova
Poland	Slovakia

Executive Orders/International Treaties

Hungary	Moldova
Poland	Slovakia

45. Can the Ombudsman File Applications before (Administrative) Courts?



Yes

Armenia
Austria
Azerbaijan
Bosnia and Herzegovina
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
Moldova
Poland
Romania
Russian Federation

No

Andorra
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
EU
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Israel
Liechtenstein
Luxembourg
FYR Macedonia
Malta
Montenegro
Netherlands
Norway
Portugal
Serbia
Slovakia
Slovenia
Spain
Sweden
Ukraine
United Kingdom
Uzbekistan

Appendix: Questionnaires

Questionnaire I

I. General Data

1. Entity of the Ombudsman-Institution (National (Federal) State, Regional State (Province) or Intern. Organisation)
2. Name of the Ombudsman-Institution
   - o Vernacular
   - o In English
3. Postal address
4. Telephone Number
5. Fax Number
6. Email
7. Homepage
8. Other websites in German, English or French
9. Name(s) of the incumbent(s)
10. Enabling legislation of the office, tasks and procedures
    - o Constitutional Law
      - ➢ Title/Article of the Law
      - ➢ Law Gazette No.
      - ➢ Indication of source (homepage)
    - o Federal (State) Law or Regulations
      - ➢ Title/Article of the Law
      - ➢ Law Gazette No.
      - ➢ Indication of source (homepage)
11. a. Is the enabling legislation available in English?
    - o Yes
    - o No

    b. Is it possible to attach the enabling legislation to this questionnaire?
    - o Yes
    - o No

12. Are there any jurisprudential publications with a synopsis of the enabling legislation of your office? Are these available in German, English or French, and if so, can you indicate the sources?

13. Is it possible to attach these publications?
    - o Yes
    - o No

14. Besides the national Ombudsman – do regional Ombudsmen exist?
    - o No
    - o Yes, regional Ombudsmen are:

15. If the Ombudsman is a regional one – what are the reasons against establishing a national Ombudsman?

16. Does the Constitution (Laws) provides the establishment of local (municipal) Ombudsmen?
    - o local (municipal) Ombudsmen are:
    - o The establishment of local (municipal) Ombudsmen is legally permitted, but not performed.

II. Establishment of the Institution

1. Date of establishment?

2. Date of the opening of the office?

3. What were the reasons or incentives to establish an ombudsman?
    - o Complete revision of the Constitution
    - o Strengthening of the legal protection system
    - o Deficiencies of the protection of human rights
    - o Other:

4. In case of the existence of Administrative and/or Constitutional Supreme Courts – Date of establishment?
    - o Administrative Court
    - o Constitutional Court

5. Are regional (local) administrative courts established?
    - o No
    - o Yes, since

III. The Ombudsman

1. Number of the incumbents?
    - o One
    - o Several (Number)

2. Are Deputy Ombudsmen elected or appointed?
   - o Yes
   - o No
3. If yes, how many?
4. Do the Deputies have sole competence or responsibilities?
   - o No
   - o Yes
5. Appointing or electing authority?
   - o Parliament (General Assembly)
   - o Appointment by the President (Monarch)
   - o Appointment by the Prime Minister (Government)
   - o Other
6. Qualifications for the incumbent?
   - o Law degree
   - o Outstanding knowledge of the legal system
   - o Other:
   - o No special qualifications required
7. What are the reasons for the requirement of special qualifications – or for the non-requirement?
   - o The reasons are inherent of the tasks and functions of the Ombudsman , namely:
   - o The Ombudsman should act with personal authority.
8. Are the incumbents bound by any (esp. governmental) instructions or are they completely independent?
   - o Yes
   - o No
9. The office of Ombudsman is incompatible with?
   - o Membership in a political party
   - o Membership in a union
   - o Functions in a political party or union
   - o State offices
   - o All professional activities
   - o Other:
10. Tenure of the office?

    ... Years
11. Can (are) the incumbent(s) be removed (dismissed)?
    - o Yes
    - o No
12. If yes:

- Provisions for the removal
- By which authority?

13. Do(es) the incumbent(s) possess jurisdictional immunity?
    - Yes
    - No

14. The independence of the Ombudsman is otherwise guaranteed by?

IV. The Role of the Institution and its Purpose in the Legal System

1. What are the purposes of the institution?
    - Ensuring a good and citizen-orientated administration
    - Improving the service of authorities
    - Guarantee the rule of law and legality
    - Control the protection of human rights
    - Stabilisation of democracy by (preventive) warnings of human rights violations
    - Development of a civil society
    - Other:

2. According to the separation of powers – the jurisprudence allocates the Ombudsman to?
    - Legislation
    - Administration
    - Jurisdiction
    - Others:

3. The relation to the Parliament (Legislation)?
    - Are the Ombudsmen (Deputies) elected by the Parliament (General Assembly)?
        - Yes
        - No
        - If yes – who nominates (e.g. committee) the candidates?
        - Election quorum?
    - May the Ombudsman (Deputy) be removed during the term of office? (See III.10)
        - If yes – who (organ) has to introduce the motion?
        - Parliamentary quorum for the removal (dismissal)?
    - Does the duration of the term of the incumbent depend on the parliamentary term?
        - Yes
        - No
        - If no – how long is the duration?
    - Is the Ombudsman (Deputy) entitled to participate in the debates by the Parliament and/or its Committees?

- Yes
- No

- Is the Ombudsman (Deputy) entitled to legislative initiatives?
  - Yes
  - No
- If yes – to which extent?
- Is the Ombudsman entitled to recommend changes to legislation?
- Is the Ombudsman (Deputy) obliged to render a report(s) or information to the Parliament?
  - Report
  - Information
  - None
- If yes – are the reports or information published?
  - Publishing
  - Publishing on request
  - No publishing of the information
- The Parliament debates the report or information?
  - Yes
  - No
- Who appropriates the budget of the institution?
- Who is entitled do draft the budget (Finance Act)?
- Is the Government (Minister of Finance) involved?
  - Yes
  - No
- Are there any other relations to the legislative power?
  - No
  - Yes, as:

4. The relation to the executive power?

- Is, in any way, the Ombudsman subordinated to the executive power?
  - Yes
  - No
- Are the authorities obliged to furnish information required upon request of the Ombudsman?
  - General information
  - Information concerning investigations only
  - Other:
- Is the Ombudsman entitled to inspect records of the authorities?
  - Yes
  - No
- Are authorities obliged to support the Ombudsman in any other way?

5. The relation to the judiciary?

- May the Ombudsman influence judicial decisions?
  - Yes

- No
- Is the Ombudsman entitled to request information in pending court cases esp. about the duration of the proceedings?
  - Yes
  - No
- Is an influence possible by monitoring the administration of justice?
  - Yes
  - No
- Is the Ombudsman entitled to file an action or to present other motions?
  - Yes
  - No
- May the Ombudsman intervene in the proceedings?
  - Yes
  - No
- Does the Ombudsman have a right of appeal?
  - Yes
  - In res judicatae only
  - Other:
  - No
- In case of controversial legal points – may the Ombudsman present a motion for an authentic interpretation by a Supreme Court?
  - Yes
  - No
  - If yes – which court has the jurisdiction of that matter?
- Is – in this case – the court committed to its own decision?
  - Yes
  - No
- Is there any other correlation to the judicial power?
  - No
  - Yes, as

6. Is the Ombudsman obliged to co-operate with any other institutions?
   - Yes
   - No
   - If yes, how?

V. Subject and Standards of the Investigations

1. What can be subject to an investigation?
   - Public administration
   - General administrative acts
   - Individual administrative acts
   - Any administrative action
   - Public private sector (activities of the public entities as holder of private rights)

- o Jurisdiction
- o Legislation
- o Public undertakings
- o Others:

2. Are there restrictions (exemptions) of the jurisdiction of the Ombudsman?
   - o Head of State (President, Monarch)
   - o Intelligence Service
   - o Police
   - o Military
   - o Jurisdiction
   - o Correctional System (Prisons)
   - o Matters of refugees or asylum seekers
   - o Other:

3. Control Criteria?
   - o „Maladministration" (grievances in general)
   - o The entire legal system, incl. administrative rules
   - o All individual rights in general
   - o Civil rights and human rights guaranteed by the Constitution
   - o Other:

VI. Accessibility

1. The initiative of an examination (investigation)?
   - o By a lodged complaint
   - o On own initiative (ex officio)
   - o Both

2. Who is entitled to lodge a complaint?
   - o Citizen
   - o Everybody
   - o Natural persons
   - o Legal persons under public law

3. What can be submitted in a complaint?
   - o Maladministration
   - o Violations of individual rights
   - o Violations of civil rights and human rights, guaranteed by the Constitution
   - o Other:

4. Is the Ombudsman legally obliged to carry out an investigation?
   - o Yes
   - o No

5. Formal requirements for a complaint?
   - o Written form
   - o Language:
   - o Signed by a lawyer
   - o Other

6. Time limits for a complaint?
   - o Yes
   - o No
   - o If yes, duration of the time limit?

7. May a complaint be lodged only so far as the complainant does not recourse to legal remedy?
   - o Yes
   - o No

8. Which legal remedies have to be exhausted?

9. Are there any fees or expenses for the complainant?
   - o Yes
   - o No

VII. Powers of the Institution

1. Coercive competencies?
   - o Yes
   - o No

2. Which of the following powers does the Ombudsman have?

Ex Post

- o (Informal) recommendations to state authorities
- o Official findings of violations of law
- o Right to appeal:
  - o Against laws, at:
  - o Against regulations, at:
  - o File a motion for an authentic interpretation of law, at:
  - o Legal remedies against individual decisions
    - o Of a court
    - o Of administrative authorities
  - o Other:
- o Intervention in court proceedings
- o Institute criminal proceedings (charges) against officials
- o Coercive competences for taking evidence (e.g. subpoena of witnesses)
- o Other:

Ex Ante
- o Intervene in impending violations of law
- o Public relations (reports, consultation days et al.)
- o Other:

