

VARIA 65 (E)

**Everyday's work of the Ombudsman –
problems and solutions – an exchange
of experiences**

(Working Session of the European Ombudsman Institute on 23 September 2011
on the occasion of the General Assembly on 24 September 2011 in Novi Sad/Serbia)

Collected publication of conference contributions by individual ombudsmen

International CONFERENCE of Human RIGHTS Novi Sad 2011

Theme of the Conference:

***„Everydays work of the Ombudsman – problems and solutions –
an exchange of experiences “***

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International CONFERENCE of Human RIGHTS - Novi Sad 2011

Working Session

*on 23 September 2011
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Introductory words:

Dear Ladies and Gentlemen,

The workshop and Conference in Novi Sad 2011 was commissioned by various ombudsmen across Europe, from west to east, north to south, as part of the Spring 2011 Board meeting.

Their aim was to inform themselves not only about the individual institutions within the European Union, but also about other member states within the EOI especially the old historic Europe, with the theme:

"The Daily Work of the Ombudsman - Problems and Solutions - An Exchange of Experience".

With a variety of contributions which you can find in this Varia, the daily problems and ways of working of each Ombudsman institutions were highlighted and compared.

The speakers also took particular attention to the many everyday problems of the individual ombudsmen, that arise in the day-to-day running of their work with the population and between the authorities.

The individual speakers did not only present their situation, but also linked their contributions with various solutions or possible solutions which could be helpful to the work of ombudsmen, authorities and institutions. A special part was the harmonization of rules and legal Ombudsman-competences.

At the meeting, it was also recommended to make these contributions available to the public and, if possible, to hold an evaluation conference on the same topic after about five to six years, to compare the standards that resulted from the meeting and to elaborate standards and, if necessary, to carry out appropriate evaluations.

The speakers will be given the thanks for their dedication and commitment to the benefit of Human Rights and the further development of standards, as well as the request to share their knowledge during their current term of offices, so that information can be regularly provided to the ombudsmen and interested people.

In particular, it should be emphasized, that in dealing with the media and institutions a word choice of the acting persons should always be found and practiced, which would show towards all the necessary and natural respect and dignity, that one would expect from other people, as well.

This Varia is a collected publication of conference contributions by individual Ombudsmen.

The authors guarantees with their contributions for correctness and personal responsibility

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OMBUDSMAN

About the name of the Institution

1. Different names

The institution of Ombudsman is given different names in different countries. In addition to the original Swedish name, there are numerous variations of the name in many countries denoting Ombudsman: attorney, commissioner, protector. Very often, there is a connotation that indicates the party on behalf of which the Ombudsman is acting, hence, it is pointed out that he is a parliamentary commissioner or officer, and, on the other hand, his/her name denotes the party or cause under his/her protection: citizens, people, human rights...

In many countries, Swedish word “**Ombudsman**” is officially used in its original form to denote this institution. Besides Scandinavian countries, the name “Ombudsman” is used in the Anglo-Saxon countries, Holland, Belgium, (in the Flemish Language, while the term “*médiateur*” is used in Wallonia, in the French speaking area), as well as in some countries in Africa and Asia.

Chronologically speaking, the second name for Ombudsman was **Parliamentary Commissioner**. However, this name was not chosen by New Zealand’s authors (which was the first country out of Scandinavia which created the institution of Ombudsman). The real creator of this name was the first Danish Ombudsman Stephan Hurwitz. In fact, Hurwitz was asked to prepare the paper in English Language for the Seminar which was held in Kandy (Ceylon) from 4-15 May, 1959 and the title of his paper was „The Experience of Parliamentary Commissioners in Certain Scandinavian Countries”. He did not use the name “Ombudsman”, but “Parliamentary Commissioner” what was, according to him, English translation of the Swedish word “Ombudsman”. Two representatives from New Zealand at the Seminar were Henry. G. R. Mason, then Attorney-General, and Dr. John. L. Robson, then Deputy Secretary for Justice and Secretary for Justice in the new Government of New Zealand after elections in 1960. They liked not only the institution, but also the name. So, the first Ombudsman of New Zealand was created in September 1962. The official title of first Law on Ombudsman comprised both terms. Its title was: “Parliamentary Commissioner (Ombudsman) Act”. Although, in practice nobody in New Zealand talked about “Parliamentary Commissioner”, but about “Ombudsman” and it became the official name in New Zealand since the “Ombudsmen Act” 1975. After New Zealand, other English speaking countries which created the institution of Ombudsman accepted the name “Parliamentary Commissioner” and we can see the same tendency in these countries to replace the name “Parliamentary Commissioner” with “Ombudsman”.

The well-known French term “**Médiateur**” is about to disappear. France changed its Constitution from 1958 on July 23, 2008 and created the new institution named “**Défenseur des droits**” (Defender of Rights). The Law on Defender of Rights was adopted on March 29, 2011 and the first Defender was nominated on June 22, 2011. Defender took over the jurisdiction of the French Mediator, but also of the former Defender of the Rights of the Child, the National Commission on Ethics in the Security Services, and the High Authority Against Discrimination and for Equality (HALDE).¹

Italians have chosen the name **Difensore civico**, and in Spanish speaking world this institution is called **Defensor del Pueblo**.

In the states of new democracy, it is common to see that the role in protection of citizens is emphasized (Commissioner for **Human Rights**, Protector of Human Rights, and similar). There are also countries in which Ombudsman functions as a collective body through Commissions for Human Rights.

In Quebec and Haiti, the word used for Ombudsman is the same as the word used in Serbia: **Protector of Citizens** (Protecteur du Citoyen), and, in this connection, for the sake of originality, the Haitians added the word denoting female citizens (Protecteur du Citoyen et de la Citoyenne). This name “Protector of Citizens” is the official name of the Ombudsman in Serbia (at national and local level), but the regional Ombudsman of the Autonomous Province of Vojvodina is officially called “Provincial Ombudsman”.

2. Name “Ombudsman” and gender equality

One can today find female form of the Swedish name Ombudsman as “Ombudswoman”, “Ombudsfrau” in some texts, mostly written in English and in German Language. It is different in Italian, Spanish and French Language because they do not use the Swedish word Ombudsman. They use the words “difensore”, “defensor”, “médiateur” (“défenseur”), “protecteur” etc. Since these are not Swedish words, they can be changed in gender according to the rules of the respective language. The same could be said for German translation used in Germany: Bürgerbeauftragter or Volksanwalt, which is used in Austria. These words are not Swedish; they are German and have female form according to the rules of German Language. All our remarks concern only original Swedish word “Ombudsman”.

Female form of the original word “Ombudsman” does not exist in any country as the official name of this institution, although women perform this function in many countries. It seems to be more an attempt by people who want to protect the rights of women, provided that the word “Ombudsman” is a compound of the word “ombuds” and the word “man”. Even if it may be etymologically correct, it is today one unique word and we must always have in mind what that word means in Sweden, because it is, originally, the Swedish word.

The word “Ombudsman” in Swedish is a neuter term - neither male nor female. Furthermore, I personally talked with Swedish colleagues and they confirmed that Ombudsman means representative: man or woman. If the word “Ombudsman” would signify only male gender, the Swedes themselves would, without any doubt, create a female form of this word. But, that is not the case. Not because the Swedes do not respect gender equality, but because the word “Ombudsman” has neuter form. Nobody could imagine that Swedes have no respect for gender equality. Moreover, even one specialized Ombudsman against discrimination works in Sweden and that Ombudsman would presumably intervene against gender discrimination.

¹ It is to expect that this replacement of name in France will be followed in other French speaking countries which established the institution of Médiateur.

Actually this workplace is occupied by a lady, her name is Katri Linna, but her official title is “DiskrimineringsOmbudsman”! Should we translate her title with “Discrimination Ombudswoman”? Sweden has four Ombudsmen. Among them, two are men and two are ladies. How do they officially call the ladies performing the function of Ombudsman? Ombudswoman? No! Ombudsman! Ombudsman represents someone, in our case, Ombudsman represents the Parliament, and a man or a woman can do that.

We can also see unusual appearance of the Swedish name in the form of “Ombudsperson” in some recently produced texts in English. It has so far, not been used as the official term for this institution (except from Kosovo, where this institution carries exactly that title: “Ombudsperson”). It is also an inconvenient attempt of some authors to protect women’s rights. The same remarks I have given for the female form of Ombudsman could be applied for “ombudsperson”. Word “Ombudsman” is not a compound noun in Swedish Language consisting of “ombuds” and “man”, but one single word. Therefore English word “man” should not be replaced with “person”. According to the rules of Swedish language, the word “Ombudsman” cannot be divided in two words. From my point of view, it is also unnecessary and incorrect to do so. We always have to keep in mind that “Ombudsman” is Swedish word, neither English nor German. If one uses the word “Ombudsman” he/she should respect the rules of the Swedish Language. Of course, different languages have their own rules, but it must be known that the word “Ombudsman” in Sweden is a neuter form. There is not one serious English or American author who calls this institution but by the name of Ombudsman. It is even more interesting to learn that in English Language, the neologism “Ombudsperson” was probably created by some experts and bureaucrats from some international organizations whose native language is not English.² These remarks do not refer to the local names or translations of the word „Ombudsman“.

Unfortunately, as much as Swedes were passive in promotion of this institution in the past, so are they today. They are doing almost nothing to stop this wrong practice (with the exception of giving answers when they are asked). The only instance of the official use of the term “Ombudsperson” is seen in Kosovo where institutions were formed by transitional authorities and experts of certain international organizations and commissions, as the chief promoters of this wrong practice.

It would have been much better today if Danish word for this institution, "Ombudsmand" was widely used instead. This word gives no possibility for the trials of female form in other languages! The first Danish **Ombudsmand** Stephan Hurwitz spread the idea and Danish model all over the world, but unfortunately, not the Danish name for this institution.

² In the United States, we can see texts in which the word ombudsman is abbreviated as “ombuds” although such abbreviation does not mean anything in Swedish. Moreover, there is yet another rarely used phrase „ombuds officer“. In addition, America is an example of the use of the word ombudsman for all complaints bodies.

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Introduction

- Distinguished President of this Honourable University,
- Highly esteemed Rector of the Law faculty of the University of Novi Sad,
- Dear Colleagues and Friends,
- Dear hosting Professor Dragan MILKOV,

It is with great pleasure that I accepted the invitation to share with you one of the problems North-Western European ombudsmen have to deal with.

After working for more than 18 years in the Ombudsman field, I think I have the beginning of a clue of what this job is all about.

In order to catch your attention, and to directly show you where my speech will lead to, I gave this small presentation the subtitle: the innocence of Lynddie England.

Lynddie England might be a name you don't remember, but with the horrible pictures of the Abu Ghraib jail you probably remember the whole story.

The problem I want to discuss with you is about one of the weak spots in the High Trust Societies (as the North-Western European societies can be called).

2 simple observations

1: what is the core business of the Ombudsman?

The definition of the British and Irish Ombudsman Association is: “to investigate and resolve, determine or make recommendations with regards to complaints against organisations with public power”. I like to take the stance that “complaint handling” is nothing more than the instrument of the Ombudsman and it is not the intended result of his Labour.

In my opinion the intended result of the Ombudsman is to raise Trust: His role is to strengthen or consolidate the legitimacy of the executive within democracy or - in other words - to strengthen trust in the system of the Democratic society.

