

The Insurance Ombudsman Abroad A Comparative Survey

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¹ For a selection of materials concerning the "insurance Ombudsman" see the Annex.

Annex: Selected Materials

Following yesterday's musical soirée I am under the obligation to lead you back to the prosaic nature of the insurance business. In this context, by the way, I am reminded of an episode in musical history.² The eighteenth century saw the existence of a so-called Viennese Association of Musical Artists (Wiener Tonkunstverein). This association was not of an aesthetical nature, but rather a form of mutual insurance to ensure the old-age care of musical artists. It is reported that no one less than Haydn and Mozart at one time or the other were engaged in bitter disputes with it. Therefore one certainly can say: They definitely would have needed an insurance Ombudsman - which leads me to the topic of my presentation. - I shall structure this talk in seven parts and introduce it with general remarks as to the Ombudsman, thus not yet dealing with the specific institution of the insurance Ombudsman.

I. The Ombudsman in general

1. Origins

The term "Ombud" is of Swedish origin and means: "representative"; accordingly, the Ombudsman is such a figure. The roots of the meaning this term enjoys today date back to Charles XIIth. At the beginning of the 18th century he was forced by the necessities of battle to leave Sweden for prolonged periods of time and upon his return to the country was confronted with maladministration and miscarriage of justice. As a remedy he created (1713) a royal supervisory organ bearing the title of Supreme Ombudsman. In the further course of events there emerged from this institution on the one hand the Office of the (Royal) Chancellor of Justice and on the other hand - as a result of the Constitutional reforms of 1809 - the Judicial Ombudsman of the Diet as the prototype of the parliamentary Ombudsman as it is perceived (worldwide) today.³ His task was to monitor the observance of the law by the judges and other official organs.⁴ - At first, the Ombudsman performed these functions solely on his own initiative. As time went by, the general public turned to this institution, especially in the

2 Credit for this reference goes to a speech at table by *Herrn Generaldirektor Dr. Schimetschek* during the Annual Meeting of the Deutscher Verein für Versicherungswissenschaft which took place in Vienna in March 1997.

3 As to further origins in the humanities which come into consideration see the alludes made by *Kepplinger*, *Die Volksanwaltschaft Österreichs und die Petitionsausschüsse der BRD auf Bundes- und Landesebene im Vergleich - unter Berücksichtigung des Wehrbeauftragten und des Bürgerbeauftragten von Rheinland-Pfalz*, unpublished thesis, Innsbruck (1987) 1 - 4.

4 As to previous statements: *Eklundh*, *The Swedish Parliamentary Ombudsmen*, unpublished presentation at the Fourth European Ombudsman Conference in Berlin from 31 May to 4 June 1994 (see *Walzel von Wiesentreu*, *Konsolidierung von Bürgerrechtseinrichtungen in Europa - Bericht über die Vierte Europäische Ombudsmann-Konferenz* -, DVBl. 1995, 456); *Söderman*, *Gibt es den klassischen Parlamentarischen Ombudsmann?*, unpublished keynote speech commemorating the twentieth anniversary of the foundation of the Austrian Volksanwaltschaft (Vienna, 4 June 1997).

twentieth century: Individual petitioners addressed the Ombudsman praying for relief in a particular case. The Ombudsman turned into a point of contact for citizens who felt oppressed.⁵

2. Expansion

For a long time, the parliamentary Ombudsman was an institution whose existence was restricted to Sweden. In 1919 it was adopted in the constitution of Finland, which had in the meantime gained its independence. Denmark followed suit in 1955, Norway in 1962.⁶ As of this time one can note a ballooning expansion. Today it is possible to embark on a global tour of Ombudsmen with destinations in all continents.⁷ The legal concept of making the parliament responsible - in addition to its institutional functions - for the individually-oriented protection of citizens - and this in the form of a specifically endowed and specialized mandatar - has - since about 1960 - found worldwide appeal.⁸ The designation "Ombudsman" also enjoys a connotation with Sweden as a respected constitutional state. - In Germany, by the way, the Ombudsman-concept has been realized in substance but not in an identical institutional structure. The parliaments traditionally ensure the protection of the citizen by means of Petitions Committees (and not by individuals such as an Ombudsman).⁹ Such structures exist in all German legislative assemblies; the Petitions Committee of the German Bundestag annually deals with 20.000 complaints.¹⁰

3. Key Concepts

It certainly makes sense that in view of the worldwide existence of Ombudsman institutions just described, slight differences concerning individual structures are noticeable. However, there are two key concepts which, in my opinion, characterize the institution worldwide.¹¹

- Key concept I:

The Ombudsman is endowed with investigative powers, but has no or only very limited powers of enforcement. His means of enforcement are

5 *Eklundh* (supra n. 4).

6 *Söderman* (supra n. 4) 3.