3. Are authorities obliged to support the Ombudsman?
   - o Yes
   - o No
   - o If yes, which authorities?

4. How are authorities obliged to support the ombudsman?
   - o Production of the files, inspection of the files
   - o Information and statements
   - o Other:

5. Are there any coercive competencies to get the support requested by the Ombudsman?
   - o Yes
   - o No

VIII. Efficiency of the Control

1. Spheres of the investigations – main caseload?
   - o Social matters (pensions, benefits, social welfare)
   - o Court proceedings (delays)
   - o Traffic and transport system
   - o Other:

2. Spheres permanently monitored by the Ombudsman on his own initiative (ex offcio)?
   - o Prisons
   - o Refugee camps
   - o Children`s homes
   - o Psychiatric hospitals
   - o Other
   - o No permanent control

3. Which are the determining factors for the efficiency of the control?
   - o Competences
     - o Which?
   - o Executive powers
   - o Voluntarily co-operation of the authorities
   - o Special qualifications of the incumbent
   - o Personal reputation of the incumbent
   - o Public relations of the Ombudsman
   - o Other:

4. Control by the Ombudsman in relation to judicial control?
   - o Subsidiary of the Ombudsman
   - o Supplement to jurisdiction, because
     - o Not all administrative actions are subject to judicial control
     - o Of the preventive effect of the Ombudsman
     - o The Ombudsman may file motions for judgement anyway
   - o Besides jurisdiction, because of
     - o Lacks of competencies of the courts
     - o Informal (non-bureaucratic) investigations of the Ombudsman
     - o The broader attention of the Ombudsman in public
     - o The personal reputation of the Ombudsman
     - o Specific competencies of the Ombudsman

5. Are the activities of the Ombudsman a "public topic"?
   - o In the newspapers
   - o On television
   - o In political discussions
   - o Rarely a topic

6. The most important instruments for the public relations?
   - o Reports to the Parliament
   - o Publishing of reports
   - o Consultation days
   - o Television or radio
   - o Website
   - o Other:

7. Best practices in the preventive function of the Ombudsman (esp. in the sphere of human rights – see IV.1.)
   - o Reference of pending violations of human rights by the authorities
   - o Reference of pending violations of law by public enterprises, privatised enterprises, or self-governing bodies
   - o Reference of violations of law by private persons (e.g. private firm)
   - o Activities in the education system
   - o EU-enlargement activities
   - o Other:

8. If the Ombudsman has a preventive function in the field of human rights –is it highly accepted among the citizens?

Explanatory Notes

1. Please add short explanations to your answers and always, if possible, the citations of the legal basis.

2. Multiple answers are possible, if necessary.

3. The legal basis of the institution, its tasks and competencies should be attached, if possible. A translated version (English, French) would be welcomed.
4. If there are any publications on your institution in English, French or German, you are kindly asked to attach them to the questionnaire.
5. For any questions to this data sheet, please contact per mail: brigitte.kofler@univie.ac.at

Questionnaire II

Note: Please indicate – where possible – the legal basis of your answers!

I. General Data

1. Is there another ombudsman institution which served as role model for your institution? If yes, which one?

2. How many people are employed in the office of the Ombudsman?

II. Relation to Parliament (Legislation): Proposals of New Laws or Changes to Law

Note: We have learned that nearly all ombudsman-institutions have the possibility to approach the state organ which is entitled to pass laws to propose/recommend/suggest new laws and/or changes to existing law. However, there are differences in the scope of this right. The following questions shall help to determine the scope of such a right in your institution. For this purpose we call such a right the "right to propose new laws or changes to law" in the following questions.

1. In practice, does it happen that the Ombudsman proposes new laws or changes to laws?

   If yes:

2. Are such proposals part of his report?

3. Which legal effect does such a proposal have?

3.a. What is the role of such a proposal in the course of the legislative procedure?

3.b. Which state organ deals with such a proposal? Parliament, the Government or other?

3.c. Is one of these organs obliged to debate the proposals? If yes, which organ?

3.d. Is one of these organs obliged to draft a law upon such a proposal? If yes, which organ?

3.e. Or does the proposal only constitute a mere recommendation which can be regarded or not?

4. What is the factual effect of such a proposal?

4.a. How often are such proposals followed in practice? (percentage)

4.b. Does such a proposal create public pressure on the Parliament so that the Parliament must eventually follow the proposal of the Ombudsman? If yes, how often?

III. Relation to Parliament (Legislation): Reports

1. What are the contents of the report to the Parliament? Is it divided into certain sections?
2. Does the report have to contain a section on the human rights situation?
3. What are the legal effects of such a report?

3.a. Is the Parliament obliged to act upon such a report?

3.b. Are other organs obliged to act upon such a report?

4. What are the factual effects of the report?
5. Can the Ombudsman issue a special report apart from his annual report? If yes, what are the legal and factual effects of such a report?
6. In practice, what are the topics of such special reports?

IV. Relation to Parliament (Legislation): Participation in Parliamentary Debates

1. Does the Ombudsman have a general right to participate in all parliamentary debates?
2. If yes, is he entitled to speak there?
3. Is the Ombudsman entitled to participate in the parliamentary debate(s) concerning his report(s)?
4. Is he only entitled to participate in such a debate if he is requested to do so by Parliament or can he decide to do so on his own?
5. Does he have a right to participate in debates concerning certain issues, e.g. human rights?

V. Relation to the Judiciary: Criminal Proceedings

1. Can the Ombudsman recommend to the competent organ that criminal charges should be brought against somebody (officials)?
2. Can he himself bring charges against somebody?

   If yes:
3. At which courts can such an application be filed?

4. What are the substantial requirements for such an application?
5. What are the effects of such an application?
6. Is the application binding on the court or the public prosecutor? If yes, to what extent?
7. Which other persons or authorities have the power to bring criminal charges against somebody?
8. Does this power of the Ombudsman to bring criminal charges against an official differ from an ordinary report of a criminal offence? If yes, to what extent? If there is a difference, is it a legal or a factual one?
9. How can the Ombudsman react if no proceedings are instituted upon his application?
10. How often are such applications filed in practice per year?

VI. Relation to the Judiciary: Disciplinary Proceedings

1. Can the Ombudsman recommend to the competent organ that disciplinary charges should be brought against somebody (official and/or judge)?
2. Can he himself bring disciplinary charges against someone (official/and/or judge)?

   If yes:
3. What can the Ombudsman claim in such an application?
4. What are the required contents of such an application?
5. What are the effects of such an application?
6. Is the application binding on the competent authorities? If yes, to what extent?
7. Which other persons or authorities have the power to bring disciplinary charges aginst someone (officials and/or judges)?
8. Does this power of the Ombudsman differ from an ordinary report of a disciplinary offence, coming from inside the authorities? If yes, to what extent? If there is a difference, is it a legal or a factual one?
9. Do the authorities have to inform the Ombudsman about instituting disciplinary proceedings?
10. What can the Ombudsman do if no disciplinary proceedings are instituted by the competent authority?
11. In practice, how often are disciplinary charges brought against someone per year?

VII. Relation to the Executive Power: Recommendations

1. What is the legal value of a recommendation of the Ombudsman to the administrative bodies?
2. Is the administrative body obliged to react in any way?
3. Does the administrative body have to justifiy why it does not comply with a recommendation of the Ombudsman?
4. What contents does such a justification have to include?
5. What happens if the justification is insufficient?
6. What are the legal consequences and what are the facutal consequences?
7. Does the Omudsman get new competences if an administrative body does not comply with his recommendations? If yes, which?
8. Can every recommendation be published?
9. Which types of publications are possible?
10. Does the Ombudsman have the power to formally declare a violation of law by an administrative body?
11. If yes, what are the legal effects of such a declaration?
12. Does control of the administration on the basis of equity play a more important role than control on the basis of legality?

VIII. Relation to the Executive Power: Duties of Administrative Bodies and Coercive Competences

1. Are the administrative bodies obliged to inform the Ombudsman upon his request?
2. Are they obliged to give him all requested pieces of information?
3. Are they obliged to give information concerning a special case?
4. Is the Ombudsman entitled to investigate on site and does he for this reason also have access to premises and rooms of the administrative bodies?
5. How can the obligation of the administrative bodies to support the Ombudsman be enforced?
6. Are there coercive powers of the Ombudsman in the taking of evidence? How do they work?
7. Can the Ombudsman summon witnesses? What if the witness does not follow the summoning? Are there possible sanctions?

8. In practice, does the Ombudsman make use of his power to summon people?
9. Does the Ombusman have access to penal institutions? If yes, does this right play a major role in practice?

IX. Human Rights

1. Is the protection of human rights regarded as an important, independent function of the Ombudsman?
2. Can the Ombudsman declare the violation of human rights through an administrative body in a legally binding way?

   If yes:
3. What are the legal effects of such a statement?
4. What are the effects of such a statement in practice?
5. Who is bound by such a statement?
6. To acts of which organs can such a statement relate (administrative acts, acts of courts, etc)?
7. Can it also relate to a legally binding decision (against which it can not be appealed any more)?
8. In practice, where do such statements play a role?
9. Which human rights are concerned most often?
10. What is the importance of such statements in the overall activities of the Ombudsman?
11. What is the specific power of the Ombusman in the determination of a human rights violation in relation to the powers of other state organs?
12. What are the differences in relation to the powers of the Constitutional Court and the Administrative Court?
13. Does the Ombudsman have powers which the Constitutional Court and the Administrative Court do not possess?
14. If there are differences, are they legal ones or rather on a factual basis?
15. To what extent is there a cooperation between the Constitutional Court and the Ombudsman?
16. How can the Ombudsman prevent the violation of human rights?
17. Is there a possibility to render a special report to the Parliament concerning the human rights situation?

18. If yes, can such a report be rendered outside the annual report?
19. What are the legal and factual effects of such a special report concerning human rights?
20. Which possibilities are there to intervene in impending human rights violations?
21. Which factors contribute to the effectiveness of the human rights protection of the Ombudsman?

X. Reform

1. What are the most frequent practical problems and obstacles concerning the control activity of the Ombudsman in relation to administration?
2. How could these problems and obstacles be overcome best?
3. In what way could or should the powers of the Ombudsman be extended or improved?
4. Which improvements could be recommended in the field of the protection of human rights?
5. Is there a regular TV show in which the Ombudsman presents certain cases to the public? If yes, does this show play a major role for the reputation of the institution?