The fact that all societies are different brings us to this simple conclusion that all Ombudsmen have a different path to go; they have to find their unique role in order to maximise their impact in very different situations³. They use the same tool (complaint handling) in order to achieve the same goal (strengthening democracy and human rights by enhancing legitimacy).

Without TRUST a democratic society can't exist: if the citizens do not trust their government this will first lead non-cooperative behaviour and later on to overt resistance. In the end this will force the government to coercion (see Belarus). After some time this situation will lead to the collapse of the system. But there can be too much trust....

2: Three-dimensional Montesquieu

The problem with the two-dimensional blackboard they used in the times I was at school, is of course that even Montesquieu was depicted two-dimensional. It took me some time to realise that in fact the division of powers should not be depicted in circles but in cones. Of course we know that much of the work of the Ombudsman is found in the area as where the cones overlap. And since the Ombudsman is there for the public especially when they meet the powers of the state, the main playing field of the Ombudsman is of course street level situations where the abstract laws become the normal and daily truth citizens have to deal with.

Especially the Ombudsman in North West Europe will probably agree that in 99% of the cases we have to deal with, there is 100% consensus between the Ombudsman and the top of the cone about what rules should be applied and what verdict is appropriate in the given case.

There is much more difference of opinion between the Ombudsman and street level civil servants or the lower management layers; this is very good understandable, because they have to apply abstract rules in practical life and they have to deal with budgetary constraints and management goals set by bureaucrats or politicians who do not work in the same playing field.

In our practice in the Netherlands we not only try to convince the top of the cone of our point of view, but we invest huge amount of labour to convince the lowest levels of the bureaucratic staircase of the reasonability and applicability of our point of view.

Now back to TRUST

Francis Fukuyama (1995) defined trust as “the expectation that arises within a community of regular, honest and cooperative behaviour based on commonly shared norms, on the part of other members of the community”.

According to Fukuyama most countries in North West Europe can be seen as High Trust Societies i.e. societies where voluntary membership of organisations outside kinship (like schools, clubs and associations) is absolute normal (if not obligatory). A special feature of the High Trust Society is that there is a readiness to form new associations and make contracts with total strangers.

High Trust in the bureaucratic system leads to the presumption that, once the rules are given, protocols are written, personnel is instructed, the unseen lower level of civil servants will execute the rules exactly as was intended by higher bureaucrats and politicians.

³ April 2008 Ghent Belgium: International conference “the Impact of the ombudsman”

Social psychological research

Of course you are all familiar with the social psychological studies done by Milgram⁴ and Zimbardo⁵ in the 60s and 70s of last century. Due to the short time given, you will excuse me for not explaining in full the content of their experiments.

The studies of Milgram and Zimbardo fundamentally falsify the believe that well instructed persons, (also civil servants) will exactly do as was intended and never exceed, misuse or abuse their powers.

80s and 90s: *TRUST is better than control*

In the late 80s and beginning of the 90s the lessons of Milgram and Zimbardo were forgotten. There was a managerial wave that advocated that control mechanisms cost more than the organisation benefits from them: it detaches and robs the employees from their responsibilities, it makes them lazy and theoretically there is an endless need for control because “*Who controls the controllers?*”

Next to that there seemed to be no need for controllers in the public field because in a transparent and open society the public itself and the press is the controller of the state powers. Together with a need to cut budgets, the rise of self-regulation⁶ this new theory gave rise to the uncontested believe that all civil servants will follow their instructions and - when there is room for discretionary decision making - that they have a flawless moral compass⁷ to rely on, that they will not exceed, abuse or misuse powers and that they always will find the correct interpretation of “open instructions” like: be firm, but not too firm; be strict but not too strict; stay in control; make sure they understand you and obey you; don't let them see your fear; don't let yourself be lured into an argument; be creative when it comes to solving problems.

There are at least 4 systems that mix up and confuse this following of the rules:

1. One might easily expect confusion and unbalanced considerations when you mix these *open instructions* with managerial tasks like: quota of fines given, quota of house calls done, speediness of transactions.
2. This whole system becomes even more difficult because the civil servant works in a job-setting wherein his social position, his personal power, his ability to cope with the work given has constantly to be proven.
3. Add to this that the psychological heavy duty work (like controlling and correcting the public), is nowadays left to the lower steps of the bureaucratic staircase, which leads to a constant fight with more skilled and assertive public.

⁴ 1963 Yale University *Behavioral study of obedience* (Stanley Milgram) Milgrams' obedience experiment (electroshocks). Time and again 60% of the persons involved exceed knowingly the limits for administering electroshocks, because they trust the leader of the experiment.

⁵ 1971 Stanford Jail experiment Philp Zimbardo (read his 2009 book: *The Lucifer complex*): 24 psychologically tested healthy students divided in two group (guards and prisoners) volunteered to play “jail” for 14 days. Within 3 days the students and the leader of the experiment (Ph. Zimbardo) are so involved in doing what they think they have to do, that they do not see any more that they are humiliating others, or – more strange, because it was a voluntary experiment and everybody could walk away any moment – that the prisoners let themselves be humiliated. There appeared to be immediate role acceptance and adaptation and there was a moral sliding scale because there was no adequate monitoring system.

⁶ *Reaganomics*: cut taxes and reduce government regulation.

⁷ Of course the last Banking-crises proves that – when it comes to self-regulation - at the top level the moral compass is not flawless.

4. Finally, especially when there is no direct control and group dynamics like power, assertiveness, masculinity, laziness, blatant racism and other biases thrive, the possibility that a fatal downwards spiral will develop is proven time and again.

One can give and give lists of exceeding, misusing or abusing powers: Abu Ghraib Jail⁸; Magdalene Asylums⁹; Rodney King¹⁰, abused children, elderly and patients all over Europe; blatant harassment by civil servants. I can fill the rest of the day discussing with you the very itchy and awkward reactions an Ombudsman gets when he confronts high-ranking bureaucrats or politicians with any misuse, abuse or exceeding of powers. I don't have time for that so I suggest we make topic of it next time.

Conditions for Perversion of trust

1. closed institutions
2. esprit de corps / firm believe in “own goals”
3. power over others
4. absence of adequate monitoring
5. absence of a safe place for complaints for the victims

The role of the Ombudsman

1. Never accept that there are real closed institutions (there is simply no argument for this in a democratic society); if not the Ombudsman, than there must be another trustworthy third party that has entrance and can adequately monitor.

- a. As a basic rule, the Ombudsman or any other trustworthy third party with adequate investigative powers should have access to any place where the state exerts its power or fulfils his job.

2. Whenever there is power over outsiders the first rule becomes more compulsory.

3. The Ombudsman should always have the possibility to handle complaints of anyone who can rightfully claim that there is no other place for him to go i.e. that there is no adequate or safe complaint handling institution available. Whether a complaint handling institution (even if it is specially designed for special organisations) actually is adequate, should be left to the appraisal of the Ombudsman.

4. Because of his knowledge of street level realities, the Ombudsman might be the first high ranking public figure who gets evidence of abuse of powers. His first role is to inform the top of the cone about what is going on street level. As a whistleblower nobody will like this Ombudsman.

5. The Ombudsman should have power of **direct intervention** when of factual misuse of power occurs: this power to **direct intervention** creates the biggest TRUST.

- 6. Never ever blame the individual civil servant for misusing his powers: the management should have read Milgram and Zimbardo and should have installed adequate monitoring systems. For failing to do so they should be fully responsible for any misuse of powers.**

⁸ 2004 Iraq, including torture, rape, sodomy, and homicide by military police personnel of the US Army together with additional US governmental agencies

⁹ 1839 – 25 September 1996 Ireland, Initially the mission of the asylums was often to rehabilitate women back into society, but by the early twentieth century the homes had become increasingly punitive and prison like. In most of these asylums, the inmates were required to undertake hard physical labour, including laundry and needle work.

¹⁰ 1991 USA Los Angeles, as one of the most well-known examples of police harassment.

Evaluation of complaints on the basis of Ombudsman standards

Introduction

In 2006 the Federal Ombudsman set up a working group of staff with knowledge of the different federal government sectors in order to prepare an adjustment of the existing evaluation procedure. The working group conducted a comparative study of the evaluation systems used by the most important Belgian and some European national Ombudsman services, and compared them with the characteristic features of the complaints filed with the Federal Ombudsman. These activities led to a complete revamping of the evaluation system.

1. The evaluation procedure

1.1. Evaluation of the actions of the administrative authority

Up to 2007, the evaluation system of the Federal Ombudsman was geared primarily to evaluating the action of the administrative authority. This had two major disadvantages:

- First, the system was unclear for the petitioner, because he was not expressly told whether his complaint was justified;
- Second, the evaluation based on an individual complaint could be perceived as a general value judgment of the way the administrative authority or its officials functioned.

Furthermore, the evaluation caused confusion because the result of the Federal Ombudsman's intervention was processed also in the evaluation of the administrative authority's action.

1.2. Evaluation of the complaint

From 2007 on - after a test period and some consequent adjustments - the new evaluation procedure lays emphasis on the complaint itself, and is concurrently intended to be an effective and practical analysis instrument.

By placing the emphasis on the evaluation of the complaint, the Federal Ombudsman falls in line with the practices of most other Belgian institutional ombudsmen, thereby giving the citizen a better picture of the intervention of the institutional Ombudsman.

Henceforth, we investigate, on the basis of a number of Ombudsman standards, whether a complaint lodged with the Federal Ombudsman is justified or unjustified. The Ombudsman standards are the successors of the former *principles of good governance*, and have a broader scope than the interpretation of these principles by the Council of State, the highest administrative court in Belgium.

1.3. Results of the evaluation

The investigation of a complaint leads to one of the following four evaluations:

- the complaint is justified;
- the complaint is not justified;
- the complaints is partially justified;
- the Ombudsman pronounces no judgment.

The heading “no judgment” in turn comprises four possibilities :

- attempt at mediation;
- impossible to make a pronouncement;
- complainant has not answered the Ombudsman’s requests for information;
- the complaint has become irrelevant.

1.4. Criteria for the evaluation

Fifteen Ombudsman standards are used as criteria for evaluating the complaint:

- 1) proper application of the rules of law;
- 2) equality;
- 3) impartiality;
- 4) reasonableness and proportionality;
- 5) legal certainty;
- 6) legitimate confidence;
- 7) right to be heard;
- 8) reasonable time limit for handling a request;
- 9) conscientious handling;
- 10) effective coordination;
- 11) justification of administrative acts;
- 12) active information;
- 13) passive information;
- 14) courtesy;
- 15) appropriate access;

The evaluation procedure is also intended to improve the communication between the Federal Ombudsman, the federal administrative departments and the petitioners. We therefore devote particular attention to the motives for the chosen evaluation in the closing letters.

1.5. The result of the Ombudsman’s intervention

As soon as it is established that a complaint is justified, the Federal Ombudsman checks the result of his intervention:

a) if the complaint is justified or partially justified:

- redress;
- partial redress;
- redress refused;
- redress impossible.

b) when the Federal Ombudsman has made an attempt at mediation:

- successful;
- unsuccessful.