7 See the survey by *Pickl*, *Die Volksanwaltschaft - ein Fall für das "sanfte Recht"*, *Das öffentliche Haushaltswesen in Österreich* (1987) 134 (137-140); a comparatist view by *Wimmer*, *Die Ombudsmann-Einrichtungen im Verfassungsgefüge*, *JBl.* 1984, 281.

8 Cf. *Söderman* (supra n. 4) 3-4 highlighting the subsequent exemplary nature of exactly the Danish model.

9 An exception ist the Wehrbeauftragte of the German Bundestag (within its limited scope of competence). Furthermore, there are individual "Bürgerbeauftragte" beside the Petitions Committees, cf. *Kepplinger* (supra n. 3) 59 - 95.

10 German Bundestag (ed.), *Petitionen - Der Petitionsausschuß - der Anwalt des Bürgers*, 5th ed. (1992) 9.

11 As to the following see only *Pickl* (supra n. 7) 134 - 140; *Wimmer* (supra n. 7) 281 (286).

investigations, mediation and persuasiveness. The means which he employs for this purpose are usually described as *soft law*. How can it be circumscribed? It is a subject-matter which in its normativity is placed between “hard” law on the one hand and equity as well as common sense on the other hand.¹²

- Key concept II:

The Ombudsman’s functions do not simply encompass a mere balancing of interests on the level of coordination by recognizing *iustitia commutativa*. Rather, his job is to protect the weaker party: He should ensure equality in arms, more precisely: eliminate an inequality in arms with a view to those, as the Swiss (Insurance) Ombudsman once phrased quite graphically, who must face their opponent with “a lance which is too short”.

This key concept, as just described, has already transgressed the boundaries of the field of public authority and has led to an almost “explosive” proliferation (not only in a geographical sense - see above - but also in a substantive sense) of the Ombudsman concept. In numerous areas of society one may encounter the Ombudsman: A random selection shows that there are (or is a serious demand for) Ombudsmen to assist victims of violence, Ombudsmen for the protection of the environment, Ombudsmen for senior citizens, Ombudsmen for the protection of children and - last, but not least, in our context: - Ombudsmen for the protection of consumers. We need not bother with this broad spectrum any further at this point. In the following statements I shall focus on the figure which is actually of interest to us today, viz. the insurance Ombudsman.

II. Insurance Ombudsman Institutions (in Europe): Sources and Survey

1. Sources

It is characteristic for the sources that - in contrast to the application of law in general - statutory bases do not exist throughout. To date - as far as can be assessed - court decisions do not exist, at least none apart from the decisions of Insurance Claim Boards which do not have genuine court quality.

Nevertheless, there is a certain, if not abundant, amount of literature. The most important sources, however, are the materials provided by the Ombudsman institutions themselves and due to their kind assistance by means of correspondence I have been furnished with insightful facts and data (see the selected materials in the annex).

12 As to “*recours à l'équité*” in the French system of mediation see Rapport sur l'activité du médiateur du GEMA pour l'année 1997 (Annex) 7-8.

2. Survey

Now what are the findings based on these sources (and further information?) First of all, the negative aspects: There is no insurance Ombudsman - beginning in the south - in Cyprus, furthermore in Italy, Slovenia¹³, Austria, Poland and Germany. On the positive side one should mention - this time beginning from the north - Norway, Sweden, Finland, Iceland, the United Kingdom, Denmark, Ireland, the Netherlands, Belgium, France and Switzerland.

In any case, the competence of the insurance supervision board to deal with complaints of individuals (as well) is also of importance in several states: in addition to the tasks of the insurance Ombudsman (e.g. in Iceland)¹⁴ or instead of him in countries where he does not exist (e.g., in Germany, Austria and Poland¹⁵).

III. Comparison of Systems

The rules just described do not follow a uniform scheme. Rather, it is possible to distinguish roughly three systems.

- First of all, I shall mention the concept which conceives the tasks of the insurance ombudsmen as such of *public authority*. At this point one must highlight Norway: In that country the institution is characterized as "integral to the system of providing free insurance counseling and assistance to the public" and thus as a bearer of such functions.¹⁶ In Denmark, the tasks seem to be similar: In any case, the Insurance Complaints Board was founded there "in pursuance" of a statute, viz. the Danish Consumer Complaints Board Act; in the concrete case it owes its creation to the permission of the Consumer Complaints Board which in its turn is a public body.¹⁷ - In Sweden, the Consumer Insurance Bureau is subject to the (co-)supervision of public bodies: that of the National Swedish Board of Consumer Policies and of the Insurance Supervision Authority (additionally, it is also supervised by the private federation of insurers).¹⁸ In Finland, the basis of the Finnish Insurance Ombudsman Bureau and of the Finnish Insurance Complaints Board is a contract between the (public) National Consumer Administration and the

13 Neither was information made available by the other countries of southern and central Europe (except Poland) nor by Spain and Portugal.

14 Vátryggingaefirlitid (Annex).

15 The findings there could not be analyzed (among other factors, due to language problems). It seems probable that an insurance Ombudsman in its own right does not exist. However, there is an insurance supervisory agency which has the competence to accept and deal with complaints. As to this finding, an English translation of a statute is available.