XI. Relation to the Judiciary

1. Do you think it is wise to put the independent courts under the control of the Ombudsman? If yes, to which extent? If no, why?

XII. Relation to the Judiciary: Control of the Administration of Justice

1. In practice, has it turned out to be wise to give the Ombudsman the right to monitor the administration of justice?
2. Are there many complaints concerning grievances at the courts?
3. What is the most frequent reason for complaints concerning the administration of justice?
4. Which recommendations can be issued by the Ombudsman to counteract these problems?
5. What can the Ombudsman do to accelerate a court proceeding?
6. Is the Constitutional Court obliged to decide upon the application?

7. In practice, how often are such applications filed per year?
8. Who else can file such applications?

XIII. Relation to the Judiciary: "Authentic Interpretation"

1. Is the Ombudsman entitled to apply for an "authentic interpretation" (authentic interpretation means that the Court will in a legally binding manner put a legal provision in concrete terms)?

   If yes:

2. What are the requirements for such a request for "authentic interpretation"?
3. To which courts can the Ombudsman apply for an "authentic interpretation"?
4. Which kind of norms kann a court interpret by way of "authentic interpretation" (eg laws, regulations, decrees, etc.)?
5. Does this "authentic interpretation" have to relate to a special case or can it be given *in abstracto*?
6. Is the court obliged to render such an "authentic interpretation" upon an application from the Ombudsman?
7. What is the legal value of such an "authentic interpreation"?
8. If it has binding force, which authorities are bound by it?
9. In practice, when does the right to obtain an "authentic interpretation" play a major role?
10. In practice, how often are such applications filed by the Ombudsman per year?
11. Are there other state organs which have the right to apply to a court for an "authentic interpretation"? If yes, which organs?

XIV. Relation to the Judiciary: Join Proceedings

1. Has the Ombudsman the power to join a court proceeding?

   If yes:

2. What are the preconditions for such an intervention?
3. Before which courts is such an intervention possible?
4. Which kind of proceedings can be subject to such an intervention?
5. What are the legal effects of such an intervention?

6. Which powers does the joining Ombudsman have in course of the proceedings?
7. Which obligations does the court have towards the joining Ombudsman in course of the proceedings?
8. Which rights do the parties to the dispute have in course of such a proceeding?
9. In practice, when does it play a role that the Ombudsman joins a court proceeding?
10. In practice, how often does such an intervention occur per year?

XV. Relation to the Judiciary: Application at the Constitutional Court

1. What can the Ombudsman claim in an application to the Constitutional Court?
2. Which legal acts can the Ombudsman have controlled by the court?
3. What are the requirements for such an application?
4. Are there time limits or formal requirements?
5. What is the effect of such an application?
6. Is the Constitutional Court obliged to decide upon the application?
7. In practice, how often are such applications filed per year?
8. Who else can file such applications?
9. Are there other forms of cooperation between the Ombudsman and the Constitutional Court?

XVI. Relation to the Judiciary: Other Rights of Application or Appeal?

1. Does the Ombudsman have further rights to apply or to appeal to a court which were not mentioned so far? If yes, which ones?

   If yes

2. Are there time limits or formal requirements for such applications?
3. How long are the time limits? Are they longer than those of the parties to the dispute?
4. Is the court in case of such an application obliged to institute proceedings or are there any other obligations for the court?

5. If yes, how can this obligation be enforced by the Ombudsman?
6. In practice, how often are such applications filed per year?
7. Is the Ombudsman entitled to give (legal) advice to the parties of a judicial dispute if they want to appeal against a court decision?
8. Does he have such a counselling function in practice?

XVII. Relation to the Judiciary: Deficiencies in Legal Protection by the Courts

1. Are there deficiencies in the legal protection system of the courts which can be especially well counterbalanced by the Ombudsman?
2. In which way can the Ombudsman counterbalance these deficiencies best?
3. Which powers can help him best in this context?
4. Which powers is he lacking in this context?
5. Could the legal protection system of the courts be changed or improved? If yes, to what extent?
6. In case of such a change or improvement, would the control of the Ombudsman be obsolete?
7. Are there deficiencies in the legal protection system of the courts which can only be counterbalanced by an Ombudsman institution?

XVIII. Deputies

1. How are the Deputy Ombudsmen appointed?
2. What are the qualification requirements for the Deputy Ombudsmen?

XIX. Preventive Action

1. What does the power to "intervene in impending violations of law" stand for?
2. Does this refer to preventive acts in a particular case or rather to the preventive effects for future cases (termination of a practice which is contrary to law)?
3. Are there any specific rights of the Ombudsman linked to a "preventive intervention" or is prevention already achieved by the Ombudsman showing interest in a certain activity?

4. In practice, in what kind of cases does the preventive function of the Ombudsman play a role?

5. Can the Ombudsman thereby achieve something that is not possible in the ordinary legal protection system? If yes, what?

XX. Questions Concerning your Answers in Questionnaire No 1

Questionnaire III

I. General Information

1. Are there parliamentary Ombuds-Institutions in your country with a special mandate (eg. for the military, children or handicapped people)? Please specify:

2. Are there decentralised offices (regional offices) of your institution in other parts of the country? Please specify:

3. Does the Ombudsperson hold consultation days in different parts of the country? Please specify:

4. If mail of prison inmates (detainees) is subject to censorship, is there an exemption for correspondence with the Ombudsperson?

   If yes, please specify the legal basis:

5. Can national minorities and/or foreigners communicate with your institution in their language?

   - o Yes – there is no prohibition.
   - o Yes, if they can't sufficiently use the official language
   - o No
   - o If no: Who pays for expenses if translations are necessary?

6. How many complaints did your institution receive within the last year?

7. How many times and when were the legal or constitutional provisions concerning your Ombuds-Institution amended? Please cite date, motivation and subject of major changes:

8. Are there legal provisions concerning your institution in laws and acts other than the Constitution or the specific law about your institution (e.g. code of criminal procedure, parliament act)?

   If yes, would it be possible to attach the concerned parts of your legislation in English, French or German?

9. Does your Ombuds-Institution have special competences or tasks with respect to the implementation of international obligations in the field of

   - o Rights of the child
   - o Anti-torture
   - o Anti-discrimination
   - o Other:

10. Is the Ombudsperson's salary determined by law?

If no please specify how and by whom it is determined:

11. How high is the Ombudsperson's salary compared to the salary of a minister or of a member of Parliament?

II. Human Rights

1. Which legal status does the European Convention on Human Rights enjoy within your national legal system?

- o Status of a Constitutional law
- o Not within the Constitution but still with priority over other laws
- o Status of a regular law

2. Are the relevant judgements of the European Court of Human Rights well known to administrative authorities and courts?

Administrative authorities	Courts
o extensively known	o extensively known
o partly known	o partly known
o hardly known	o hardly known

Comments:

3. Are they taken into account by the authorities and courts in their daily practice?

Administrative authorities	Courts
o extensively	o extensively
o partly	o partly
o hardly	o hardly

Comments:

4. Does the Law about your Ombuds-Institution explicitly define human rights as control criteria?

- o No
- o Yes → please proceed with Question B

A. If no:

A1. Are human rights used to interpret the existing control criteria nonetheless?

A2. When examining a complaint, is special attention paid to the fact, that the authority might have violated human rights?

B. If yes:

B1. Are human rights

- o control criteria amongst others → Please proceed with question 5
- o the only control criteria

If human rights are the only control criteria:

B2. Does the focus on human rights limit the control possibilities of the Ombudsperson? (Can people for example still complain about unfriendly officials?)

B3. Can people also complain about violations of regular/simple laws to your institution?

Questions concerning all institutions

5. Which types of human rights are used as control criteria when your institution examines complaints?
   - o Civil liberties and basic rights as laid down in the Constitution
   - o Human rights as laid down in the European Convention on Human Rights
   - o Human rights as laid down in ratified international treaties that do not (directly) confer rights on individuals or that have not been sufficiently transformed into national law
   - o Human rights as laid down in international treaties that have not (yet) been ratified
   - o Other:
6. Can the Ombudsperson demand the implementation of ratified but insufficiently implemented international treaties?
7. Is there a (constitutional) provision stating a "right to good administration" in your country?

   If yes:

   Please state the legal basis:
   How can citizens enforce this right?
8. Is the Ombudsperson entitled to control private persons/entities under certain circumstances (eg "Drittwirkung" of constitutional rights – effect of a constitutional right on a third party)?

   If yes, please specify the conditions:
9. Are judges required to have undergone special education in the field of human rights?

III. Judiciary

1. Are there problems with the enforcement of court judgments in your country?

If yes, please describe why?

2. Are public prosecutors/district attorneys subject to your control?

3. If your institution can neither control judges nor the administration of justice,

   A. How is the problem of lengthy court proceedings dealt with in practice?

4. If your institution can control the administration of justice or even judges

   A. Who can be asked for information

   - o Judges
   - o The President of the Court/The judicial body dealing with the supervision of judges
   - o Other:

   B. Who can a recommendation be addressed to?

   - o Judges
   - o The President of the Court/The judicial body dealing with the supervision of judges
   - o Other:

5. If your Institution can control judges

   A. How far do you go in practice? Do you for example limit yourself to protect the appearance of independence of the judiciary?

   B. Are you entitled to act

   - o while court proceedings are still *engaged or*
   - o is your action subsidiary to legal remedies?

   C. Can you request information or render recommendations

   - o only relating to procedural issues or
   - o also to the subject-matter of the proceedings?

   D. Which means does your Institution possess if judges answer your questions insufficiently or not at all?

IV. Scope of Control

1. Under which legal form are institutions organised that deal with the following issues?

2. Is the Ombudsman empowered to investigate complaints with regard to institutions assigned with the following functions?

unemployment insurance
retirement pension insurance
accomodation of asylum seekers
electricity supply
post
railway
health insurance
public hospitals
water supply
social living
telecommunication
universities

Bibliography

I. General Literature

I.A. Monographs and Miscellanies

Aichele Valentin, Nationale Menschenrechtsinstitutionen in Europa, hrsg vom Deutschen Institut für Menschenrechte, 2004.