The clear distinction between the actual evaluation of the complaint and the result of the Federal Ombudsman's intervention promotes the insight into one's own effectiveness and in the cooperation of the administrative authority.

2. The Ombudsman standards

The mission of an institutional Ombudsman is to deal with cases of "poor governance." But what is actually meant by good or poor governance?

The first European Ombudsman, Jacob Söderman, was of opinion that there were essentially two ways of informing citizens and civil servants as to what good or poor governance comes down to in practice. The first is that the Ombudsman decides on a case-by-case basis through investigation and then publishes the results. The second consists of adopting and publishing a code of good governance.¹¹ This is already the case in a number of member states of the European Union.

The Federal Ombudsman has from the outset focused on drawing up a transparent list of rules and standards used to process the complaints received.

This list has been updated through the years in accordance with the practice of the Federal Ombudsman and in comparison with such Ombudsman services in other democratic countries.

These standards or criteria were originally called "principles for good governance." In reality, they comprise broader obligations than those developed by the Council of State (the highest administrative court in Belgium) and the Court of Cassation (the highest judicial court in Belgium) and do not lend themselves fully to legal supervision. They have consequently been rechristened "Ombudsman standards" after the revision of the complaint assessment system in 2006.

"Proper application of the rules of law" is naturally the first Ombudsman standard. The Federal Ombudsman currently uses 15 such Ombudsman standards in all. This list of standards and their definition will be adapted in time in accordance with developments in case law, and especially in the society in which the Ombudsman is active and which is reflected in the complaints that the Ombudsman investigates.

The publication of the 15 Ombudsman standards used by the Federal Ombudsman at this time and of their actual definition is a necessary step to a better knowledge and thus better understanding of the standards to which the Federal Ombudsman refers in its relations with the administrative authorities. This tool also helps make more objective the (annual and interim) reports that the Federal Ombudsman submits to Parliament and to initiate a discussion on the need for a code of good governance in our country.

¹¹ Jacob Söderman, "Les premières années du Médiateur européen", in *Le Médiateur européen. Origines, création, évolution*, Luxembourg, 2006, p. 94.

Proper application of the rules of law

The administrative authorities act in compliance with the general legal rules and regulations and with respect for fundamental human rights.

When a rule is not clear, the administrative authorities see to it that it is applied in the spirit of the law or in the meaning that is usually recognised by case law and legal doctrine.

The administrative authorities must moreover comply with their own administrative instructions and circulars, provided they do not run contrary to the legal and regulatory provisions.

Equality

The administrative authorities must treat all citizens equally without creating any illicit distinction between them.

Citizens who find themselves in the same circumstances must be treated in the same way. Citizens in different situations are accorded different treatment. The situation is assessed in regard to the measure considered.

A different treatment may be established between categories of persons provided it is based on an objective standard and is reasonably justified in view of the purposes and the effects of the measure criticised. The equality principle is violated when there is no reasonable proportional relation between the means used and the end pursued.

Impartiality

The administrative authorities may under no circumstances favour one party at the expense of the other. This impartiality presupposes an objective treatment of the case file and entails an absence of interest – even the appearance of interest – of the officiating civil servant.

When the administrative authorities process a case file, they may not be influenced by any form of personal, family or national interest, nor by any external pressure or by religious, political or philosophical convictions. No one from the administrative authorities may be involved in a decision in which he or one of his close relations has – or may be perceived as having – interests; a civil servant may not be involved in an appeal of a decision if he helped to take that decision.

The administrative authorities must avoid having their decision influenced by the fact that it might cause inconvenience for one of the parties.

Reasonableness and proportionality

The administrative authorities must make sure that their decision is appropriate, proportional and fair.

The principle of reasonableness is violated when the administrative authorities use their freedom of assessment in a manifestly unreasonable manner. The decision of the administrative authorities may be qualified as being manifestly unreasonable when it is not that which would have been taken by any other normally prudent and diligent civil servant under the same circumstances.

To comply with the principle of proportionality, a normally diligent civil servant makes sure to take the measure that seems concurrently most respectful of the citizen's interests and of the general interest objectives pursued by his department.

When a citizen finds himself in an unfair situation as a result of an administrative rule or practice, the administrative authorities must spare no effort to put things right. Equal treatment of all citizens under the same circumstances must be ensured in such a case too and abuse of power must be avoided.

Legal certainty

Legal certainty entails that citizens are placed in a position to know the positive law that is applicable to them. Citizens must be able to assess beforehand the legal consequences of their conduct and actions. They must be able to rely on certain constancy in regulations and administrative practices.

To preserve legal certainty, the administrative authorities must endeavour to familiarise the citizen, within a reasonable period, with the rules applicable to him.

The principle of legal certainty entails that the citizen may not be expected to take account of rules that are made known late if at all, or with decisions of an individual scope that were not notified to him.

Legal certainty entails that the retroactive application of legal and regulatory provisions is prohibited.

Legal certainty offers guarantees for equal and impartial treatment, thereby setting limits on the freedom of action of the administrative authorities and doing away with arbitrary decisions.

Legitimate confidence

The administrative authorities honour the legitimate confidence that their constant attitude, promises and previous decisions have aroused in citizens.

The expectation aroused must be legitimate. Barring particular exception, legitimate expectation cannot be deduced from the silence of the administrative authorities.

Right to be heard

Everyone has the right to have his observations asserted orally or in writing when he has to defend his interests, even if this right is not expressly stipulated in the legislation or if the legislation does not require the administrative authorities to hear the citizen before they take a decision. This right must be assertable at every stage of the decision-making procedure, including, insofar as reasonable, after the decision is taken.

This principle is intended to protect the interests of the citizen and the administrative authorities alike, as the former can thereby present his or her case, and the administrative authorities can be certain of taking a decision with full knowledge of the facts.

Reasonable time limit for handling a request

Every request must be processed by the administrative authorities within a reasonable period of time.

A reasonable period of time is assessed in terms of the concrete situation considered: it will depend on the urgent nature of the request, its complexity, as well as any negative consequences of a late response for the citizen. Consequently, under certain circumstances, the principle of reasonable time requires the administrative authorities to decide within a shorter period than the maximum period provided by law.

In the absence of a legally stipulated such period, the following basic principles can serve as a guideline. If the administrative authorities are not in a position to answer a question within three weeks, they must send an acknowledgement of receipt to the interested party informing him accordingly and proposing a period within which to provide such an answer. The administrative authorities must make efforts to take a decision within four months. For a particularly complex case, this period amounts to eight months.

Conscientious handling

Every administrative authority must proceed and decide conscientiously. This presupposes first and foremost that the administrative authorities obtain sufficient information to decide with knowledge of the facts. They must have all the legal and factual data needed for the decision.

In making their decision, the administrative authorities must rely on verifiable facts, taking into account the applicable provisions and all pertinent elements of the case, and discard those which are not.

The precautionary principle constitutes an integral part of the conscientious handling requirement.

Effective coordination

The different governmental services must cooperate efficiently with each other. Communication must moreover be smooth within the same governmental service for the sake of optimal information exchange. Citizens may not be asked to provide elements that are already at the disposal of – or easily obtainable otherwise by – the administrative authorities.

When different administrative authorities have to work together, efficient coordination entails harmonised procedures and a correct and rapid exchange of information. Reciprocal access to databases, in compliance with privacy protection rules, may be required. No department may hide behind the silence of another department to justify its failure to act and must make every effort to get the department that is responsible for the case to cooperate optimally.

Justification of administrative acts

Every administrative action must be based on acceptable and reasonable ground, de facto and de jure. Citizens must understand the reasons for which they receive a given decision, which means that the decision served to them must be reasoned. This requirement nonetheless extends beyond merely formal motivation to the quality of the motivation.

A well reasoned decision is an intelligible decision. Standard or excessively general turns of phrases are therefore insufficient. Concise motivation may suffice if it is clear and appropriate to the citizen's case.

Active information

The administrative authorities must act in a transparent manner and inform the public, unsolicited, in as clear, objective and extensive a manner as possible within the limits authorised by law.

Active information tallies with the mission of the administrative authorities which consists of making legal and regulatory provisions as well as administrative practices more accessible and intelligible to as wide a public as possible. This information must be correct, complete, unambiguous, efficient and up to date.

The administrative authorities must use clear and understandable language and their communication must be effective. They must make sure to use diversified and adequate channels of communication to reach the largest number of citizens concerned.

Passive information

Apart from the exceptions provided by law, information requested by citizens must be provided to them.

A request for information and the answer thereto may be made verbally or in writing. Insofar as authorised by law, the administrative authorities give priority to the means and channel of communication preferred by the citizen.

Courtesy

In his contacts with citizens, in addition to compliance with the elementary rules of politeness generally acceptable in our society, a civil servant must maintain a professional tone in his speech and attitudes, so as to preserve a harmonious, respectful and humane inter-personal relationship.

Where necessary, he provides instruction by explaining the reasons why he may not comply with the citizen's request and tries to direct him or her to the competent department. In any event, he tries to use understandable language, adapted to the situation and characterised by neutrality.

If the administrative authorities have made a mistake and have not acted in accordance with the citizen's legitimate expectations, they must restore the citizen's trust and confidence in the administrative authorities by apologising.

Appropriate access

The administrative authorities endeavour to maximise accessibility to their services, offices and information by making sure that their opening hours are convenient for the public concerned, that they can be reached by telephone and through various channels of communication.

They endeavour to receive citizens in an appropriate working environment, to limit waiting times and to improve the legibility of administrative decisions and documents and access to legal and regulatory information. The administrative authorities try to make such information accessible to as wide a public as possible, without claiming to be exhaustive. Particular attention must be paid to making offices accessible to persons with reduced mobility.

My experience as Ombudsman and Ombudsman functionary

Introduction

I'll try to illustrate both my experience as local Ombudsman of three towns nearby Florence along Arno River (Incisa in Val D'Arno, Figline Val D'Arno and Rignano Sull'Arno) and my experience as functionary of Ombudsman of Tuscany Region office since December 1994¹².

I'll start from my experience as functionary (which came first), but before doing so I have to give you a short glance of Italian Ombudsman situation.

Italian Situation

You all well known that in Italy there's not a National Ombudsman, and there's not an organic National Law about the Ombudsman and Ombudsmanship. Such a situation has some points of weakness and some points of strength.

I'll start to describe points of weakness of this situation:

➤ We have a scarce or missing awareness of international documents¹³ on the Role of the Ombudsman. A very few thinks that Ombudsman has a role in protecting human rights and that the institution should be granted independence and autonomy according to such documents¹⁴. Ombudsman themselves are sometimes sceptical about the idea of being non judicial human rights protection institution, and scholars very often have concept of Ombudsman institution thoroughly different from the parameters that international documents provide for the Ombudsman institution.

➤ There's no National Ombudsman in Italy. Besides there's no National organic Law that regulate Ombudsmanship and powers and grants that Ombudsman have. At Regional and Local level it's missing a system of Regional and Local Ombudsman¹⁵.

¹² This is the text version of shorter powerpoint presentation in Novi Sad Assembly. In writing it today I updated the contents.

¹³ Documents of United Nation (Resolutions of General Assembly and of Commission for Human Rights, which became Human Rights Council after General Assembly Resolution 60/251 of 15 March 2006) defines Ombudsman and National Human Rights Commission as National Institutions for the protection and promotion of Human Rights. Council of Europe Documents stress as well the role of the Ombudsman in Human Rights protection. Both Organization fix parameters about independence that should be granted to Ombudsman. Other Regional Organization such as OSCE underline the role of Ombudsman.