16 The Norwegian Bureau for Insurance Disputes (Annex) 4.

17 The Danish Insurance Complaints Board (Annex) 3.

18 Stiftelsen Konsumenternas Försäkringsbyrå (circular letter) (Annex) 1.

Federation of Finnish Insurance Companies¹⁹. - In the United Kingdom, a model exists which is not immediately immanent to insurance, but is also described as a possible concept for insurance. In the case of *building societies*, no private initiative of the parties necessary; rather it is mandatory *by law* that the enterprises concerned must adhere to a *complaint handling scheme*.²⁰ In such cases the Ombudsman institutions are independent enterprises charged with specific functions in the public interest.

- Conversely, there is the *entirely privately organized model* of the Netherlands²¹ and of Belgium.²² In these countries, the exclusive responsibility for the Ombudsman institutions lies with the federation of insurers who also appoint the respective persons.²³ In France the influence of the insurers' federations also prevails. Two groups dominate the scene: the *Fédération française des sociétés d'assurance* (FFSA) - and for mutuals - the *Groupe des entreprises mutuelles d'assurance* (GEMA). The *Charte de la médiation* of the FFSA²⁴ which is by far the larger of the two provides for a dual system: On the one hand mediation is offered at the level of the insurer itself (in form of an external independent mediator who, however, is appointed for a minimum of two years by the insurer itself). On the other hand there is also mediation at the level of the federation. The competent *médiateur professionnel* is appointed by unanimous resolution of a panel of three persons which is composed of the presidents of two institutions performing functions in the public interest, namely the *Institut national de la consommation* and the *Commission consultative de l'assurance* as well as a representative of the FFSA. Before the mediator can be called on the insurer's internal complaint procedure must have been exhausted. Since 1993 the institution "Médiation Assurance" in Paris serves as an optional point of reception and distribution.²⁵
- A *middle of the row position* is assumed by the important group where private initiative and responsibility are determining factors, but where the insurance Ombudsman's tasks are performed by an entity in its own right with special safeguards for ensuring its independence. This system exists in

19 Kuluttajien vakuutustoimisto (Annex) 13.

20 The Insurance Ombudsman Bureau, annual review 1996 (Annex) 8.

21 See Ombudsman Schadeverzekering (Annex) 1: the Non-Life Insurance Ombudsman and the Life Insurance Ombudsman are appointed by the General Board of Directors of the Association of Insurers, the Health Care Insurance Ombudsman by the Board of Directors of Dutch Health Care Insurers.

22 L'ombudsman de l'UPEA (Annex) 3.

23 Here one can observe similarities to the German bank Ombudsman. See in this work *Bundschuh*

24 *Lambert-Faivre* (Annex) 144-145; Le médiateur de la FFSA, Rapport annuel 1996-1997 (Annex) 39 ss.

25 As to the statements above see *Lambert-Faivre* (Annex) 134 ss.; La médiation en assurance (Annex).

Switzerland,²⁶ the United Kingdom²⁷ and - following the latter model in a broad brush - in Ireland.²⁸

IV. The Nature of the Insurance Ombudsman's Services

- Primarily, the insurance Ombudsman's most important service is *complaint handling*.²⁹ avoidance of conflicts - by means of mediation - between the counterpart of the insurer³⁰ and the insurer.³¹ In such a situation, concurrent jurisdiction for cases pending before the courts of law is sometimes prohibited.³² On the other hand, recourse to the general courts of law is always available in cases in which mediation is unsuccessful.³³
- A special procedure in case mediation fails is available in Norway: In such a case, the matter is referred eo ipso by the Insurance Ombudsman Office to specific court-like bodies. These are, on the one hand, the Insurance Agreements Board which has jurisdiction for disputes in all cases.³⁴ On the other hand, the Board for Reduced Compensation has jurisdiction for cases of alleged misconduct on the part of the policyholder.³⁵ (We thus have before us - which is remarkable from a comparative law perspective - a system of actions in which jurisdiction of the judicial organs depends on

26 Stiftung Ombudsmann der Privatversicherung which has its seat in Zurich; cf. the annual reports of the des Ombudsmann der Privatversicherung (Annex); as to its foundation cf. *Maurer*, VR 1978 (Annex) 69 (73 ss.).

27 Cf. as to this statement: Ombudsmann in der britischen Versicherungswirtschaft (Annex) 651; The Insurance Ombudsman Bureau, annual review 1996 (Annex).