Aichele Valentin, Nationale Menschenrechtsinstitutionen, Peter Lang, Bern ua, 2003.

Caiden Gerald E. (ed), International Handbook of the Ombudsman. Evolution and Present Function, Greenwood Press Westport, London, 1983.

Caiden Gerald E. (ed), International Handbook of the Ombudsman. Country Surveys, Greenwood Press Westport, London, 1983.

Carpie Daniela (ed), The Concept of Equity – An Interdisciplinary Assessment, Winter, Heidelberg, 2007.

Clause Lars, Krasser Sozialer Wandel, Leske und Budrich, Opladen, 1994.

Crespo Allen Marília (ed), European ombudsman, national ombudsmen or similar bodies: comparative tables, Luxembourg 1995.

Gammeltoft-Hansen Hans/Olsen Jens (Eds), The Danish Ombudsman 2005, Folketingets Ombudsmand, Copenhagen, 2005.

Gellhorn Walter, Ombudsmen and Others. Citizens' Protectors in Nine Countries, Harvard University Press, Cambridge Massachusetts, 1966.

Grabenwarter Christoph, Europäische Menschenrechtskonvention[3], C.H. Beck, München, 2007.

Gregory Roy/Giddings Philip (eds), Righting Wrongs. The Ombudsman in Six Continents, IOS Press, Amsterdam, 2000 (cited as: *Gregory/Giddings [eds]*, Righting Wrongs).

Hossein Kamal/Besseling Leonard et al (eds), Human Rights Commissions and Ombudsman Offices: National Experiences Throughout the World, Brill, Leiden, 2001 (cited as: *Hossein/Besselink et al [eds]*, Human Rights Commissions and Ombudsman Offices).

Ismayr Wolfgang (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3].

Ismayr Wolfgang (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004[2].

Mathes Hagen, Der Bürgerbeauftragte. Eine rechtsvergleichende Studie unter besonderer Berücksichtigung des Ombudsmann-Modells in Rheinland-Pfalz, Duncker & Humblot, Berlin, 1980.

Matscher Franz (ed), Ombudsmann in Europa. Institutioneller Vergleich. Ombudsman in Europe. The Institution, N.P. Engel Kehl, Strasbourg, Arlington, 1994.

Messner Robert, Europäische Ombudsmann-Einrichtungen und ihre Bedeutung für Demokratie und Bürgerrechte, Diplomarbeit, Universität Wien, 1997.

Mössler Gerd, Der Ombudsmann. Seine Herkunft und Institution in Österreich sowie in Europa, Diplomarbeit, Universität Innsbruck, 1996.
Peel Roy V. (ed), The Ombudsman or Citizen's Defender.: A Modern Institution; The Annals of the American Academy of Political and Social Science 1968, Prince and Lemons Sts., Lancaster, PA, 1968.
Polakiewicz Jörg, Die Verpflichtungen der Staaten aus den Urteilen des Europäischen Gerichtshofs für Menschenrechte, Springer, Berlin, 1993.
Reif Linda C. et al (eds), The Ombudsman: Diversity and Development, Edmonton, International Ombudsman Institute, 1992.
Reif Linda C. (ed), The Ombudsman Concept, University of Alberta, International Ombudsman Institute, Edmonton, 1995 (cited as: *Reif [ed]*, Ombudsman Concept).
Reif Linda C. (ed), International Ombudsman Journal, Number 13, 1995, University of Alberta, Edmonton, 1996.
Reif Linda C. (ed), International Ombudsman Journal, Number 13, 1995, University of Alberta, Edmonton, 1996.
Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 1, Kluwer Law, The Hague, 1997.
Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 2, Kluwer Law, The Hague, 1998.
Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 3, Kluwer Law, The Hague, 1999.
Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 4, Kluwer Law, The Hague, 2000.
Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 5, Kluwer Law, The Hague, 2001.
Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 6, Kluwer Law, The Hague, 2002.
Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 7, Kluwer Law, The Hague, 2003.
Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 8, Kluwer Law, The Hague, 2004.
Reif Linda C. (ed), The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute, Kluwer Law, The Hague, 1999.
Reif Linda C., The Ombudsman, Good Governance and the International Human Rights System, Martinus Nijhoff, Leiden, 2004 (cited as: *Reif*, Governance).
Rowat Donald C., The Ombudsman Plan: The Worldwide Spread of an Idea, 2nd rev. ed, University Press of America, Langham, Md, 1985.

I.B. Conference Transcripts

Austrian Ombudsman Board and IOI – European Region (eds), European Ombudsman Meeting. IOI – European Region, Vienna Parliament, June 11–13 2006.

European Ombudsman Institute (ed), 3rd European Ombudsman Conference. The Importance of the Regional Ombudsman, Vitoria-Gasteiz, 1993.

Europäisches Ombudsmann-Institut (Hrsg), Ombudsmann in alten und neuen Demokratien, Universität Innsbruck, 2003.

Christopoulos Dimitris/Hormovitis Dimitris (eds), The Ombudsman-Institution in South-Eastern Europe, Athens, 22–23 May 2003.

Internationales Ombudsmann-Institut/Volksanwaltschaft der Republik Österreich (Hrsg), Fünfte Internationale Ombudsmann-Konferenz, Wien, 11.–16.Oktober 1992.

Volksanwaltschaft der Republik Österreich (Hrsg), Erste Europäische Ombudsmann-Konferenz, Wien, 10.–13. Juni 1986.

I.C. Articles in Miscellanies, Yearbooks and Journals

Adams John Clarke, In Quest of the Ombudsman in the Mediterranean Area, in Peel Roy V. (ed), The Ombudsman or Citizen's Defender: A Modern Institution; The Annals of the American Academy of Political and Social Science 1968, Prince and Lemons Sts., Lancaster, PA, 1968, 97.

Aufrecht Steven E./Hertogh Marc, Evaluating Ombudsman Systems, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 389.

Ayeni Victor O., The Ombudsman in the Achievement of Administrative Justice and Human Rights in the New Millenium, International Ombudsman Yearbook, Vol 5, Kluwer Law International, The Hague, 2001, 32.

Bader Helmut/Brompton Henry, Remedies against Administrative Abuse in Central Europe, the Soviet Union, and Communit East Europe (Ombudsmen and Others), in Peel Roy V. (ed), The Ombudsman or Citizen's Defender: A Modern Institution; The Annals of the American Academy of Political and Social Science 1968, Prince and Lemons Sts., Lancaster, PA, 1968, 73.

Besselink Leonard F. M., Types of National Institutions for the Protection of Human Rights: An Overview of Organizational and Legal Issues, in Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 157.

Bizjak Ivan, Special Features of the Role of the Ombudsman in Transition Conditions, International Ombudsman Yearbook, Vol 5, Kluwer Law, The Hague, 2001, 83.

Burdekin Brian, Human Rights Commissions in: Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 801.

Bussani Mauro/Fiorentini Francesca, The Many Faces of Equity. A Comparative Survey of the European Civil Law Tradition, in Carpi Daniela (ed), The Concept of Equity, Heidelberg, 2007, S 101ff.

Cheng Hing Yong, The Emergence and Spread of the Ombudsman Institution, in Peel Roy V. (ed), The Ombudsman or Citizen's Defender: A Modern Institution; The Annals of the American Academy of Political and Social Science 1968, Prince and Lemons Sts., Lancaster, PA, 1968, 20.

Christopolous Dimitris/Diamandouros Nikiforos, Traditional Human Rights Protection Mechanisms and the Rising Role of Mediation in Southeastern Europe, in Iyunim – The periodical of the Office of the State Comptroller and Ombudsman, Vol 59, 2002, 32.

Espersen Ole, Ombudsmen as Champions for Democracy and the Rule of Law: the Baltic Region in Focus, in Rautio Ilkka (ed), Parliamentary Ombudsman of Finland. 80 Years, Painotalo, Helsinki, 2000, 49.

Evers Hans-Ulrich, Bemerkungen zu einem System der Verwaltungskontrolle, in FS Hellbling, Duncker & Humblot Berlin, 1981, 159.

Gammeltoft-Hansen Hans, The Ombudsman: Reactive or Proactive?, in Iyunim - The periodical of the Office of the State Comptroller and Ombudsman, Vol 59, 2002, 1 http://www.mevaker.gov.il/serve/site/english/Iyunim.asp (31.10.2007).

Giddings Philip, The Ombudsman and Human Rights, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 441.

Gottehrer Dean M./Hostina Michael, The Classical Ombudsman Model, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 403.

Gottehrer Dean M., Designing an Ombudsman System, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 415.

Gregory Roy/Giddings Philip, The Ombudsman Institution: Growth and Development, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 1.

Gregory Roy/Giddings Philip, The Ombudsman and the New Public Management, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 425.

Haller Walter, Hierarchische Gliederung von Ombuds-Institutionen, VARIA 55, 2006.

Jacoby Daniel, The Future of the Ombudsman, in Reif Linda C. (ed), The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute, Kluwer Law, The Hague, 1999, 15.

Johnson Harley, Ombudsman – Essential Elements in Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 785.

Jörundsson Gaukur, The Ombudsman and the European Human Rights Institutions, in Gammeltoft-Hansen Hans/Olsen Jens (eds*),* The Danish Ombudsman 2005, Folketingets Ombudsmand, Copenhagen, 2005, 139.

Kempf Udo/Mille Marco, The Role and the Function of the Ombudsman: Personalised Parliamentary Control in Forty-Eight Different States, in Reif Linda C. (ed), The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute, Kluwer Law, The Hague, 1999, 195.

Klecatsky Richard, Menschenrechte und Grundfreiheiten in der Europäischen Union – „Globalisierung" – „Deregulierung"- Die Stunde der Ombudsmann-Einrichtungen, VARIA 19, 1998.

Koskinen Pirkko K, Investigating the Judiciary, in Reif Linda C. (ed), The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute, Kluwer Law, The Hague, 1999, 519.