¹⁴ On the contrary Tuscany Region Law about Ombudsman 19/2009 at article 1 states that discipline of Ombudsman has to be ruled in conformity to principles that United Nations and Council of Europe fix for the Ombudsman.

¹⁵ For a summary into English and French of situation in Italy see Council of Europe, Congress of Regional and Local Authority Explanatory Memorandum of Resolution 327(2011) and Recommendation309/2011 21st session CG 21 (6), available at www.coe.int/congress paragraph 17.b , paragraph 29, paragraph 40 and paragraph 49. The description of situation, quite different from the original draft report, and now more near to Italian reality, is fruit of proposal of amendments that Italian Ombudsman made through EOI who's consulting ONG of Council of Europe and which was consulted by the Congress.

➤ Regional Ombudsman is not present in all Regions of Italy: Sicily hasn't a Regional Law, Friuli Venezia Giulia abolished law about Ombudsman on summer 2008¹⁶, Calabria and Puglia never appointed an Ombudsman, in Umbria Ombudsman dead on 1995 and has never been re-elected, at the moment Sardinia and Campania haven't an Ombudsman¹⁷.

➤ Towns Ombudsman has been abolished: starting from 2010 first finance law stated that Ombudsman had to be abolished, then that he should be abolished when Ombudsman mandate ended up¹⁸. According to the provision of this law local Ombudsman had to be substituted by province "territorial" Ombudsman. As a matter of fact Province Ombudsman are very few in Italy, only some of them have competence on towns within the province territory as well, and a very few towns after the law made an agreement to have the Province Ombudsman (when existing) competent for the towns. Besides new Government in 2011 finance provided that Provinces have to be represented by Council and by President, abolishing Assessors (province Ministers)¹⁹. There are so a lot of doubts about the future of Provinces in Italy and the last thing an institution that is uncertain about its future want to do is to appoint the Ombudsman.

So at local level, towns Ombudsman are disappearing when their mandate elapse such as "Highlander"²⁰ and the few province Ombudsman existing aren't competent towards towns²¹.

➤ There's the idea that the Judges only are those who protects rights²². There's a scarce awareness of possibility of non judicial protection offered by the Ombudsman and of power of soft law²³. There's the idea that if a tort has been done by an administration the judge is the one who have to protect the citizen, better if he's a criminal judge that puts in jail the criminal officer who prosecuted the citizen.

¹⁶ Regional Law number 9 of Special Region Friuli Venezia Giulia (Budgetary Disposition of the Region for year 2008) at Article 12 point 33 letter "a" (list of abolished law) abolished Regional Law 20/1981 which instituted the Ombudsman. The article was discussed by Regional Parliament at 2 a.m.

¹⁷ There is no Ombudsman in Trentino Alto Adige as well, but Region established that matters citizens have with Regional Administration can be treated by Ombudsman of Bozen Autonomous Province or by Ombudsman Trento Autonomous Province.

¹⁸ Article 2 point 186 of finance Law (law 191/2009) as modified by the so called thousand prorogation decree (Law 42/2010 that converted with modification Government Decree Law 2/2010)

¹⁹ Article 23 point 15

²⁰ According to law local ombudsman ends up his mandate when city council ends up his mandate. So last ombudsman will last till 2015 if city council has been voted on summer 2010. Since in Italy not all town councils have the same election date, this situation is different in any town, even if most town council mandate elapsed from 2010.

²¹ For instance in Tuscany Region there are ten Provinces. Only 5 have a province ombudsman (Florence has an agreement with Regional Ombudsman) and only three have agreement with towns according to whom Province Ombudsman is competent towards the towns.

²² Especially since "clean hand campaign" of 1992, for cases of political corruption, the idea of people is that whenever Public Administration violate your rights the only one that can protect the citizen is the criminal judge. There's also the idea that if administration violates the thirty days term that Italian Administrative Procedure Act (Law 241/1990) provides as a general term for administrative proceedings duration (if differently not specify) there's automatically criminal offense of omission of office act (Article 328 Italian Criminal Code). The equivoque is to think there's an administrative proceeding going on even when the citizen wrote a letter to claim something and the idea that this kind of crime is existing even if there's no will of civil servant to omit his answer, just he don't manage to answer due to all things he has to do or he thinks the citizen needn't to be given a formal answer according to the law. It's very difficult to explain citizens that if Public administration did something which is against the rule of law, this doesn't automatically means that this is due some criminal behaviour or that has been done to damage the claimant and to make a favour to someone else.

²³ The idea is that if ombudsman cannot send anyone in jail or cannot make void administrative acts, ombudsman action is pointless.

- There's a strong movement of Consumer protection Association claiming to be the only ones who can protect consumers (not for free) in the field of Public Services.
- There's a strong inclination to settle up "sector" systems of protection and to appoint special Ombudsman (minors, inmates, environment). Public opinion and politician issues proposal of special Ombudsman after press or media denounce problems or scandals in determinate sector (i.e. suicides or overcrowding in prisons, violence against women, abuse of minors and so on).
- Ombudsman has been considered one of the "costs" of Italian Political system, and when finance law 2010 has been presented abolishing local Ombudsman has been considered a way to cut unnecessary expenses, as long as abolishing Regional Ombudsman in Friuli Venezia Giulia.

This situation has even some points of strength:

- Generally Ombudsman manage to solve problems of citizens. Administration is often ready to cooperate with the Ombudsman and look the matters from the citizens point of view if Ombudsman invite them to reconsider the matter. Besides Italian laws are so complicated that if a determinate matter can be solved in some way because Ombudsman formally wrote that that interpretation of the law was the right one, the functionary responsible can be confident to say he did so because Ombudsman told him that it was right.
- Local and Regional Ombudsman nearer to the citizens and to the institutions. Especially at local level if the citizen has a problem he generally go to the town administration (even if the problem is with the State administration) and if there's an Ombudsman in town the problem can be solved directly by him or by the competent Ombudsman.
- Regional Ombudsman, were appointed got the task of protecting citizens rights even towards National Public Administration within the Region or Special Province territory²⁴, so they could another piece of problem of citizens.
- A lot of local and Regional Ombudsman made networking among them at regional and national level. This means sometimes a lot of confusion, but also confrontation as well and good ideas springing up from discussion
- Institutionalization of Organization of Regional and Special Provinces of Bozen and Trento Ombudsman, first as a Coordination on 1998²⁵ and then with formal recognition by Congress of Italian Regions on 2002²⁶. The importance and the role of Coordinating committee among Ombudsman at national level has been recognized by Congress of Regional and Local Authorities with Recommendation 309/2011²⁷.

²⁴ According article 16 of National Law 127/1997 Regional Ombudsman and Special Province Ombudsman – where appointed – have powers to investigate toward "peripheral State offices" with exception of those operating in sectors of Justice, Military Administration, Public Security.

²⁵ The act is available in the appendix of Report of Tuscany Region Ombudsman 1997 (also on line www.consiglio.regione.toscana.it/difensore page 226)

²⁶ Resolution of Congress of Italian Regions that met in Italian House of Representatives on 5th June 2002 in which letter g the Congress "recognizes the role of National Coordination o Regional and Autonomous Provinces Ombudsman as propulsive interlocutor in processes of development and strengthening of Ombudsmanship" for the text see Tuscany Region Ombudsman Report 2001 (Florence May 2002) page 176.

²⁷ Recommendation 309/2011 at point 6 the Congress of Regional and local Authorities inter alia "recognises the positive role that national coordinating committees can play in developing Ombudsman services" 21st session CG 21 (6), available at www.coe.int/congress. This recognition is fruit of amendments proposed through EOI to original draft recommendation.

- Attempt to extend this forum to local Ombudsman, which ended up due to cutting of local Ombudsman²⁸.
- Italy is maybe the only country where Ombudsmanship started from the ground (from local and regional level and not at the opposite)
- A lot of towns settled up associated service of Ombudsman²⁹

As we can see Italian experience is more complicated than we can say at glance noticing the weakness of a system without national Ombudsman and without a complete system of regional and local Ombudsman, but we have some effectiveness in Ombudsmanship, even if this system is very weak and without roots in Constitution or in a national organic law and can easily be overruled.

My experience in Tuscany Region Ombudsman

Within this complicated landscape Tuscany Region has been the first Region that provided Ombudsman within Constitution on 1970³⁰ (institution of ordinary Region) and from 1972 Institutional law has been adopted. On 1975 the first Ombudsman has been appointed. His powers were very limited till 1994 when a new law (law 4/94) has been adopted and he got more powers.

The third Ombudsman of Tuscany Region Prof. Massimo Carli was appointed on 1994 and my story at Ombudsman office starts from December 1994.

A first phase of my work started with a new Ombudsman who tried to set up a new office with new powers in such way starting investigating cases and not just asking for an answer to public administration. The structure of office changed. From few people with manager powers and the Ombudsman doing all the work, the office become an office with more people and several of them studying cases for the Ombudsman and investigating under his guide.

²⁸ On year 2010 the Coordinator of Regional Ombudsman in charge Avv. Samuele Animalì, proposed to the regional Ombudsman to call for “general states of Italian Ombudsmanship”: inside the coordination in fact from 2008 local Ombudsman from each Region had started to be invited. Anyhow in some Regions such as Tuscany, invited ombudsman have been appointed by the Regional Conference of Local Ombudsman who met by themselves or by convocation of Regional Ombudsman (as happened in Tuscany). In some other region local ombudsman invited had been decided by the Regional ombudsman or by chance. So it was proposed to elect for each region a provincial ombudsman and a local ombudsman who should represent the regional local and province ombudsman. With this attempt the coordination should become a place were local ombudsman were officially represented as well. After their progressive abolition the statute of coordination didn’t change and the few local ombudsman elected still on charge attend to the work of coordination as guest.

²⁹ Especially in Tuscany, due to Regional law 40/2001 gave regional contributions to towns associating among each others offices (local police, management of human resources, library, social services) including among services who could have contributions if organized in joint way ombudsman office.

³⁰ Article 61 of Constitution (Statute) of Tuscany Region (voted by Parliament of Tuscany Region on 26th November 1970, and approved by National Parliament with law 343/1971 – as before of Constitutional reform of 2001 ordinary Region Constitution was approved by national law) said only “1. Ombudsman Office is instituted by Regional law and office has to take care, on citizens request, the correct carrying on of administrative procedures about them. 2 The way Ombudsman has to be appointed and his tasks are regulated by law” as it can be noticed it was quite a vague definition according “Paris Principles” anyhow was the first article in Italy that speaks about Ombudsman.

On 1996 Ombudsman changed Dr. Romano Fantappiè arrived and office started to be known outside and get more frequent institutional contacts also at international level. Around 1999 the new manager and the Ombudsman organized the office giving to each functionary a sector. I could choose health services sector and, since on a more general point of view I had developed also knowledge about international guidelines about Ombudsman and international associations and organization of Ombudsman I started to follow the Ombudsman in his institutional activity both in Italy and abroad, especially with action within EOI. My work in this sector went on with Dr. Giorgio Morales as well and with present Ombudsman Dr.ssa Lucia Franchini.