28 Insurance Ombudsman of Ireland, Annual Report 1995 (Annex) 37.

29 This term is commonly used in the United Kingdom.

30 Issues relating to insurance agents and brokers shall not be discussed here.

31 *Maurer*, VR 1978 (Annex) 69 (76 ss.); *Maurer*, in: Festgabe Deschenaux (Annex) 511, 522 - 523; the following country reports shall be cited as examples: for Finland Kuluttajien vakuutustoimisto (Annex) 13; for the United Kingdom The Insurance Ombudsman Bureau, annual review 1996 (Annex) 27; cf. for Denmark The Danish Insurance Complaints Board (Annex) 4; for Ireland Insurance Ombudsman of Ireland, Terms of Reference (Annex) 1; for the Netherlands the Ombudsman Schadeverzekering (Annex) 1; for Belgium L'Ombudsman de l'UPEA (Annex) 3; for Sweden Stifelsen Konsumenternas Försäkringsbyrå (circular letter) (Annex) 2; for France see only Le médiateur de la FFSA, Rapport annuel 1996-1997 (Annex) 39.

32 E.g., in the United Kingdom, see The Insurance Ombudsman Bureau, annual review 1996 (Annex) 26 and in France, see Le médiateur de la FFSA, Rapport annuel 1996-1997 (Annex) 39; not excluded in Switzerland, see *Maurer*, VR 1978 (Annex) 69 (78).

33 This rule is also sound from the perspective of constitutional law: No person shall be deprived of his lawful judge; cf., e.g., *Maurer*, VR 1978 (Annex) 69 (78); 1. Jahresbericht des Ombudsmannes der Privatversicherung (Annex) 2; *Schürch*, in: *Reichert-Facilides* (Annex) 98 (99); Ombudsmann in der britischen Versicherungswirtschaft (Annex) 651; The Danish Insurance Complaints Board (Annex) 9; France, where additionally the commencement of the mediation procedure suspends the running of the Statute of Limitations: Le médiateur de la FFSA, Rapport annuel 1996-1997 (Annex) 39.

34 The Norwegian Bureau for Insurance Disputes (Annex) 1, 3 and 4 ss.

35 The Norwegian Bureau for Insurance Disputes (Annex) 1, 3 and 6 ss. (in particular, 7).

the qualification of the matter in dispute). In case a dispute cannot be resolved before these court-like bodies, one must seek recourse before the general courts of law.

- In the United Kingdom and in Ireland the insurance Ombudsman is competent to make final and binding decisions concerning individual disputes: If he decides against the insurer and the amount in dispute does not exceed £ 100.000, the decision is final³⁶ - by all means a significant display of confidence.
- Two further aspects of *complaint handling* by the insurance Ombudsman are the following: First of all, in all systems the procedure is practically free of charge for the policyholder's side.³⁷ Secondly, the duration of the procedure, compared to court proceedings, usually is extraordinarily short. The average time for deciding a case, e.g., in the United Kingdom, is approximately 170 days.³⁸ In France, the Ombudsman of the FFSA should - pursuant to its bylaws - render a detailed decision in writing (*avis motivé*) within three months after the complaint was filed;³⁹ in practice, (even) the average duration for processing a complaint exceeds this time-frame. As to mutuals, in 1997 two-thirds of the complaints filed were disposed of within a maximum period of two months, almost all within three months at the most.⁴⁰
- Besides *complaint handling*, the insurance Ombudsman is sometimes entrusted with specific counseling tasks: Certainly, this does not extend to the conclusion of contracts but should rather be understood as a consultation aid before the actual mediation procedure or accompanying it.⁴¹ In Sweden, however, the Consumer Insurance Bureau also offers counseling before the conclusion of an insurance contract.⁴² In Finland, even requests to compare different insurance offers are processed.⁴³

V. The Issue of Independence

36 For the United Kingdom: The Insurance Ombudsman Bureau, annual review 1996 (Annex) 27; concerning the possibility of a judicial review of the decision of the Ombudsman see *Morris*, Lloyd's Maritime and Commercial Law Quarterly 1994, 358 passim; for Ireland: Insurance Ombudsman of Ireland, Terms of Reference (Annex) 1 - 2.

37 Cf., e.g., *Maurer*, VR 1978 (Annex) 69, 79 - 80; for Sweden Stiftelsen Konsumenternas Försäkringsbyrå (circular letter) (Annex) 1; for the Netherlands Ombudsman Schadeverzekering (Annex) 1; for Belgium L'Ombudsman de l'UPEA (Annex) 4; in Denmark a small fee of approximately £ 9 is charged; see The Danish Insurance Complaints Board (Annex) 6.

38 The Insurance Ombudsman Bureau, annual review 1996 (Annex) 23.

39 Le médiateur de la FFSA, Rapport annuel 1996-1997 (Annex) 39.

40 Rapport sur l'activité du médiateur du GEMA pour l'année 1997 (Annex) 19.

41 Cf. *Maurer*, VR 1978 (Annex) 69 (76); *Maurer* in Festgabe Deschenaux (Annex) 511 (521); The Insurance Ombudsman Bureau, annual review 1996 (Annex) 27; Kuluttajien vakuutustoimisto (Annex) 13; cf. Insurance Ombudsman of Ireland, Terms of Reference (Annex); Stiftelsen Konsumenternas Försäkringsbyrå (information sheet) (Annex) 1 and 2.