Kucsko-Stadlmayer Gabriele, Europäische Ombudsmanneinrichtungen und Menschenrechtsschutz, in Bammer et al (Hrsg), Rechtsschutz gestern – heute – morgen, 2008.

Matscher Franz, L'ombudsman et la protection des droits de l'homme, in Matscher (Hrsg), Ombudsmann in Europa, N.P. Engel Kehl, Strasbourg, Arlington, 1994, 15.

Mauerer Michael, Die parlamentarischen Ombudsmanneinrichtungen in den Mitgliedstaaten des Europarates/Systematischer Überblick, in Matscher (Hrsg), Ombudsmann in Europa, N.P. Engel Kehl, Strasbourg, Arlington, 1994, 123.

Mauerer Michael, Ombudsmann in alten und neuen Demokratien, in Europäisches Ombudsmann-Institut (Hrsg), Ombudsmann in alten und neuen Demokratien, Universität Innsbruck, 2003.

McMillan John, The Ombudsman and the Rule of Law, in Mifsud Ivan/ Plaidy Cécile, The Roles of Administrative Courts and Ombudsmen in France and Malta: A Review of Two Contrasting Systems, in Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 8, Kluwer Law, The Hague, 2004, 3.

Morrison H. Gail, Decision by the Ombudsman and Rreview by the Legislature: Rules, Principles and Policy, in Reif Linda C. (ed), The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute, Kluwer Law, The Hague, 1999, 621.

Öhlinger Theo, Ombudsmann und soziale Grundrechte, in Matscher (Hrsg), Ombudsmann in Europa, N.P. Engel Kehl, Strasbourg, Arlington, 1994, 95.

Oosting Marten, Roles for he Ombudsmen: Past, Present and Future, in Rautio Ilkka (ed), Parliamentary Ombudsman of Finland. 80 Years, Painotalo, Helsinki, 2000, 17.

Oosting Marten, Protecting the Integrity and Independence of the Ombudsman Institution: the Global Perspective, in Iyunim – The periodical of the Office of the State Comptroller and Ombudsman, Vol 59, 2002, 1 http://www.mevaker.gov.il/serve/site/english/Iyunim.asp (31.10.2007).

Papisca Antonio, Der Ombudsmann im nationalen System der Menschenrechte, in Europäisches Ombudsmann-Institut (Hrsg), Ombudsmann in alten und neuen Demokratien, 2003.

Pearce Dennis, The Ombusdman: Review and Preview. The Importance of Being Different, in Reif Linda C. (ed), The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute, Kluwer Law, The Hague, 1999, 73.

Reif Linda C., Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection, 13 Harvard Human Rights Journal, 2000, 1.

Söderman Jacob, Gibt es einen klassischen Parlamentarischen Ombudsmann?, VARIA 16, 1997.

Stolzlechner Harald, Privatisierung staatlicher Verwaltungsaufgaben und Kontrolle durch die Volksanwaltschaft, ZfV 1997, 1.

Walzel von Wiesentreu Thomas, Konsolidierung von Bürgerrechtseinrichtungen in Europa, DVBl 1995, 456.

Walzel von Wiesentreu Thomas, Rechtsschutzdefizite im besonderen Gewaltsverhältnis?, JBl 2000, 707.

Wimmer Norbert, Die Ombudsmann-Einrichtungen im Verfassungsgefüge, JBl 1984, 281.

Zoll Andrzej, The Development of the Model Ombudsman Institution in the EU Acceding Countries and the Balkans, in Europäisches Ombudsmann-Institut (Hrsg), Ombudsmann in alten und neuen Demokratien, 2003.

II. Literature Concerning Particular Legal Orders

Albania

Gammeltoft-Hansen Hans/Olsen Jens (eds), Some Experiences in the Field of Assistance and Co-operation between Ombudsmen, in Gammeltoft-Hansen/Olsen (eds), The Danish Ombudsman, Folketingets Ombudsmand, Copenhagen, 2005, 251.

Schmidt-Neke Michael, Das politische System Albaniens, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004[2], 805.

Armenia

Human Rights Watch, Human Rights Overview – Armenia, http://www.hrw.org/english/docs/2006/01/18/armeni12221.htm (4.11.2007).

Orton Frank/Genya Petrossyan/Theresa Khorozyan (eds), Human rights, Good Governance and the Rule of Law: Role and Relevance of the Human Rights Defender of Armenia (2005), http://www.ombuds.am/main/en/10/20 (4.11.2007).

Austria

Angerer Bruno, Die Einrichtung des Landesvolksanwaltes von Tirol, Diplomarbeit, Universität Innsbruck, 1996.

Dünser Felix, Regional Ombudsmen: An institution to defend citizens' rights – Report for the Congress of Local and Regional Authorities of Europe, http://www.landesvolksanwalt.at (4.11.2007).

Dünser Felix, Die Landesvolksanwälte und ihre Beziehung zu anderen Rechtsschutzeinrichtungen, in Korosec (Hrsg), Die Arbeit der Volksanwaltschaft, Holzhausen Verlag, Wien, 2001, 43.

Funk Bernd-Christian, Die Volksanwaltschaft als Institution des österreichischen Staatsrechts, Zeitschrift für Verwaltung, 1978, 1.

Häusler Johannes, Die Vorarlberger Volksanwaltschaft, Diplomarbeit, Universität Innsbruck, 1987.

Klecatsky Hans/Pickl Viktor, Die Volksanwaltschaft, Verlag der Österreichischen Staatsdruckerei Wien, 1989.

Kelsen Hans, Wesen und Entwicklung der Staatsgerichtsbarkeit, Verhandlungen der Deutschen Staatsrechtslehrer, Heft 5, 1929, 30.

Kelsen Hans, Die Reine Rechtslehre: Einleitung in die rechtswissenschaftliche Probelmatik, Deuticke, Leipzig und Wien, 1934.

Korosec Ingrid, Die Arbeit der Volksanwaltschaft, Holzhausen Verlag, Wien, 2001.

Kostelka Peter, Ombudsmann-Organisationsmodelle im deutschsprachigen Raum, in Europäisches Ombudsmann-Institut (Hrsg), Ombudsmann in alten und neuen Demokratien, 2003.

Kostelka Peter, Volksanwaltschaft – Demokratiebelebender Vermittler zwischen Staat und Bürger, VARIA 40, 2004.

Krautschneider Christian, Nichtgerichtsförmige Beschwerdeprüfungseinrichtungen in Österreich, Dissertation, Universität Innsbruck, 1989.

Kucsko-Stadlmayer Gabriele, Art 148a–Art 148j B-VG, in Korinek/Holoubek (Hrsg), Kommentar zum B-VG, Springer, WienNewYork, 2000.

Kucsko-Stadlmayer Gabriele, Die Volksanwaltschaft als Rechtsschutzeinrichtung, in Österreichische Parlamentarische Gesellschaft/Schefbeck Günther (Hrsg), 75 Jahre Bundesverfassung, Verlag Österreich, Wien 1995, 558.

Lukasser Gabriele, Volksanwaltschaft und Petitionswesen in Österreich, Diplomarbeit, Universität Innsbruck, 1988.

Manke Frederik, Regionale Ombudsleute im deutschsprachigen Raum, Dissertation, Universität Innsbruck, 2002.

Messner Evelyn, Erfahrungen der österreichischen Volksanwaltschaft beim Schutz von Grundrechten, in Matscher (Hrsg), Ombudsmann in Europa, N.P. Engel Kehl, Strasbourg, Arlington, 1994, 109.

Morscher Siegbert, Zusammenarbeit zwischen Volksanwaltschaften, in FS Koja, Springer, WienNewYork, 1998, 317.

Mössler Gerd, Der Ombudsmann, Diplomarbeit, Universität Innsbruck, 1997.

Öhlinger Theo, Die Volksanwaltschaft, Österreichisches Verwaltungsarchiv, 1977, 101.

Pelinka Anton, Das politische System Österreichs, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3], 521.

Rabanser Wolfgang, Die Prüfungs- und Empfehlungsbefugnisse der Volksanwaltschaft, Diplomarbeit, Universität Innsbruck, 1989.

Rohrmoser Michaela, Die Prüfungsbefugnisse der Volksanwaltschaft im Justizbereich, Diplomarbeit, Universität Innsbruck, 1990.
Schönherr Fritz, Volksanwaltschaft, Manz, Wien, 1977.
Schöpfer Eduard Christian, Volksanwaltschaft in Österreich/Schwerpunkte Grund- und Menschenrechte aus den Jahresberichten 2001 bis 2003, EuGRZ, 2005, 108.
Schwärzler Nikolaus, The Ombudsman Institutions in Austria, in Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 247.
Stolzlechner Harald, Privatisierung staatlicher Verwaltungsaufgaben und Kontrolle durch die Volksanwaltschaft, Zeitschrift für Verwaltung, 1997, 1.
Thienel Rudolf, Das Verfahren vor der Volksanwaltschaft, ZÖR 35, 1984, 1.
Thienel Rudolf, Art 148a–Art 148j B-VG, in Rill/Schäffer (Hrsg), Bundesverfassungsrecht. Kommentar, Verlag Österreich, Wien, 2002.
Walter Robert/Mayer Heinz/Kucsko-Stadlmayer Gabriele, Bundesverfassungsrecht[10], Manz, Wien, 2007, 579.
Weisz Thomas, Die Volksanwaltschaft, eine Demokratiereform in Österreich, Dissertation, Universität Innsbruck, 1990.

Belgium

Andersen Robert et al, The Ombudsman in Belgium, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 107.
Goorden Jan, Le service de médiation en Flandre, in Marias (ed), The European Ombudsman, European Institute of Public Administration, Maastricht, 1994, 23.
Monette Pierre-Yves, The Parliamentary Ombudsman in Belgium: Strenghtening Democracy, in Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 269.
Monette Pierre-Yves, Du contrôle de la légalité au contrôle de l'équité : Une analyse du contrôle exercé par l'ombudsman parlementaire sur l'action de l'administration, Revue belge de droit constitutionnel, 2000/1, 3 ff.
Van Kinderen Migiel, Entwicklungen im Ombudsmannwesen in den BeNeLux unter besonderer Berücksichtigung des lokalen Ombudsmanns, in Europäisches Ombudsmann-Institut (Hrsg), Ombudsmann in alten und neuen Demokratien, 2003.
Woyke Wichard, Das politische System Belgiens, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3], 389.