I'll try to figure shortly my experience in protection of health first then my experience in institutional activity of the Ombudsman.

Protection of health in Tuscany Region Office

Regional Ombudsman have competence generally only towards Regional Offices and their agencies. According to the national law, Agencies of National Health Services became Regional Public enterprises only in December 1994³¹. In Tuscany we have twelve local health agencies³² and four University hospital agencies³³: university hospital agencies rules hospital only, local health agencies have both hospitals and ambulatories services on the territory.

Before 1994 Ombudsman had no power towards health agencies in Italy, since they depended from towns, but in Tuscany Ombudsman has been given a power to investigate matters relating health problems in 1983 with a regional law³⁴ that gave Ombudsman limited powers only³⁵, but that was unique



³¹ Law was Legislative Delegate Decree 502 Agencies, before depending from towns and name from Local Health Unit (Unità Sanita Locale ASL) or University Hospital Agency (University). Nowadays after Constitutional Ref from the Region. According to article 117.1 the criteria concerning essential levels that all Regions with all Region in which levels of health services fixed (Essential Assistance Levels – Livelli Essenziali di Assistenza – LEA) Ministers 29th November 2001. In that act there are:

1. Services that all Regions have to grant to residents
2. Services that Regions can grant if they are paying with Regional funds
3. Services that Regions cannot grant with public funding in any case (for instance aesthetic surgery unless aesthetic problems aren't due to an injury or an illness)

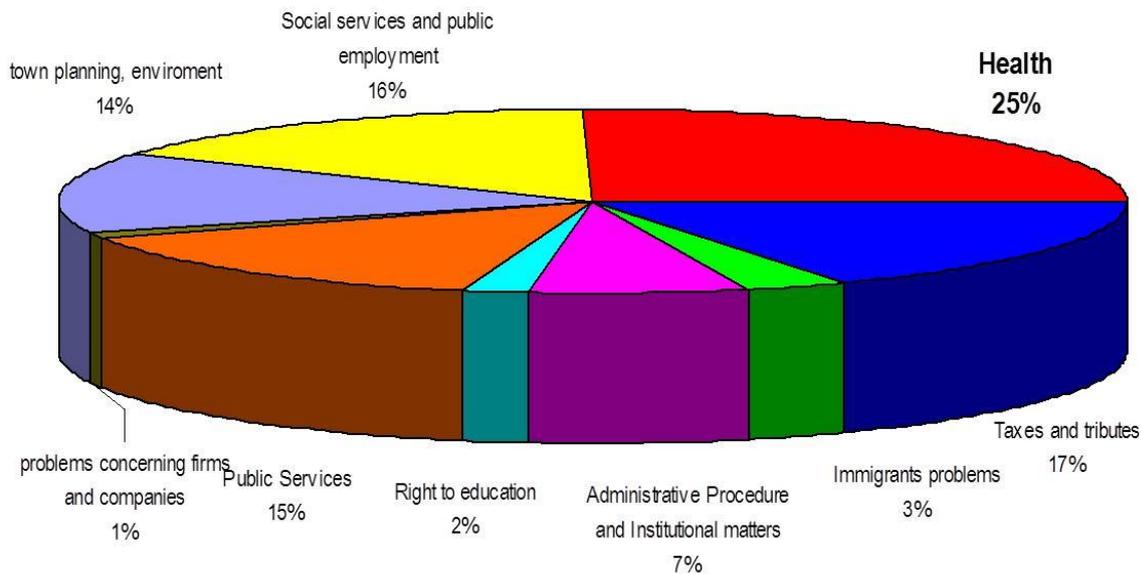
³² They correspond to the 10 provinces of Tuscany and they are numbered from 1 to 12, except the Versilia local health Agency (cost zone of Viareggio town) and Empoli local health agency (Empoli is a particularly populated zone in North West Florence Province with a lot of industries).

³³ They are in towns where University are: Florence (where we have two one specialized in children care), Pisa and Siena: some sections of the hospital depend from University and are places of research and teaching as well.

³⁴ Regional Law 36/1983

³⁵ Even if never applied in his complicated system, in theory citizen had to write a former letter to General manager of Health Agency involved, if he didn't get an answer he could sue the Ombudsman.

2010 Ombudsman activity: percentage of files opened (total 1758)



in providing that Ombudsman could use the help of sanitary personnel depending from public services when he investigated a claim relating health services. Due to this provision Ombudsman made agreement with forensic physician of Public Services and was able to investigate claims of malpractice as well³⁶. In year 2010 activity in this sector was higher than other sectors as we can see from.

Since the Health Agencies have their own internal claim services Ombudsman investigates claims he got through the work of these offices. On the other hand if internal claim office of a Public Agencies receive directly a claim relating a malpractice case, applicant is informed that if she/he is not satisfied with the answer he got he can sue the Ombudsman for a second step investigation³⁷, and the claim is sent to Ombudsman as well (that intervene only if the applicant claims not to be satisfied with the answer).

My activity of Regional Ombudsman of Tuscany region in health protection relate three main sectors:

1. Malpractice cases: the Ombudsman asks the point of view of the service involved in the malpractice case through the claim office of the sanitary health agency involved, gets a copy of all documents relating to the case and asks for the point of view of independent forensic physician³⁸. The applicant gets a not binding forensic evaluation of the claim and can decide in such way whether ask or not for damages. Of course through this investigation Ombudsman often rises general objections about organization of health services and the way sanitary personnel work (for instance people are asked informed consent, how clinical data are recorded, how assistance for a determinate illness has been organised, why general guidelines haven't been respected). Before 2009 Tuscany Health Agencies were organized with a private insurance system to deal damage claims, so task of the Ombudsman ended up.

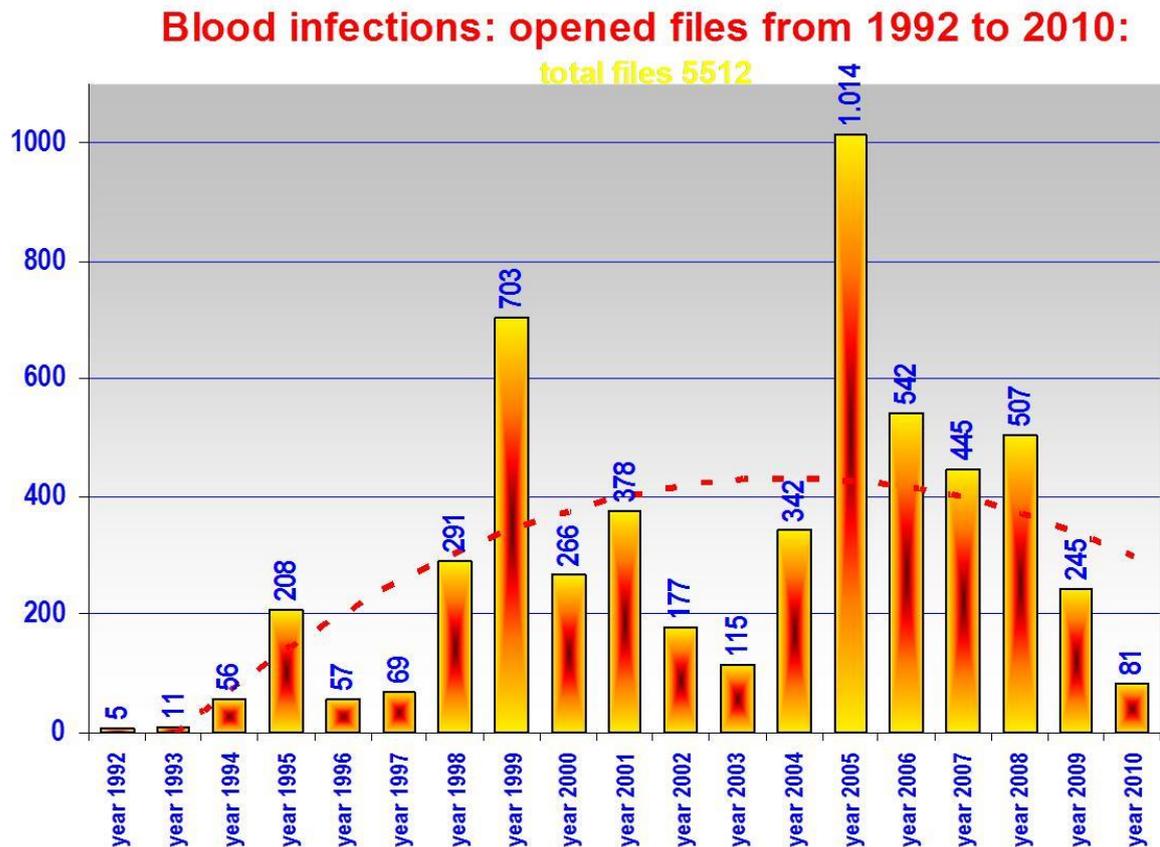
³⁶ To my knowledge only Sud Tyrol Ombudsman in Italy investigate claims of malpractice.

³⁷ Such procedure is described by law 19/2009 articles from 15 to 18. There should be a regulation as well that hasn't been issued but the law states that the previous act of Regional Government (Regional Government of Tuscany Deliberation number 462/2004) is applied till the new regulation will be issued.

³⁸ Ombudsman has an agreement with University Of Florence Forensic Institute (which doesn't investigate malpractice claims concerning University Agency Hospital of Florence and Children Florence University Hospital) and with Arezzo Forensic Service.

From the end of 2009 Tuscany Region decided to deal directly with claim damages they got and progressively solved their insurance contract³⁹. At the end of year 2011 Tuscany Region Ombudsman got the charge to “help agreement among parties” in non judicial settlement of malpractice services among citizen and health agency. At the moment we are studing a way to give practical application to this disposition⁴⁰.

2. Assistance to citizens who got HIV, HCV or HBV through blood transfusion or were damaged byh vaccines⁴¹. In 1992⁴² there’s been a National Law that gave indenisation to



persons that got hepatics or HIV from transfusions or products made from human blood and that granted indenisation to person who got damages from vaccination compulsory by law as well. Also sanitary personnel who got similar illness due to their working activity has right to the same indenisation⁴³. This law has been very badly publicized⁴⁴ and had a series of

³⁹ In the meantime, at National level, alternative dispute resolution through mediation has been adopted by National law (Legislative Decree 28/2010). Compulsive attempt of Mediation before getting the case in front of the court became compulsive in a series of matters, including matters concerning clinical malpractice.

⁴⁰ First step has been to inform citizens about this possibility and to offer assistance to those citizens whose malpractice claims were declared funded by the Ombudsman in asking damages to the health agency involved, informing the agency that the citizen had asked ombudsman assistance. Since last malpractice cases have been closed on march 2011 we still have no answer from health agencies involved.

⁴¹ HIV was discovered only in 1981, C hepatics (HCV) even later 1989. A lot of people in Italy and all over the world got transfusion with blood of infected persons. Besides after discovery time passed before exams to make a correct HCV diagnosis were adopted so the phenomena went on at least till the second half of the 90's. Nowadays risks are less.

⁴² Law is Law 210/1992 which has been changed several times and was object of several conflict and of several pronounciation of unconstitutionality of its disposition by Constitutional Court.