42 Stiftelsen Konsumenternas Försäkringsbyrå (circular letter) (Annex) 1 and 2.

43 Kuluttajien vakuutustoimisto (Annex) 13.

Issues of independence are intertwined with the structure of the respective organization. Issues of financing precede them. The following figures shall illustrate this subject.

1. Issues of Financing

Without exception, the insurance Ombudsman institutions are funded by the insurers.⁴⁴ In the Netherlands and in Belgium the federation of insurers is charged;⁴⁵ this is also the case in, e.g., Sweden.⁴⁶ In countries with an independent body purporting insurance Ombudsman activities the (insurance) enterprises which have a determining influence on its creation bear the cost of keeping it viable from an economic point of view. In Switzerland, this entity is a foundation.⁴⁷ In the case of the British model it is an *unlimited company without a share capital*. In the United Kingdom - in the area of general lines insurance⁴⁸ - 95 % of the insurance enterprises are members.⁴⁹

2. Structural Issues

In Norway, the insurance Ombudsman (bureau) is a collegial institution which has six members; two are appointed by the federation of insurers, two by the state and two by the private consumer sector.⁵⁰ This composition ensures neutrality much in the same form as in the case of the court-like institutions (as described supra IV). In the Netherlands and in Belgium the insurance Ombudsman is appointed by the respective insurers' federation. Its bylaws lay down its independence and a certain institutional guarantee of this independence is realized by the circumstance that the insurance Ombudsman may not be a member of an insurance company or of a brokerage firm.⁵¹ It is reported from France that bodies performing functions in the public interest participate in appointing the *médiateur* within the framework of the FFSA.⁵² Due to its organizational structure the independence of the Ombudsman institution is safeguarded firmly in the Swiss and the British models. I have already described that in these countries the insurance Ombudsman institutions are autonomous

44 In Norway there might be a mixed form of funding with participation by organizations representing the policyholder; the materials which were available to me did not give a clear picture in this respect.

45 Cf. Ombudsman Schadeverzekering (Annex) 1; L'Ombudsman de l' UPEA (Annex) 3.

46 Stiftelsen Konsumenternas Försäkringsbyrå (circular letter) (Annex) 1.

47 See, e.g., Maurer, VR 1978 (Annex) 69 (79).

48 As to life insurance the situation is quite specific and particularly complicated and would exceed the scope of this article.

49 The Insurance Ombudsman Bureau, annual review 1996 (Annex) 7.

50 The Norwegian Bureau for Insurance Disputes (Annex) 7.

51 See Ombudsman Schadeverzekering (Annex) 1; cf. L'ombudsman de l' UPEA (Annex) 3.

52 See the references supra III n. 24.

bodies on which the influence of representatives of the insurance business providing the funding is limited. In Switzerland, the board of trustees - which is solely responsible for appointing the insurance Ombudsman - is usually composed of distinguished persons of the public sector; they in their turn are complemented by cooptation.⁵³ In the United Kingdom the members of the aforementioned *unlimited company* elect a *board* from the midst of their members; this board has limited competences and is generally responsible for fund-raising.⁵⁴ The insurance Ombudsman himself is not appointed by the *board*, but by the *council*: According to its bylaws, this body is primarily composed of non-insurers and it must ensure adequate representation of the general public and of consumer interests.⁵⁵ The insurance Ombudsman's independence is further safeguarded by the fact that his term of office is a priori limited to seven years without the possibility of reappointment.⁵⁶ (I would just like to remark in passing that this model has also - in the sense of a safeguard of independence - been realized for the members of the Directorate of the European Central Bank [eight-year term of office]⁵⁷).

VI. Selected Issues

1. Caseload: Illustrative Figures

In Switzerland, approximately 3.000 cases were filed in 1996. About 700 cases were rejected for lack of jurisdiction (e.g. social insurance cases). In 430 cases actual mediation vis-à-vis insurance companies was undertaken. In a little more than a third of the cases (153) the insurance company revised its opinion.⁵⁸ In Norway, 11.000 cases were filed. In the final stage 360 were referred to the aforementioned special court-like bodies (200: *Insurance Agreements Board*, roughly 50% of the cases were decided in favour of the complainant; 160: *Board for Reduced Compensation*: more than 50%). The rest of the cases were resolved by means of negotiation between the insurance Ombudsman bureaus with the respective insurers.⁵⁹ - In the United Kingdom approximately 66.400 complaints were filed, but the insurance Ombudsman bureau's competence only covered 31.774 cases. 26.815 of them were resolved in a "simple" manner; in the remaining 5.000 cases a genuine *complaint service* was necessary. 35% of the

53 1. Jahresbericht des Ombudsmannes der Privatversicherung (Annex) 2 - 3.

54 The Insurance Ombudsman Bureau, annual review 1996 (Annex) inside cover page, 25 and 31; Memorandum and Articles of Association of the Insurance Ombudsman Bureau (Annex) 11 ss. (in particular, 13 -14).