Bosnia and Herzegovina

Aigner Jürgen, Ombudsinstitutionen in Bosnien-Herzegowina und im Kosovo, Diplomarbeit, Universität Graz, 2001.
Milkov Dragan, Ombudsman in the Countries of the Former Socialist Federal Republic of Yugoslavia, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 373.

Nowak Manfred, The Human Rights Chamber for Bosnia and Herzegovina adopts its First Judgments, 19 Human Rights Law Journal, 1997, 174.
Nowak Manfred, Is Bosnia and Herzegovina ready for Membership in the Council of Europe?, Human Rights Law Journal, Vol 20, 1999, 285.
Orton Frank, The Legal System in Bosnia and Herzegovina, http://www.ohro.ba/articles/policy.php?id=5 (4.11.2007).
Oschlies Wolf, Das politische System Bosnien-Hercegovinas, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 739.

Bulgaria

Riedel Sabine, Das politische System Bulgariens, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 593.
Sotirov Vladimir, Die Errichtung des Amts des Ombudsmannes in der Republik Bulgarien, VARIA 18, 1997.

Croatia

Christopoulos Dimitris/Dimitris Hormovitis (eds), The Ombudsman institution in South-eastern Europe, Athens, 2003, http://www.synigoros.gr/eunomia/docs/Contents2.doc, 33 (4.11.2007).
Hucker John, The Ombudsman Institution in Croatia: An Expert Analysis, OSCE, 2003, http://www.osce.org/documents/mc/2003/06/1977_en.pdf (4.11.2007).
Milkov Dragan, Ombudsman in the Countries of the Former Socialist Federal Republic of Yugoslavia, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 373.
Zakošek Nenad, Das politische System Kroatiens, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 677.

Cyprus

Zervakis Peter A., Die politischen Systeme Zyperns, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 887.

Czech Republic

Navratilova Lucia, Ombudsman in Österreich und Tschechien, seine Rolle in der Gesellschaft und sein Tätigkeitsbereich. Eine Terminologiearbeit, ein Vergleich, Diplomarbeit, Universität Wien, 2005.
Vodička Karel, Das politische System Tschechiens, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 247.

Denmark

Abraham Henry J., The Danish Ombudsman, in Peel Roy V. (ed), The Ombudsman or Citizen's Defender.: A Modern Institution; The Annals of the American Academy of Political and Social Science 1968, Prince and Lemons Sts., Lancaster, PA, 1968, 55.

Andersen Jon, The Danish Ombudsman, in Marias (ed), The European Ombudsman, European Institute of Public Administration, Maastricht, 1994, 29.

Busck Lars, The History and Development of the Danish Ombudsman Institution, in The Danish Ombudsman 2005, Folketingets Ombudsmand, Copenhagen, 2005, 13.

Dethlefsen Claus, The Parliamentary Ombudsman and Parliament, in The Danish Ombudsman 2005, Folketingets Ombudsmand, Copenhagen, 2005, 123

Fliflet Arne, Requesting Administrative Review and Complaining to the Parliamentary Ombusdman - a Comparison between a Legal and a Non-Legal Remedy, in The Danish Ombudsman 2005, Folketingets Ombudsmand, Copenhagen, 2005, 115

Frandsen Lennart, The Ombudsman – The Faroe Islands and Greenland, in The Danish Ombudsman 2005, Folketingets Ombudsmand, Copenhagen, 2005, 303.

Gammeltoft-Hansen Hans/Olsen Jens (eds), The Danish Ombudsman 2005, Folketingets Ombudsmand, Copenhagen, 2005.

Gammeltoft-Hansen Hans, Communicating with Complainants, in The Danish Ombudsman 2005, Folketingets Ombudsmand, Copenhagen, 2005, 167.

Gellhorn Walter, Ombudsmen and Others. Citizens´ Protectors in Nine Countries, Harvard University Press, Cambridge Massachusetts, 1966, 5.

Lane Jan-Erik, The Ombudsman in Denmark and Norway, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000.

Møller Jens, The Danish Ombudsman and the Protection of Human Rights, in Matscher (Hrsg), Ombudsmann in Europa, N.P. Engel Verlag, 1994, 37.

Nannestad Peter, Das politische System Dänemarks, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 20033, 55.

Nordskov Nielsen Lars, Denmark, in Caiden Gerald E. (ed), International Handbook of the Ombudsman. Country Surveys, Greenwood Press Westport, London, 1983, 73

Nordskov Nielsen Lars, The Ombudsman in the Future, in Gammeltoft-Hansen Hans/Olsen Jens (eds), The Danish Ombudsman 2005, Folketingets Ombudsmand, Copenhagen, 2005.

Olsen Jens, Good Administrative Practice, 2004, http://www.ombudsmanden.dk/publikationer/administrative_practice/ (31.10.2007).

Estonia

Roosma Peeter, Constitutional Review under 1992 Constitution, in juridica international I 1998, S 35–42.

Lagerspetz Mikko/Maier Konrad, Das politische System Estlands, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 71.

European Union

Bonnor Peter G., The European Ombudsman: A novel source of soft law in the European Union, 25 European Law Review, 2000, 39.

Erhart Michael, Der Europäische Bürgerbeauftragte – ausgewählte Rechtsfragen, Journal für Rechtspolitik, 1997, 278.

Giraud Jean-Guy, Der Ombudsmann der Europäischen Union, Europäisches Ombudsmann-Institut, Innsbruck, 1995.

Gregory Roy, The European Union Ombudsman, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 155.

Guckelberger Anette, Der Europäische Bürgerbeauftragte und die Petitionen zum Europäischen Parlament, Duncker und Humblot, Berlin, 2004.

Hager Charlotte, Der europäische Bürgerbeauftragte als effizientes Mittel zur Durchsetzung der Rechte der Unionsbürger im Vergleich zur österreichischen Volksanwaltschaft, Dissertation, 1998.

Höllscheidt Sven, Art 195 EGV, in Grabitz/Hilf (Hrsg), Das Recht der Europäischen Union, Loseblatt, Beck, München, 2006.

Hummer Waldemar, Stellung und Funktion des Bürgerbeauftragten des Europäischen Parlaments, EOI, 1995.

Kluth Winfried, Art 195 EGV, in Callies/Ruffert (Hrsg), Kommentar zum EU-Vertrag und EG-Vertrag, Beck, München, 2007³.

Marias Epaminondas A. (Hrsg), The European Ombudsman, European Institute of Public Administration, Maastricht, 1994.

Mauerer Michael, Ein Volksanwalt für Europa, Economy – Fachmagazin, 1993, 207.

Reif Linda, The Ombudsman, Good Governance and the International Human Rights System, Martinus Nijhoff Publishers, Boston, Leiden, 2004, 367.

Solar Natascha, Art 195 EGV, in Mayer (Hrsg), Kommentar zu EU- und EG-Vertrag, Manz, Wien, Loseblattausgabe, 2005.

The European Ombudsman (ed), The European Ombusman. Origins, Establishment, Evolution. Commemorative volume published on the occasion of the 10th anniversary of the institution, Office for Official Publications of the European Communities, Luxembourg, 2005.

Wessels, Das politische System der Europäischen Union, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003³, 779.

Finland

Aalto Jorma S., Finland, in Caiden Gerald E. (ed), International Handbook of the Ombudsman. Country Surveys, Greenwood Press Westport, London, 1983, 93.

Auffermann Burkhard, Das politische System Finnlands, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 20033, 187.

Hidén Mikael, Finland's Defenders of the Law, in Peel Roy V. (ed), The Ombudsman or Citizen's Defender.: A Modern Institution; The Annals of the American Academy of Political and Social Science 1968, Prince and Lemons Sts., Lancaster, PA, 1968, 31.

Hidén Mikael, The Ombudsman in Finland: The first fifty years, University of California, Berkeley, 1973.

Hidén Mikael, Finnish Parliamentary Ombudsman as Guardian of Human Rights and Constitutional Rights: an Integrated Approach, in Rautio Ilkka (ed), Parliamentary Ombudsman of Finland. 80 Years, Painotalo, Helsinki, 2000, 61.

Kastari Paavo, Die Institution des Ombudsman im skandinavischen Recht, Journal für Öffentliches Recht, 1972, 219.

Modeen Tore, The Finnish Ombudsman: The first case of reception of the Swedish Justitieombudsman Office, Ombudsman Journal, Vol 1, 1981, 41.

Modeen Tore, The Swedish and Finnish Parliamentary Ombudsmen, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 315.

Nieminen Liisa, Finnish Parliamentary Ombudsman as Guardian of Human Rights and Constitutional Rights: View from the University of Lapplanf, in Rautio Ilkka (ed), Parliamentary Ombudsman of Finland. 80 Years, Painotalo, Helsinki, 2000, 79.

Pellonpää Matti, Finnish Parliamentary Ombudsman as Guardian of Human Rights and Constitutional Rights: View from the European Court of Human Rights, in Rautio Ilkka (ed), Parliamentary Ombudsman of Finland. 80 Years, Painotalo, Helsinki, 2000, 73.

Rautio Ilkka (ed), Parliamentary Ombudsman of Finland. 80 Years, Painotalo, Helsinki, 2000.

France

Bardinaux Philippe, Le modèle continental, in Marias (ed), The European Ombudsman, European Institute of Public Administration, Maastricht, 1994, 1.

Kempf Udo, Das politische System Frankreichs, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3], 301.

Menier Jacques/Desfeuilles Henri, France, in Caiden Gerald E. (ed), International Handbook of the Ombudsman. Country Surveys, Greenwood Press Westport, London, 1983, 105

Mifsud Ivan/Plaidy Cécile, The Roles of Administrative Courts and Ombudsmen in France and Malta: A Review of Two Contrasting Systems, in Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 8, Kluwer Law, The Hague, 2004, 28.

Pauti Monique, The Ombudsman in France, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 175.