⁴³ Initially sanitary personnel had right to indenisation only when she he got HIV and not if the illness was an hepatis. On November 2002 Constitutional Court declared this disposition void with sentence 476/2002

problems in his application⁴⁵. The first problem for people when the law was issued was to get copy of their clinical documentation when they have been in hospitals that in the meantime closed. Tuscany Region office started his work in this sector while assisting persons in looking for their clinical records started to follow those who asked for assistance in writing the application and also to write administrative recourse to Health Minister against reject of application⁴⁶. Tuscany Region office in this sector become the only office in Italy that take care of helping people from all Italy in this sector⁴⁷, especially people from those Region where Ombudsman has not been appointed⁴⁸.

As the graphic shows the number of cases is starting to lower due to lowering of infections, anyhow National Parliament never solved the problem that Ombudsman signalled⁴⁹, sometimes with agreement of Coordination of Regional Ombudsman as well and with agreement of Tuscany regional Parliament.

3. Other matters of sanitary organization: according to law⁵⁰, Ombudsman or an Ombudsman delegate is member of Regional Bioethics Commission, I represented

⁴⁴ In theory a copy of the law should be hanging in each health agency office. In practice sometimes not even the service that take care of infective diseases inform patient of their right to ask indenisation if they got HIV or HCV from a transfusion and a very few family doctors are informed of such law and are able to inform their patients.

⁴⁵ The law provides only three years of time to claim indenisation from the moment the person finds out her positivity to illness. Applicant has to prove just that he got a transfusion and on the other hand it's investigated if is possible to prove that the person who donate the blood for that transfusion has the illness or not. Since it relates transfusion done in the 60's or 70's this kind of proof is very difficult. On the other hand the applicant has to attend a visit from a Military Forensic Commission and indenisation is calculated through the war pension system, which is studied to evaluate damages to military injured in war or in action, and it is very difficult to apply to evaluate hepatic damages and relationship life damages of HCV hepatics. Therefore asking for indenisation is not in contrast with civil action for damages. So we have people who doesn't manage to get indenisation (which is about 300€ per month) and on the other hand people who got indenisation and damages (which sometimes are of millions).

⁴⁶ Nowadays Tuscany Military Commission of Florence and near Commission of La Spezia in Liguria Region are quite good in evaluating application. In the past (and still somewhere in Italy) we have had absurd decisions. Since '90s if a person got a transfusion there is a very accurate recording of the episode with documents concerning the blood units and so on and it is specifically recorded in clinical diary "transfusion". In the 70' documentation of transfusion was not so accurate and in the first period we assisted to a very formal analysis of clinical documentation by some Military Commission, even when it was clear that the patient got a transfusion. Nowadays problems concerns essentially time of application (law provides a term of three year from the finding out the positivity to illness, several people still don't know that the law exist or find out too late: some judge made void negative decisions of Commissions and of Ministry) and evaluation of illness in relationship with a schedule studied for war physical damages.

⁴⁷ I took charge of this specific sector from 2009 only. Before we had a functionary who remained as consultant of association helping as to threat this cases since there were over a hundred cases per year. He was the person who studied this subject and give Tuscany Region office resources to deal claims in this specific sector and in general started the work of Tuscany Region office in heath protection: his name is Francesco Caponi and since he had the merit to settle up work of the office in this sector I think it was right to quote him here.

⁴⁸ Sicily and Calabria and Puglia which have never had an ombudsman were Region were a lot of person were affected by thalassaemia and other illness that required frequent transfusion.

⁴⁹ On the contrary with finance assessment of July 2010 it has been stated that people who got indenisation hasn't right to ask revaluation of their indenisation according to inflation revaluation established by Italian National Statistic Service (Istituto Italiano di Statistica ISTAT) Government Law Decree 78/2010 (converted in Law 122/210) at article 13 and 14 stated that law 210/'92 had to be interpreted as denying such right to petitioner, unless such right haven't been already recognized them by a Judge and non appeal was possible any more (in fact several person were applying the judge to ask revaluation of their indenisation). On November 2011 this provision has been declared against constitution and of course one of the problems of this law nowadays is how this provision has to be applied. Since before 2010 law in fact jurisprudence about revaluation was uncertain, is not clear if people has right to revaluation after Constitutional Court pronounciation only or even for the period before. Waiting for a Government decision Tuscany Region started to pay revaluation from January 2012, in other region nothing is paid.

⁵⁰ Regional Law 40/2005 "Discipline of Regional Health Service" at article 97 point 1 letter "e".

Ombudsman within the Commission⁵¹ and the Commission has been very sensible to threat general problems that emerged from Ombudsman cases⁵². Besides it happened very often that since Ombudsman during investigation activity involved also Regional Government into general aspects of the claim, Regional Government Department invited Ombudsman to attend Committees or working group ad hoc.

We have been member (at the moment all Committees are renewing) of Regional Diabetics Committees, of Commission about nephrology organization, of a Committee dealing with electroconvulsive therapy⁵³ and so on. I represented the Ombudsman nearly in all this Commissions and Groups. It has been a quite good experience since it gave me the possibility to know directly from doctors, sanitary personnel and association of people affected by some illness, specific problems of their discipline, give them the point of view of the Ombudsman and knowing better guidelines about a certain illness that often are ignored by sanitary personnel who operates in different sectors⁵⁴.

My institutional and international activity

In my activity in this sector I had the luck to see Coordination of Italian Ombudsman born, front difficulties of his activity, first as place of informal meeting of Ombudsman, and then getting own by laws, getting official recognition from Italian Congress of Region and then Congress of European Local and Regional authorities, through the attempt to became a place where local and province Ombudsman was represented too. It's still very hard settle up a common activity within the Coordination, and it's a continuous up and down of hopes and delusions: two times a draft project law about national Ombudsman and Ombudsmanship discipline in Italy have been developed by the Coordination and became a proposal of law within the Parliament due to its presentation by two Parliament members from majority and opposition, and it's still a draft law. And of course that project was fruit of several discussions, disagreement and confrontation among regional Ombudsman, so it was hard to see that when at last it became a draft law it hasn't been followed.

Another frustrating example was the joint commission Ombudsman Conference – Congress of Regions to make proposal (after Constitutional reform of 2001) of a common disposition of Constitution of each Regions about the Ombudsman, that has been studied but not adopted by any Region⁵⁵.

With all this problems Coordination of Italian Ombudsman remains an important place where Regional Ombudsman could confront and discuss among each other, and I hope they could soon develop more effective strategies.

⁵¹ Mandate of the Commission elapsed after 2010 election and members who have to be chosen by Parliament of Tuscany Region hasn't been appointed yet, so we haven't a Commission.

⁵² For instance access to complementary medicine such as Homeopathy (in Tuscany is granted that you can be visited by a specialist in homeopathy, but homeopathic medicine have to be paid in their whole since they can't be dispensed by National Health Service) and way of keeping clinical documentation.

⁵³ It is not a standard in Italy, but University Hospital of Pisa has a psychiatric professor who trust in this method and several patient from Italy specifically ask for going in that hospital to be cured in this way psychiatric illness.

⁵⁴ So for instance in a surgery division physicians and nursery are not aware of guidelines about diabetic patients and so on.

⁵⁵ The group was founded with deliberation of Congress of Regions 5th June 2002 "For A Strong and Generalized Ombudsmanship in favour of citizens" (cfr. www.parlamenti.regionali.it "difensore civico" and Report of Tuscany Region Ombudsman 2001, Florence May 2002, page 175 for the text) and produced a proposal of statutory disposition about the Ombudsman (see Report of Tuscany Ombudsman 2002, may 2003, page 154 www.consiglio.regione.toscana.it for the story and text on page 164), that has been adopted by

Another interesting experience I had is following Ombudsman of Tuscany Region in his EOI activity, I started attend EOI conferences as member of Tuscany Region Staff since Innsbruck 1999; I was in Cracow on 2002⁵⁶ when Romano Fantappi  (at the moment Tuscany Region Ombudsman was elected member of the Board) and followed the Ombudsman to all conference and Board from that moment I can forget Sarajevo Board in 2007 discovering how seriously word of European Ombudsman of the board were taken by press and TV in a so called “new democracy”, compared to nearly empty press conference in Tuscany and Italy were no reports would have written a word about Ombudsman independence, not interesting for the readers; in 2006 in Innsbruck Dr. Giorgio Morales who succeeded Fantappi  became member of the Board. As local Ombudsman I became EOI Institutional member on 2003, and now I remain institutional member. Thank to my experience with EOI I was elected in the Board in Mainz Assembly on 2007 and confirmed in Florence Conference on 2009 and Novi Sad Conference of 2011. I represented Tuscany Region Office at several meeting and I contributed to Charter of effective Ombudsman, whose draft had been produced by Professor Zoll, Ombudsman of Poland at that period⁵⁷. I helped Tuscany Regional Ombudsman in organizing General Assembly of 2009 in Florence and I had possibility to speak and work directly with Ombudsman of EOI countries and with persons studying Ombudsman all over Europe. Even the possibility to cooperate directly with Congress of Regional and Local authorities of Council of Europe that accepted our proposals of integration to draft resolution and recommendation about Ombudsman has been very interesting and successful. Luckily Dr.ssa Lucia Franchini, our actual Ombudsman was happy to go on in Tuscany Region action within the EOI and she’s been elected Board member as well.

Besides in Italy on 2009 former Coordinator of Italian Ombudsman Samuele Animali settled up together with Padua University Human Right Center and gave life to Italian Ombudsman Institute. I made my post graduate specialization in Padua University and new Ombudsman of Tuscany Region was happy to start to cooperate with Institute as well so made a protocol agreement with the Institute and I’m now technical coordinator of Institute. It is very difficult to carry on activity within the Institute since it’s not easy to find an agreement among Italian Coordination of Regional Ombudsman and find funding, anyhow I hope, even after Memorandum of Understanding that will be signed among EOI and the Centre and Institute and after all discussions that went on during 2011 activity could start on.

My experience as local Ombudsman

I have been local Ombudsman of Towns of Figline Val D’Arno, Incisa In Val D’Arno e Rignano Sull’Arno (three small towns south west Florence along the Arno river, about thirty

⁵⁶ In Cracow each member of EOI was given a black plastic bag to carry documents which is still the bag in which I take documents inside if I have to attend some conference or work meeting in Italy or abroad. Inside the back zip pocket I still keep the three voting fiches of 2006 Innsbruck General Assembly (I was voting as institutional member on account of myself and Regional ombudsman and as individual member) in memory of a particular delicate moment in EOI life, from which we restarted.

⁵⁷ First draft didn’t considered U.N. and Council of Europe Resolution about Ombudsman and had designed a hierarchical relationship among National Ombudsman and local or regional Ombudsman.

thousand inhabitants whit a population growing along the years) from October 2003 to May 2011, with a prorogation of my term till November 2011 for the town of Incisa and Rignano⁵⁸.

First thing I remember from my mandate is the thrill of my first signature as “the Ombudsman”. Even if as functionary I had a wide independence and letter I proposed to the Ombudsman were often read quickly as they have been written and I used to sign them as well as responsible of the procedure, to sign as Ombudsman was a quite different experience of responsibility.