55 The Insurance Ombudsman Bureau, annual review 1996 (Annex) inside cover page and 30; Memorandum and Articles of Association of the Insurance Ombudsman Bureau (Annex) 22 ss.

56 Memorandum and Articles of Association of the Insurance Ombudsman Bureau (Annex) 26.

57 Art. 109a (2) (b) EC-Treaty.

58 Ombudsman der Privatversicherung (Annex) 1 ss.

59 The Norwegian Bureau for Insurance Disputes (Annex) 1.

cases were decided in favour of the policyholder. In 57% of the cases the insurance company did not back down; 8% of the complaints were withdrawn.⁶⁰ In Denmark, 2,782 complaints and another 3,410 requests were filed with the *Board* in 1996. 629 were already handled by the *Secretariat* which takes action before the *Board*. Of the remaining cases, the *Board* decided 1,972 and issued 20 recommendations; the rest of the complaints were adjourned. 77% of the complaints decided were resolved in favour of the policyholder.⁶¹ The *Finnish Insurance Ombudsman Bureau* dealt with 7,418 requests and complaints in 1996. No information in English is available as to the further handling of the cases. In the same year, the *Finnish Insurance Complaints Board* decided 783 cases out of 864 in which an opinion was requested; a third of the cases in which a decision was arrived at held in favour of the requesting party.⁶² In 1996, 12,632 requests were directed to Sweden's *Consumer Insurance Bureau*; half of them were complaints, 600 were requests for consultation before the conclusion of an insurance contract.⁶³ The figures in France for the reporting period of 1996/97 are as follows:⁶⁴ 489 complaints were lodged with the *médiateur* of the FFSA⁶⁵ with approximately half the cases being suitable for examination on their merits. 24% of these were resolved by mutual agreement. In the remaining cases in which a decision in writing was issued (177) a third held in favour of the complainant and two-thirds against him.⁶⁶ As to mediation within the framework of GEMA⁶⁷ the figures are similar.⁶⁸ 176 complaints, more than two-thirds within the jurisdiction of the mediator; 10 cases were resolved by mutual agreement, 87 by decision in writing. Among these, 33 were resolved (partially or completely) in favour of the complainant.⁶⁹ - It is noteworthy that the caseload in France is relatively small. The reason therefor probably is that mediation in France is a recent phenomenon and still in the experimental stage; future developments must be observed.⁷⁰

2. Personnel, Costs

As to Switzerland one can report an extraordinary sense of economy: three persons, distributed locally, acting as insurance ombudsmen (see immediately *infra* 3); two employees and a secretary.⁷¹ The situation in France is similar: The insurance ombudsman of the FFSA enjoys the support of only an assistant, a

60 The Insurance Ombudsman Bureau, annual review 1996 (Annex) 23.

61 The Danish Insurance Complaints Board (Annex) 10 - 11.

62 Kuluttajien vakuutustoimisto (Annex) 13 - 14.

63 Stiftelsen Konsumenternas Försäkringsbyrå (information sheet) (Annex) 1 - 2.

64 Le médiateur de la FFSA, Rapport annuel 1996-1997 (Annex) 35.

65 As to the médiateur of the FFSA see *supra* III n. 24.

66 Le médiateur de la FFSA, Rapport annuel 1996-1997 (Annex) 36.

67 Cf. *supra* III preceding n. 24.

68 Rapport sur l'activité du médiateur du GEMA pour l'année 1997 (Annex) 13-14.

69 Rapport sur l'activité du médiateur du GEMA pour l'année 1997 (Annex) 14.

70 *Lambert-Faivre* (Annex) 137.

71 Ombudsman der Privatversicherung (Annex) inside cover page.

secretary and two experts.⁷² In Norway the insurance Ombudsman bureau itself - aside from the court-like institutions - has a staff of 13.⁷³ In the United Kingdom the insurance Ombudsman and his deputy are supported by a staff of 50 specialized persons. The cost: £ 3,9 million which are funded by the aforementioned member companies, according to an allocation table which reflects the degree in which the bureau is charged by its counterparts: the more complaints, the higher the charge to the addressees of the complaints.⁷⁴ A corresponding allocation concept also exists in Denmark. The *Danish Insurance Complaints Board* has 36 members; of these, only the chairperson and his deputy are on a payroll. The *Complaints Board Secretariat* has another 10 employees.⁷⁵ In Finland the *Ombudsman Bureau* has a staff of 12.⁷⁶

3. Central or Regional Organization?

In past discussions one of the arguments put forward against the institutionalization of an insurance Ombudsman had been that such an institution would not be practical for a large state.⁷⁷ Today, this argument has been disproved, not least by the model of the United Kingdom: It is served by only a single insurance Ombudsman office in London which - obviously functioning - has no branch offices. Conversely, in Switzerland regional offices have been established for each of the three (main) language areas:⁷⁸ a plausible solution linked to the specific federal structure of the Swiss Confederation.