Germany

Becker Bernd et al, Federal Republik of Germany, in Caiden Gerald E. (ed), International Handbook of the Ombudsman. Country Surveys, Greenwood Press Westport, London, 1983, 81.

Ismayr Wolfgang, Das politische System Deutschlands, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3], 445.

Kempf Udo/Uppendahl Herbert (Hrsg), Ein deutscher Ombudsmann, Leske und Budrich, Opladen, 1986.

Kempf Udo, Complaint-Handling Systems in Germany, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 189.

Kepplinger Barbara, Die Volksanwaltschaft Österreichs und die Petitionsausschüsse der BRD auf Bundes- und Landesebene im Vergleich unter Berücksichtigung des Wehrbeauftragten und des Bürgerbeauftragten von Rheinland-Pfalz, Diplomarbeit Universität Innsbruck, 1987.

Kostelka Peter, Ombudsmann-Organisationsmodelle im deutschsprachigen Raum, in Europäisches Ombudsmann-Institut (Hrsg), Ombudsmann in alten und neuen Demokratien, 2003.

Langenfeld Christine, Die Stellung der EMRK im Verfassungsrecht der Bundesrepublik Deutschland, in Bröhmer (Hrsg), Der Grundrechtsschutz in Europa (2002) 95.

Manke Frederik, Regionale Ombudsleute im deutschsprachigen Raum, Dissertation Universität Innsbruck, 2002.

Matthes Hagen, Der Bürgerbeauftragte: eine rechtsvergleichende Studie unter besonderer Berücksichtigung des Ombudsmann-Modells in Rheinland Pfalz, Duncker und Humblot, 1981.

Peter Horst, The Committee on Petitions of the German Bundestag, in Marias (ed), The European Ombudsman, European Institute of Public Administration, Maastricht, 1994, 35.

Schäfer Markus, Datenhandbuch zur Geschichte des Landtags Rheinland Pfalz 1947–2003, von Hase & Koehler, Mainz, 2005.

Greece

Reif Linda, The Ombudsman, Good Governance and the International Human Rights System, Martinus Nijhof Publishers, Boston, Leiden, 2004, 152.

Tsobanoglou George O., The Ombudsman and Old Socio-Administrative Conditions in Greece, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 219.

Zervakis Peter, Das politisches System Griechenlands, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003³, 687.

Hungary

Gonczol Katalin, The Erosion of Human Dignity. The Protection of the Value of Human Dignity in the Perspective of the First Hungarian Ombudsman (1995–2001), in Iyunim – The periodical of the Office of the State Comptroller and Ombudsman, Vol 59, 2002, 1 http://www.mevaker.gov.il/serve/site/english/Iyunim.asp (31.10.2007).

Konrad Judit, Die ungarischen „Orszaggyülesi Biztosok" und die österreichische Volksanwaltschaft, Diplomarbeit, Universität Innsbruck, 2004.

Körösényi András/Fodor Gábor G., Das politische System Ungarns, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 323.

Sladecek Vladimir, Parliamentary Commissioners for Civil Rights in the Republic of Hungary, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 229.

Tilk Péter, The Appearance of the Ombudsman's Institution in the Republic of Hungary, in Chronowski Nóra (ed), Adamante Notare – Essays on Honour of Professor Antal Ádám on the Occasion of his 75th Birthday, Pécs, 2005.

Iceland

Eythórsson Gretar Thór/Jahn Detlef, Das politische System Islands, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003³, 167.

Ireland

Elvert Jürgen, Das politische System Irlands, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003³, 263.

Mills Michael, The Irish Ombudsman, in Marias (ed), The European Ombudsman, 1994, European Institute of Public Administration, Maastricht, 53.

Morgan David G./Hogan Gerard, Irish Law Texts – Administrative Law, 1986, Sweet&Maxwell, London, 161.

Israel

Bin-Nun Ariel, Einführung in das Recht des Staates Israel, Wissenschaftliche Buchgesellschaft, Darmstadt, 1983.

Bin-Nun Ariel, The Law of the State of Israel, Rubin Mass, Jerusalem, 2002[2].

Caiden Gerald E., Israel, in Caiden Gerald E. (ed), International Handbook of the Ombudsman. Country Surveys, Greenwood Press Westport, London, 1983, 123.

Levush Ruth, A Guide to the Israeli Legal System, 2001, http://www.llrx.com/features/israel.htm (4.11.2007).

Italy

Falqui-Massidda Carlo, Der Ombudsmann in der Emiglia Romagna und der Schutz der Menschenrechte, in Matscher (Hrsg), Ombudsmann in Europa, N.P. Engel Kehl, Strasbourg, Arlington, 1994, 156.

Palla Werner, Die rechtlichen und faktischen Grundlagen für das Verhältnis des Landesvolksanwaltes zu den Gemeinden Südtirols, VARIA 20, 1997.

Trautmann Günter/Ullrich Hartmut, Das politische System Italiens, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3], 553.

Köppl Stefan, Das politische System Italiens, Verlag für Sozialwissenschaften, Wiesbaden, 2007.

Kyrgyzstan

Human Rights Watch, Overview on Human Rights Developments – Kyrgyzstan 2005, http://hrw.org/english/docs/2006/01/18/kyrgyz12241.htm (4.11.2007).

Latvia

Schmidt Thomas, Das politische System Lettlands, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004[2], 111.

Liechtenstein

Kley Andreas, Grundriss des liechtensteinischen Verwaltungsrechts, Verlag der liechtensteinischen akademischen Gesellschaft, Vaduz, 1998.

Waschkuhn Arno, Die politischen Systeme Andorras, Liechtensteins, Monacos, San Marinos und des Vatikan, in Ismayr (Hrsg), Politische Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3], 759.

Winkler Günther, Die Verfassungsreform in Liechtenstein: verfassungsrechtliche Studien mit verfassungsrechtsvergleichenden und europarechtlichen Perspektiven, Springer, WienNewYork, 2003.

Winkler Günther, Verfassungsrecht in Liechtenstein, Springer, WienNew York, 2001.

Lithuania

Tauber Joachim, Das politische System Litauens, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 153.

Luxembourg

Schroen Michael, Das politische System Luxemburgs, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003³, 415.

Van Kinderen Migiel, Entwicklungen im Ombudsmannwesen in den BeNeLux unter besonderer Berücksichtigung des lokalen Ombudsmanns, in Europäisches Ombudsmann-Institut (Hrsg), Ombudsmann in alten und neuen Demokratien, 2003.

FYR Macedonia

Koprić Ivan, Administrative Justice on the Territory of Former Yugoslavia, http://www.oecd.org/dataoecd/52/21/36365948.pdf (4.11.2007).

Manninen Timo, Independent Assessment of the Ombudsman Institution (December 2004 – March 2005), http://www.osce.org/documents/mms/2005/07/15807_en.pdf (4.11.2007).

Milkov Dragan, Ombudsman in the Countries of the Former Socialist Federal Republic of Yugoslavia, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 373.

Willemsen Heinz, Das politische System Makedoniens, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 769.

Malta

Bestler Anita/Waschkuhn Arno, Das politische System Maltas, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003³, 731.

Mifsud Ivan/Plaidy Cécile, The Roles of Administrative Courts and Ombudsmen in France and Malta: A Review of Two Contrasting Systems, in Reif Linda C. (ed), The International Ombudsman Yearbook, Vol 8, Kluwer Law, The Hague, 2004, 28.

Republic of Moldova

Büscher Klemens, Das politische System Moldovas, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 515.

Netherlands

Berge Ten, Welche Auswirkungen hat die Entwicklung der Verwaltung, kommunale Aufgaben und Dienste zu privatisieren und zu regionalisieren, auf die Kompetenz des Ombudsmannes der Stadt?, VARIA 13, 1997.

De Rooij Ric, National Ombudsman of the Netherlands, in Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 343.

Gemeentelijke Ombudsman Amsterdam, Wichtige Fragen betreffend die Zuständigkeit des Ombudsmannes der Stadt Amsterdam, VARIA 13, 1997.

Hertogh Marc, The National Ombudsman of the Netherlands, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 273.

Lepszy Norbert, Das politische System der Niederlande, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3], 349.

Ooosting Marten, The National Ombudsman of the Netherlands and Human Rights, in Reif Linda C. (ed), The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute, Kluwer Law, The Hague, 1999, 317.

Van Kinderen Migiel, Entwicklungen im Ombudsmannwesen in den BeNeLux unter besonderer Berücksichtigung des lokalen Ombudsmanns, in Europäisches Ombudsmann-Institut (Hrsg), Ombudsmann in alten und neuen Demokratien, 2003.

Van Sijk Pieter, Domestic Status of Human Rights Treaties and the Attitude of the Judiciary: The Dutch Case, in FS Felix Ermacora, 1988, 631.

Norway

Fliflet Arne, Legal Institution of the Ombudsman, in Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 365.

Gellhorn Walter, Ombudsmen and Others. Citizens' Protectors in Nine Countries, Harvard University Press, Cambridge Massachusetts, 1966, 154.

Groß Hermann/Rothholz Walter, Das politische System Norwegens, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3], 131.

Lane Jan-Erik, The Ombudsman in Denmark and Norway, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000.

Thune Sverre, The Norwegian Ombudsmen for Civil and Military Affairs, in Peel Roy V. (ed), The Ombudsman or Citizen's Defender: A Modern Institution; The Annals of the American Academy of Political and Social Science 1968, Prince and Lemons Sts., Lancaster, PA, 1968, 41.

Poland

Elcock Howard, The Polish Commissioner for Citizens' Rights Protection: Decaying Communism to Pluralist Democracy Through An Ombudsman's Eyes, in Public Adminstration Vol. 75 Spring 1997, 359.

Elcock Howard, The Polish Ombudsman and the Transition to Democracy, International and Comparative Law Quarterly, Vol 45, 1996, 684.

Jaster Georg, Der polnische Beauftragte für Bürgerrechte: eine Institution zum Schutz der Grundrechte im Übergang vom realen Sozialismus zum bürgerlichen Rechtsstaat, Nomos, Baden-Baden, 1994.