The positive side of this experience was that the three towns made a Convention among them for taking on the Ombudsman office in which was granted to Ombudsman independence and autonomy with referral to United Nations resolutions and especially resolution of Council of Europe Congress of Regional and Local Authorities specifically concerning local Ombudsman, and was granted as well that the town will take charge of institutional membership into EOI of Ombudsman⁵⁹.

On the other side I’ve never felt “the Ombudsman” towards the person of towns administration, that – as public functionary – felt also somehow colleagues of mine so I had a quite colloquial relationship whit the major part of them, of course without losing my role of asking them reasons if something was wrong according to the law or according to good administration principles.

For what about people, even if I follow a very sensible sector in Tuscany Region, were right of people are affected like health protection and it’s frequent people want to meet me directly not just write the Ombudsman, as town Ombudsman I experienced a more direct and immediate relationship with people asking for Ombudsman assistance and I found out how the town administration represent a point of referral for people who’s not away of their rights. If a person with poor education and awareness of her right have a problem of any kind with any administration or public service (even if it’s a national one), they just knock the town administration door. If they found an Ombudsman there through local Ombudsman they can take their problem to the competent Ombudsman without a network of Ombudsman it will be very difficult for them to reach competent Ombudsman on their on, notwithstanding free toll numbers, internet and so on⁶⁰.

The number of files formalized is shown by the graphic. In year 2010 it lowered dramatically since several citizens thought the Ombudsman was not existing any more, since the news of abolition of the Ombudsman was very confused till march 2010.

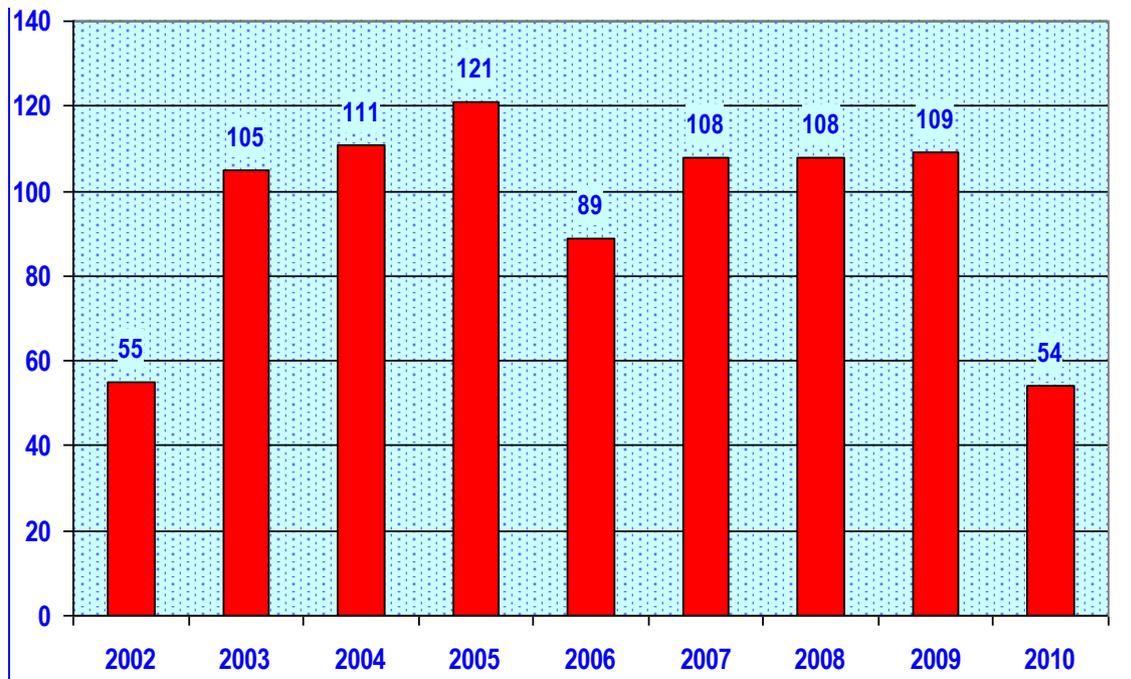
⁵⁸ According to the Convention among three towns, my mandate was elapsing with administrative elections in the town of Figline, but could be prorogued for six months. Even if prorogue was functional to appointment of my substitute and this wasn’t possible anymore with the new discipline of local ombudsman the towns of Incisa and Rignano decided to prorogue my mandate for six months all the same.

⁵⁹ I had experienced in my previous EOI frequentation that several Italian local Ombudsman, due to a misunderstanding of the role of the Ombudsman in Italy, were forced to apply EOI as individual members only, paying by themselves fee, since some towns and administrators didn’t think that association to EOI or other kind of association should be a prerogative of the ombudsman.

⁶⁰ In Tuscany ombudsmanship had been in fact organized through the network of local ombudsman, and Regional Law 19/2009 about Ombudsman dedicated a whole section to this network and to the Permanent Conference of Local Ombudsman (Cape IV of law article 19 to 21) . After National reform of 2010 in Tuscany only 30 local Ombudsman remains of over 60 present before and several of them will elapse in the next two years. The problem is that claims that those Ombudsman got for Regional didn’t reach Regional Ombudsman any more as soon as local Ombudsman disappeared

Most part of my job was collecting claims from citizens to send them to Regional Ombudsman⁶¹, generally preventing the claim of the citizen to the Office interested for knowledge, so that when Regional Ombudsman got the claim national or regional office involved has already solved the problem if it was easy to solve, another part of cases I got involved not the town administration itself, but Agencies that offered Public Services at local level to citizens.

For what about relationship with towns administration being present in the towns to receive



citizens allowed me often to treat and solve directly problems.

The interesting and more complicated part of my job anyhow consisted in treating claims relating to Public Services Agencies. In past years it has been decided in Italy that services as water, cleaning of streets and waste recovery and so on shouldn't be any more be ruled and dispensed by the town directly, but that several towns have to join among each other and offer this service to citizens through a Public Service Agency.

Water service especially constituted a problem. In fact in small towns leaks and water problems were solved quickly by people working for the town, and with centralized system in a public firm, sometimes took several hours of days, before some people from the firm arrives on the territory⁶², find out which was wrong⁶³ and repair it. In the same way one thing was walk inside the town office and ask reasons of a water bill that seemed to high or wrong another hand was to catch the line of a virtually free toll number and speak all the time with a different operator and explain him your story several times.

Towards this kind of problems Majors and Administrator of small towns protested, but haven't the same power they had towards managers and people working before in their own towns. And managers of this firms have been elected by towns themselves, so it was quite difficult criticize them hard from those who elected them. On the other hand problems very often had their origin in Service Regulations voted by all the town council, very often

⁶¹ Also in this role of protection towards National State offices and Public services.

⁶² And sometimes they had no knowledge of the territory.

⁶³ And sometimes had no idea of how the aqueduct of that town was done.

discussing just political matters of the new organization of the service⁶⁴, without checking the regulation. Several administrators hasn't juridical competence.

On March 2008 the Public Firm of Florence Area including several towns with Ombudsman and some towns of Arezzo Province as well, sent a new proposal of Regulation of service. This time a task force of local Ombudsman of town of Florence, me for towns of Figline Incisa and Rignano and other local Ombudsman of the district, including functionary of Regional Ombudsman examined the proposal and made their observation. Some of towns city council, including those of Figline Incisa and Rignano took observation of this pool of Ombudsman and voted as their own observations, obtaining some change.

Another less effective example was the railway local transportation service, which is administrated by National Public Firm for Railways on mandate of Tuscany Region. In this case to local Ombudsman tried to make network.

In those two fields, towns administrator found out that Ombudsman was not only a watchdog to complain with them if something went wrong with town service, but – without abdicating to this fundamental role – he could also become an ally to fight with them to get more services to citizens.

⁶⁴ For instance it's not fair to have a private firm, since water should remain public or on the other side the Public firm costs too much.

Tatyana Merzlyakova

Dear colleagues,

My name is **Tatyana Merzlyakova**, I am the Ombudsman of Sverdlovsk Region (Russia) for 10 years.

Let me introduce you my experience of work as a regional Ombudsman.

1. The title of my presentation is “The structure of the activity of the Regional Ombudsman in Russia: experience of Sverdlovsk Regional Ombudsman”

2. Here at the scheme we have four main directions of the activity which are closely connected with other supportive directions.

The four main directions are:

-dealing with written applications;

-visits to regime facilities;

-support for civil society;

-legal education

3. In dealing with applications we have groups of people who requires special attention of Ombudsman:

-people with special needs

-people in conditions of deprivation of freedom

-migrants

-military servicemen

4. When we work with written and oral applications we analyze the reasons of human rights violations:

It can be unlawful actions of authorities, or

Lawful but formal actions of authorities, or

The quality of the law which can be in contradiction with the Russian Constitution or international human rights acts.

We look for the reason in order to define the strategy of the protection.

5. At the diagram we see the growth of the written applications’ quantity from two thousand to two thousand and ten. Now we have more then five thousands.

6. visits to regime facilities are regular but usually authorities are not informed in advance (for better understanding of the situation by the Ombudsman)

they include:

-military service

-psychiatric hospitals

-prisons and other correctional facilities

-preliminary detention facilities

7. Support of human rights NGOs and civil society is also very important as we can act as resources for each other.

8. The forth direction is legal education. We work with teachers of law and human rights courses in schools,

We cooperate with higher educational institutions and assist in teaching human rights courses there, we also take law students as interns,

We work with professionals – judges, policemen, prosecutors, advocates, civil servants) and educate them in international human rights standards and especially in practice of the European Court of Human Rights.

9. These four directions of activity give source for analytical work and special monitoring, practical research, writing reports and articles and defining strategy of protection of human rights in the Region.

This is also connected with legal education and mass media coverage of human rights issues for ordinary people.

We also closely cooperate with other Regional Ombudsmen in Russia, Council of Europe, European Ombudsman Institute and other international structures.

Many of my Russian colleagues work on similar scheme and make much human rights work in their regions.

But it must be stressed that the main success in this field and how the work is organized depends on the Ombudsman's personality and, in this connection, on the trust.

Thank you very much for your attention.

Dr. Peter Kostelka

Member of the Austrian Ombudsman Board

I.O.I. Secretary General

EOI Meeting and General Assembly, 23 – 24 Sept. 2011, Novi Sad

Mrs. President, Ladies and Gentlemen,

First of all, I would like to thank the European Ombudsman Institute for inviting me to speak here today. This event is an excellent opportunity for me as I.O.I. Secretary General to share views on some essential aspects of Ombudsmanship with you. I am very grateful that so many colleagues took time out of their busy schedules to attend this event, and I very much look forward to your comments and questions after the presentation.

The theme of this year's General Assembly is ***'The everyday work of the Ombudsman – problems and solutions – an exchange of experience'***.

I would like to use this opportunity to address two issues that are related to current challenges of European Ombudsman institutions and that have a direct impact on the everyday work of many colleagues in the Ombudsman family.

1. Promoting human rights: the Ombudsman and OPCAT

The past years have seen an unprecedented dynamic development in the mandate but also the practical priorities of the work of European ombudsmen. I think that you all agree that the current work of ombudsmen and ombudswomen nowadays goes far beyond identifying individual cases of maladministration and recommending legislative adaptations. European Ombudsman institutions are contributing to the effective realization of the rule of law and respect for the general principles of human rights. Several institutions have also acquired the legal status as a National Human Rights Institution (NHRI) with a formal mandate to protect and promote human rights.