4. Specific Protection Requirement on part of the Complainants?

The main function of the Ombudsman is to protect the weaker party (supra I.3):

Do complainants therefore have to have a specific need for protection in order to be entitled to call upon insurance Ombudsman institutions? The answers vary. In Norway, there are no restrictions: The travaux préparatoires expressly show that disputes with business policyholders are included.⁷⁹ In Switzerland it is not possible to invoke the services of the insurance Ombudsman in cases in which the complainant is represented by legal counsel.⁸⁰ In the United Kingdom, only natural persons may seek assistance; furthermore, the binding effect of decisions

72 Le médiateur de la FFSA, Rapport annuel 1996-1997 (Annex) 40.

73 The Norwegian Bureau for Insurance Disputes (Annex) 1.

74 The Insurance Ombudsman Bureau, annual review 1996 (Annex) 25.

75 The Danish Insurance Complaints Board (Annex) 4 ss.

76 Kullutajien vakuutustoimisto (Annex) 13.

77 References provided by *Reichert-Facilides*, Zusammenfassender Überblick der Tagungsergebnisse, in: *Reichert-Facilides* (Annex) 139, 144.

78 Ombudsman der Privatversicherung (Annex) passim.

79 The Norwegian Bureau for Insurance Disputes (Annex) 3.

80 *Maurer*, VR 1978 (Annex) 69 (78); *Schürch*, in: *Reichert-Facilides* (Annex) 98 (100).

(see *supra* IV) is limited to sums not exceeding £ 100.000.⁸¹ In Denmark, too, only complaints by natural persons can be dealt with.⁸² It is reported that in Finland, at least in the case of the *Insurance Complaints Board*, requests by non-consumers for counseling are handled, too.⁸³ Mediation in France can only be invoked by natural persons (*particuliers*).⁸⁴

5. Publicity Issues

- First of all, I shall make some remarks concerning the publicity of the work reports of the insurance Ombudsman in general: In Norway, the decisions of the aforementioned bodies (*supra* III) are recorded in official collections.⁸⁵ The decisions of the Danish *Insurance Complaints Board* are published (at least in some cases).⁸⁶ The Finnish *Ombudsman Bureau* publishes comparative studies whereas the *Finnish Insurance Complaints Board* publishes statistical data as to cases and their outcome.⁸⁷ The FFSA⁸⁸, GEMA⁸⁹ and Médiation Assurance⁹⁰ also publish statistical data as to complaints and their outcome. In the United Kingdom, it is possible according to local practice to inform oneself even as a non-party by studying the annual reports.⁹¹
- An even more important issue is how aware the general public is of the existence of insurance Ombudsmen. A publication by the Australian Insurance Ombudsman Institution⁹² may be prototypical in as far as it reads: "One of the great concerns is: Are we reaching the right consumer? Do they know of our existence?" And it is reported from the United Kingdom that (occasional?) grievances exist in such form that insurance companies - despite the responsibilities they have assumed - have withheld information about the existence of the protection offered by the insurance Ombudsman when things came to a head, thus eroding his protection.⁹³ - Similarly, it is reported that access to French *médiation* is impeded by the conduct of insurers.⁹⁴

VII. Policy Issues

81 The Insurance Ombudsman Bureau, annual review 1996 (Annex) 26 - 27.

82 The Danish Insurance Complaints Board (Annex) 4.

83 Kuluttajien vakuutustoimisto (Annex) 14.

84 La médiation en assurance (Annex) 2.

85 The Norwegian Bureau for Insurance Disputes (Annex) 3.

86 The Danish Insurance Complaints Board (Annex) 9.

87 Kuluttajien vakuutustoimisto (Annex) 13 - 14.

88 Le médiateur de la FFSA, Rapport annuel 1996-1997 (Annex) 4 ss.

89 Rapport sur l'activité du médiateur du GEMA pour l'année 1997 (Annex) 13 ss.

90 Médiation Assurance, Statistiques 1997 (Annex).

91 See, e.g., the most recent annual report: The Insurance Ombudsman Bureau, annual review 1996 (Annex).

92 General Manager of the Life Insurance Complaints Service Limited, 23 Oct. 1996.

93 The Insurance Ombudsman Bureau, annual review 1996 (Annex) 7.

94 Le médiateur de la FFSA, Rapport annuel 1996-1997 (Annex) 7.

Towards the end, I would like to touch on the following issues in a few catch-phrases:

1. Necessity?

- Do we need an insurance Ombudsman? In my introduction the aspect of inequality of arms was mentioned. At an earlier date, I have categorized it in a threefold manner:⁹⁵ Firstly, it is the practically unlimited financial potential of the insurer to litigate legal disputes which establishes its superiority vis-à-vis its typical counterpart. Secondly, it is the insurer's predominant know-how concerning the subject matter and thirdly - a circumstance which fortunately is not commonplace but not at all irrelevant - that the dispute about the insurance proceeds (almost) never threatens the existence of the insurer, but certainly - in a serious calculation - that of the policyholder. As a fourth issue I would like to add - by taking up a phrase made by the former Swiss insurance Ombudsman *Broger* - : "In hardly any field does the man from the street feel so much at the mercy of the whims of fate than in the field of insurance. To a layperson, questions of insurance have always been a book with seven seals."⁹⁶ And even if one need not fear the threat to one's existence, there is the psychological embarrassment of having to litigate against an overpowering opponent: This certainly represents a real obstacle to gaining access to justice.
- But don't we already have numerous institutions for the protection of the consumer in general, shouldn't they meet this need? Concerning this question, I only give account of a conversation which I recently had with a competent Viennese lady who works in the Ministry for Consumer Affairs: She was of the opinion that despite the facilities which already existed, an insurance Ombudsman represented a necessity. The general institutions for consumer protection lacked the requisite specific knowledge. Their diversity also caused confusion; an insurance Ombudsman, however, would represent an unambiguous address in this field for the persons concerned.

2. Economic Issues; Questions of Concurring Jurisdiction

- As to the economic aspect I would simply like to cite the result of an expert's enquiry in England: "Lord Woolf's enquiring into civil justice has highlighted the overall cost of going to law and has commended greater use of Ombudsman schemes."⁹⁷

⁹⁵ *Reichert-Facilides* in: *Reichert-Facilides* (Annex) 15 (16-17).

⁹⁶ 1. Jahresbericht des Ombudsmannes der Privatversicherung (Annex) 3.

⁹⁷ The Insurance Ombudsman Bureau, annual review 1996 (Annex) 6.

- Another word as to concurring jurisdiction between insurance Ombudsman institutions and the general courts of law. Access to the general courts of law always remains open to the policyholders (see supra IV). Apart from this aspect, an issue which might cause problems is the fact that the development of law (and of equity) by the courts might be repressed by (less clean-cut) *soft law* as practised by the Ombudsman institutions (see supra I 3). Certainly, especially in the case of insurance contract law, the development of the law by the judges plays a significant role. Its problem is, however, that it is realized at the cost of a few individuals who cannot receive help under the law even when taking into account the principle of good faith, whereas the intervention of an insurance Ombudsman who applies "soft law" may arrive at a "consoling" result.
- As to an eventual concurring jurisdiction of the supervisory authorities following a complaint I need not make any statements since we will be listening to the speech of Mr. *Hohlfeld* presently.

3. Public/private Entities?

- The models of a public entity (or an entity which at the least is responsible to the public) have already been mentioned. In my view they certainly have a persuasive appeal. The current state of financial affairs of the public sector with its discouraging perspectives should not a priori paralyze the pursuit of proper programs.
- However, as to private structures, too, clear and convincing examples may be found. This is especially the case in the very important *issue of independence*: It has been demonstrated supra V that sound models exist.
- The foundation as well as the *resilience* of a private entity is linked closely to the *interests involved*. Thus, the interests of the policyholders are certainly accounted for. But even in the insurance business (here the German one deserves to be mentioned) as well, however, is increasingly convinced that such institutions make sense.⁹⁸ The value of a "soft" resolution of disputes, of avoiding "tough" conflicts can certainly be advantageous to those "selling insurance". A closely related concept states that as soon as a case is litigated before a court, the business relationship is destroyed, whereas an insurance Ombudsman might be able to come up with a solution which will not stand in the way of an amicable cooperation in the future.⁹⁹ - In this context it is conceivable that an insurance enterprise might publicly draw attention to its

98 Cf. on the one hand the still prevailing scepticism as mentioned by *Reichert-Facilides*, in: *Reichert-Facilides* (Annex) 139 (144); on the other hand see the recent press reports on serious deliberations in the Gesamtverband der Deutschen Versicherungswirtschaft.

99 Cf. *Rieger*, in: *Reichert-Facilides* (Annex) 72.

membership in an insurance Ombudsman institution and make use of this circumstance as a (completely legitimate and useful) marketing instrument.

4. Final remarks

- When reviewing the foreign materials one can find today a degree of quality and diversity in the field of insurance Ombudsman institutions which makes it appropriate to advise countries which still are "blank spots" on the map in this respect to take initiatives to remedy their situation. A high degree of "comfort in legal protection" is not a luxury item in our part of the world - it rather has become a commonplace attribute of consumer protection in the sense of the protection of the weaker party. One can only shout out to the responsible decision-makers the battle-cry of the Tyrolean provincial hero *Andreas Hofer*: "Mander, 's isch Zeit!" (Men, the time has come!).
- A final word: We are talking about the Ombudsman. This does not mean an inadmissible masculinization. It is rather a gender-neutral, traditional characterization of the institution. I would like to inform the ladies who are present that a significant number of insurance ombudsmen in the present and in the recent past have been females. The head of the respective Swiss agency official designates herself as Ombudswoman. Thus, even in this respect this institution is up to date.

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