Letowkska Ewa, The Polish Ombudsman (The Commissioner for the Protection of Civil Rights), International and Comparative Law Quaterly, Vol 39, 1990, 206.

Letowska Ewa, The Polish Ombudsman and the Protection of Human Rights, in Matscher (Hrsg), Ombudsmann in Europa, N.P. Engel Kehl, Strasbourg, Arlington, 1994, 57.

Unterwurzacher Edith, Die österreichische Volksanwaltschaft und der Parlamentarische Bürgerrechtsbeauftragte der Volksrepublik Polen im Vergleich, Diplomarbeit, Universität Innsbruck, 1990.

Zielinski Adam, Roles for the Ombudsmen: View from Poland, in Rautio Ilkka (ed), Parliamentary Ombudsman of Finland. 80 Years, Painotalo, Helsinki, 2000, 43.

Ziemer Klaus/Matthes Claudia-Yvette, Das politische System Polens, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004[2], 189.

Zoll Andrzej, Der Bürgerrechtsbeauftragte als ein Verfassungsorgan in der Republik Polen, in Classen/Heiss/Suproń-Heidel (Hrsg), Polens Rechtsstaat am Vorabend des EU-Beitritts, 2004, 35–44.

Portugal

Merkel Wolfgang/Stiehl Volker, Das politische System Portugals, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3], 651.

Meneres Pimentel, L'ombudsman portugais, in Maries (ed), The European Ombudsman, European Institute of Public Administration, Maastricht, 1994, 65.

Romania

Gabanyi Anneli Ute, Das politische System Rumäniens, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004[2], 553.

Russian Federation

Ametistov Ernest M., Ombudsman in Russia: Project in Progress, in Matscher (Hrsg), Ombudsmann in Europa, N.P. Engel Kehl, Strasbourg, Arlington, 1994, 153.

Bowring Bill, The First Russian Ombudsman and the Last?, in Müllerson (Hrsg), Constitutional Reform and International Law in Central and Eastern Europe, 1998, 235.

Lawyers Committee for Human Rights, The Price of Independence: The Office of Ombudsman and Human Rights in the Russian Federation, International Ombudsman Journal, Vol 13, 1995, 125.

Mironov Oleg, Ombdusmen as Champions for Democracy and the Rule of Law: View from Russia, in Rautio Ilkka (ed), Parliamentary Ombudsman of Finland. 80 Years, Painotalo, Helsinki, 2000, 53.

Mommsen Margareta, Das politische System Russlands, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 373.

Vangansuren Ulziibayar, The Institution of the Ombudsman in the Former Communist Countries", Paper submitted to the International Foundation for Election Systems, Washington, July–August 2002, 4, http://www.ifes.org/publication/b5f06a648cd71ec9cec88cf6d440d73f/08_08_02_Manatt_Ulzzibayar_Vangansuren.pdf (4.11.2007).

Serbia

Reljić Dušan, Das politische System Serbien-Montenegros, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 727.

Slovakia

Kipke Rüdiger, Das politische System der Slowakei, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 285.

Slovenia

Bizjak Ivan, The Human Rights Ombudsman of Slovenia, in Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 373.

Cerar Miro, Die verfassungsrechtlichen Grundlagen der Konstituierung des Staates Slowenien, in Marko/Boric (Hrsg), Slowenien – Kroatien – Serbien, Böhlau, Wien, 1991, 100.

Marko Joseph/Boric Tomislav (Hrsg), Slowenien – Kroatien – Serbien, Die Neuen Verfassungen, Böhlau, Wien, 1991.

Milkov Dragan, Ombudsman in the Countries of the Former Socialist Federal Republic of Yugoslavia, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 373.
Marko Joseph, Die neuen Verfassungen: Slowenien, Kroatien, Serbien – Ein Vergleich, in Marko/Boric (Hrsg), Slowenien – Kroatien – Serbien, Böhlau, Wien, 1991, 1.
Lukšič Igor, Das politische System Sloweniens, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Leske und Budrich, Opladen, 2004², 637.
Vouk Rudi et al, Rechts- und Wirtschaftsratgeber Österreich/Slowenien, Linde, Wien, 2004.

Spain

Adomeit Klaus, Einführung in das spanische Recht, Beck, München, 20012.
Barrios Harald, Das politische System Spaniens, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003³, 609.
Diez Bueso Laura, Spain's Parliamentary Ombudsman Scheme, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 323.
Peces-Barba Gregorio, Le „Defensor del Pueblo" en Espagne et les droits de l'homme, in Matscher (Hrsg), Ombudsmann in Europa, N.P. Engel Kehl, Strasbourg, Arlington, 1994, 83 .
Retuerto Buades Margarita, Le médiateur de l'Espagne, in Marias (ed), The European Ombudsman, European Institute of Public Administration, Maastricht, 1994, 43.
Vintó Castells Juan, The Ombudsman and the Parliamentary Committees on Human Rights in Spain, in Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 393.

Sweden

André Kerstin, Roles for the Ombudsmen. View from Sweden, in Rautio Ilkka (ed), Parliamentary Ombudsman of Finland. 80 Years, Painotalo, Helsinki, 2000, 35.
Bexelius Alfred, The Origin, Nature, and Functions of the Civil and Military Ombudsmen in Sweden, in Peel Roy V. (ed), The Ombudsman or Citizen's Defender.: A Modern Institution; The Annals of the American Academy of Political and Social Science 1968, Prince and Lemons Sts., Lancaster, PA, 1968, 10.
Bogdan Michael (ed), Swedish Law in the New Millennium, Norstedts Juridik , Stockholm, 2000.
Eklundh Claes, The Scandinavian Model, in Marias (ed), The European Ombudsman, European Institute of Public Administration, Maastricht, 1994, 11.
Eklundh Claes, The Swedish Parliamentary Ombudsman System, in Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 423.

Gellhorn Walter, Ombudsmen and Others. Citizens' Protectors in Nine Countries, Harvard University Press, Cambridge Massachusetts, 1966, 194.

Gellhorn Walter, The Swedish Justitieombudsman, 75 Yale Law Journal, 1965, 1.

Jahn Detlef, Das politische System Schwedens, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003³, 93.

Lundvik Ulf, Sweden, in Caiden Gerald E. (ed), International Handbook of the Ombudsman. Country Surveys, Greenwood Press Westport, London, 1983, 179

Modeen Tore, The Swedish and Finnish Parliamentary Ombudsmen, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 315.

Wennergren Bertil, The Rise and Growth of Swedish Institutions for Defending the Citizen against Official Wrongs, in Peel Roy V. (ed), The Ombudsman or Citizen's Defender.: A Modern Institution; The Annals of the American Academy of Political and Social Science 1968, Prince and Lemons Sts., Lancaster, PA, 1968, 1.

Wieslander Bengt, The Parliamentary Ombudsman in Sweden, Fingraf, Södertälje, 1999.

Switzerland

Haller Walter, Die Institution Ombudsstelle – 25 Jahre Ombudsstelle der Stadt Zürich, VARIA 15, 1996.

Haller Walter, Konsequenzen der Auslagerung von Staatsaufgaben auf den Zuständigkeitsbereich des Kanntonzürcherischen Ombudsmannes, VARIA 31, 1999.

Keller Beat, Der Ombudsmann der Stadt Zürich – ein schweizerisches Modell, Dissertation, Universität Zürich, 1979.

Linder Wolf, Das politische System der Schweiz, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003³, 487.

Manke Frederik, Regionale Ombudsleute im deutschsprachigen Raum, Dissertation, Universität Innsbruck, 2002.

Kostelka Peter, Ombudsmann-Organisationsmodelle im deutschsprachigen Raum, in Europäisches Ombudsmann-Institut (Hrsg), Der Ombudsmann in alten und neuen Demokratien, 2003.

Ombudsman des Kantons Basel-Stadt, Die Beurteilung der Ombudsstelle, VARIA 44, 2003.

Ukraine

Bos Ellen, Das politische System der Ukraine, in Ismayr (Hrsg), Die politischen Systeme Osteuropas, Osteuropas, Leske und Budrich, Opladen, 2004², 469.

United Kingdom of Great Britain and Northern Ireland

Darbyshire Penny, Eddey & Darbyshire on the English Legal System, Sweet & Maxwell, London, 2001[7].

Drewry Gavin, The Northern Ireland Parliamentary Ombudsman, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 285.

Doeker-Mach Günther/Wirth Malcolm, Das politische System Großbritanniens, Wissenschaftlicher Autorenverlag, Berlin, 1982.

Ebert Kurt Hanns, Der Ombudsman in Großbritannien, J.C.B. Mohr (Paul Siebeck), Tübingen, 1968.

Götsch Monika, Die auf Gesetz beruhenden Ombudsmänner des vereinigten Königreichs von Grossbritannien und Nordirland, ihre Rolle als Kompensateure im Rechtsschutzsystem und Versuch einer Einschätzung, Dissertation, Universität Innsbruck, 1989.

Gregory Roy/Giddings Philip, The United Kingdom Parliamentary Ombudsman Scheme, in Gregory/Giddings (eds), Righting Wrongs, IOS Press, Amsterdam, 2000, 21.

Neff Stephen C./Avebury E., Human Rights Mechanisms in the United Kingdom, in Hossain et al (eds), Human Rights Commissions and Ombudsman Offices, Brill, Leiden, 2000, 667.

Rittberger Volker, Der Parlamentskommissar, Zeitschrift für Politik, Band XIV, Carl Heymanns Verlag Köln Berlin, 1967, 365.

Sturm Roland, Das politische System Großbritanniens, in Ismayr (Hrsg), Die politischen Systeme Westeuropas, Leske und Budrich, Opladen, 2003[3], 225.

Yardley David C.M., The Ombudsman and the Protection of Human Rights in the United Kingdom, in Matscher (Hrsg), Ombudsmann in Europa, N.P. Engel Kehl, Strasbourg, Arlington, 1994, 73.

Further Links

Ombudsman Information Network
www.anticorruption.bg/ombudsman/index_eng.htm

International Ombudsman Institute
www.law.ualberta.ca/centres/ioi/index.php

International Ombudsman Institute – Section Europe
www.ioi-europe.org

Index