It is in this context that an increasing number of Ombudsman institutions in Europe are gaining additional responsibilities in the area of human rights protection as they are appointed as National Prevention Mechanism (NPM) in the framework of the implementation of OPCAT, the UN Optional Protocol on the Prevention of Torture. This is also the case for the Austrian Ombudsman Board (AOB). Austria is currently preparing the ratification of OPCAT. The draft law that was tabled by the Austrian Government foresees an NPM responsibility for the AOB. Reactions by political parties, NGOs and academics have been predominantly positive and it can be expected that the Parliament will take its vote on the draft law before the end of this year. The AOB has a long-standing history of human rights-related activities that are illustrated annually in a specific section of its report that is delivered to Parliament. Moving from an entire ex-post control to preventive action in the area of human rights, however, demands detailed and long-term preparations that the AOB has already started.

I have just come back from an I.O.I. seminar in Warsaw gathering several European Ombudsman institutions that are in a similar situation – they are either already functioning as NPMs or are about to be appointed as NPM. The seminar provided for an excellent and fruitful debate on the opportunities and challenges of this new task for Ombudsman institutions. As a result, participants agreed that an effective and well-functioning NPM with a broad human rights mandate strengthens the Ombudsman institution, whereas financial restraints pose the danger of insufficient action damaging the Ombudsman. The framework for the national and regional OPCAT implementation may vary from one country and State to the other in Europe. However, I am convinced that information exchange on OPCAT best practise models is most helpful and I would therefore like to use this opportunity to encourage all colleagues present in this event to engage in a dialogue.

2. Ombudsman under threat: the case of Castilla-La Mancha

I would also like to raise an issue of specific concern to me that regards recent developments in Spain. The Defensor del Pueblo de Castilla-La Mancha is a valued member of the European Ombudsman community participating in best practice processes at regional and international level and offering an example of how a Regional Ombudsman can make a real difference to good governance. Due to budget restraints the regional government recently tabled a draft law that might lead to the abolishment of this institution.

Ombudsman institutions contribute with their work to transparent governance, the protection of human rights and the progress of the rule of law. Specifically Europe has seen numerous new Ombudsman institutions coming into existence in the past decades with the work of ombudsmen being perceived as an important and necessary aspect of a developed, transparent and accountable western European democracy.

The importance of Ombudsman institutions in guaranteeing citizens' access to justice is also recognised by international organisations. A UN General Assembly resolution recognized in November 2010 the role of the Ombudsman institutions in the promotion and protection of human rights and fundamental freedoms. The General Assembly underlined the importance of the autonomy and independence of the Ombudsman and considered 'the role of the Ombudsman in promoting good governance in public administrations, as well as improving their relations with citizens, and in strengthening the delivery of public services.'

As an independent organization, the I.O.I. certainly does not wish to interfere with the internal affairs of a State or regional decisions but nevertheless noted with great concern the development in Castilla-La Mancha. It is exactly in times of economic turmoil and financial instability that the work of the Ombudsman becomes ever more important for the citizens. The European Ombudsman family has seen similar developments within the past couple of years in Italy. For the entire international Ombudsman community the abolition of this independent Ombudsman institution is therefore another warning signal that contradicts modern international standards and I call upon the EOI and the I.O.I. to be aware and to counteract with joint forces any attempt to threaten the important work of ombudsmen and ombudswomen in Europe.

I hope that my presentation has elaborated some important challenges we are faced with and can form a good basis for the follow-up discussion and exchange here in the plenum.

Many thanks for your attention!

The everyday work of an Ombudsman • Problems and solutions • Exchanging experiences

The state of South Tyrol covers an expanse of 7,400 km² (seven-thousand-four-hundred square kilometers). It has about the same population as Luxembourg, slightly over 500,000 (five-hundred-thousand) inhabitants, but is three times its size.

South Tyrol is the northernmost province of Italy, bordering to the north and east on Austria and to the west on Switzerland. Following the First World War, the territory south of the Brenner Pass was granted to Italy. That political act launched a long, drawn out struggle by that segment of the population which overnight became a small Austrian minority in Italy to achieve certain rights of autonomy. Following the Second World War, the peace treaty of Paris set down the international principles for a far-reaching autonomy. Today's statute of autonomy is exemplary for many of Europe's minority groups. It provides and assures a peaceful cooperation of all language groups. The most recent census revealed that 70% (seventy percent) of South Tyrol's population belongs to the German, 27% (twenty-seven percent) to the Italian, and 3% (three percent) to the Romanche language group.

As Ombudsman of South Tyrol, I represent all three language groups. Over the course of the last seven years, my efforts have been devoted to the following sectors of everyday work:

1) The first aim has been to make the institution of Ombudsman better known to the general public, particularly to those classes of society which are most in need of assistance, in order to assure them the necessary aid in dealing with public agencies.

What is an Ombudsman? A lawyer? A legal advisor? A public prosecutor? A mediating judge?

Many citizens have only a vague notion of what the institution of Ombudsman is, and a very fuzzy concept of the activities an Ombudsman actually engages in. By means of judicious public relations, we have succeeded in raising the understanding and recognition of this function. The new **Internet portal** is a big success. Our user-friendly website has all the necessary information about my work and the functions and services of my team, the locales and the times of our office hours.

The **online complaints** section of the Internet portal is used gladly and often. Of course, an e-mail is not always the ideal form of communication for an Ombudsman to establish contact with a citizen who is raising a complaint for the first time. Certain details might be overlooked that have to be cleared up later, or gaps filled in through a telephone conversation or a personal visit. But the success to date demonstrates that citizens appreciate a quick, uncomplicated and informal way of delivering a message or posing a question, completely detached from time and place.

For years now, I have published weekly reports of concrete cases in two big dailies, one a German language newspaper, one an Italian language newspaper. These aim to provide insights into the activity of Ombudsman work. The **column known as "A Case for the Ombudsman"** is quite popular with readers and has even resulted in extremely high familiarity with the institution in South Tyrol. According to a survey conducted in 2007 (two-thousand-and-seven) by the State Statistical Institute (ASTAT), 75% of South Tyrolean citizens know about the Ombudsman institution and 57% know what responsibilities it fulfils and what tasks it performs.

This high level of familiarity has resulted in the number of new cases rising by more than 30% in the last few years: from 2,473 (two-thousand-four-hundred-seventy-three) to 3,178 (three-thousand-one-hundred-seventy-eight) cases.

2) Another pursuit is to build up mutual trust with individual towns so that we can represent citizen concerns more effectively.

Many mayors claim, they themselves are the Ombudsman in their town!

South Tyrol has 116 (one-hundred-sixteen) towns. Ombudsman laws provide that all citizens are permitted to utilise the services of the Ombudsman institution. The only requirement is that an **official agreement be concluded** in which the mayor pledges to cooperate with the Ombudsman in order to seek a satisfactory solution for the citizen(s). Over the course of the last few years, I have worked with town after town and gradually convinced the mayor of each respective community that Ombudsman services for the citizens are not an intrusion into the business of the municipal government, but rather an **opportunity for getting closer to the needs of the citizens** and for improving municipal administration. Particularly in community affairs, the assistance of an Ombudsman is in high demand. Appeals of citizens with regard to the administration of their town government usually have a personal component: relatives, neighbours, membership in a local club all play their part in making communication between citizens and town hall easier, but at the same time are often an impediment when negative decisions have to be made. Very swiftly, such measures are then taken personally, i.e. as a personal repudiation. Particularly in towns where there are close family ties and family networks, citizens often turn to **Ombudsman services because they are a neutral and independent facility which is in no way entangled with village business.**

In May of this year, I spoke and came to an agreement with the last of the 116 (one-hundred-sixteen) mayors. With that ultimate step taken, all 116 towns of South Tyrol now belong to the Ombudsman's official area of responsibility.

3) An important objective is getting closer to the needs of citizens, expanding courtesy measures, and processing their concerns immediately and efficiently.

Many citizens ask: have our municipal governments lost their connection to reality?

Personal talks with individuals in the framework of office hours, where citizens can present their own problems in person and without any time pressure, are of immense importance and extremely popular. For that reason, the amount of office hour availability is far higher in South Tyrol than just about anywhere in Europe. Office hours are offered **daily**, both in the morning and the afternoon, in the Ombudsman offices at the **headquarters** in Bolzano. Apart from that, there are office hours on an average of **140 half-days** annually in a variety of **branch offices.**

In the year of reporting 2009 (two thousand and nine), 3,178 (three thousand one hundred seventy-eight) new cases were registered. It is notable that **36% of the time** the citizens of South Tyrol preferred their initial contact to be personal. That amounts to no fewer than 1,147 (one thousand one hundred forty-seven) personal interviews per year.

In addition to the office hours, an average of 50 (fifty) individual talks are organised between public agencies and appellants by me and my team. In very many cases, when talks can be organised and carried out directly at the location of the problem, where the positions of public agencies and appellants originally formed and where objective communication has broken down, this leads, ultimately, to a solution.

4) I also spend great efforts enlarging my network of connections and relationships with social facilities in order to provide citizens with assistance when their difficulties are outside my area of responsibility.

“Not my area of responsibility” - many citizens complain of being chased from one agency to another.

Citizens turn to the Ombudsman facilities more and more often in order to inquire whether they have a claim to receive social aid. They are anxious about their living standards and have the feeling that tried-and-tested political formulas for coping with problems are no longer sufficient to deal with the currently prevailing economic crisis. They are fearful that the enormous risks inherent in life which can only be met and covered through a social-oriented state apparatus, as for example, unemployment, illness, disablement, loss of income in old age, et cetera, will no longer be covered in the future. Some parts of the population manifest an **inchoate fear of the future itself**, coupled with **dissatisfaction** and **worry about their job security**. Many citizens who seek advice and assistance from the Ombudsman facilities, however, have serious problems which do not fall in the **immediate area of Ombudsman responsibility**. Such cases are not simply rejected, but rather **re-directed to specific agencies or facilities which are designed to accompany and assist people who have fallen into existential difficulties**, from where they can expect competent assistance, for example, psychological and psychiatric services, social services, addiction illnesses, forum for addiction prevention, Women Help Women, woman's aid, women's refuge facilities, Caritas, debt counselling, immigration services and the Catholic Association for Working People, the St. Vincent Association. It is my avowed aim, parallel to the legal assistance we provide, to link Ombudsman services very closely to these public and private facilities to support citizens with other assistance in their personal existential dilemmas.

5) Efforts to maintain contact with other regional Ombudsman facilities. On a national level, South Tyrol's Ombudsman services are member of the so-called **“Coordinamento dei Difensori civici” (CNDC)**. This network of regional Ombudsman facilities was established in 1994 (nineteen-ninety-four). Its purpose is to further contact and communication exchange among Italian Ombudsman services; to advance the solutions of citizen concerns; and to maintain international contacts. Its headquarters are in Rome. It is currently being chaired by the Ombudsman facilities of the Piedmont region.

The current situation is as follows: Italy has **20 (twenty) regions and 14 (fourteen) regional Ombudsman facilities**. In the regions of Apulia, Sicily, Calabria, Campania, Umbria and Sardinia there exists no *Difensore civico regionale*. In the region Friuli-Julia-Venezia, the facility was abolished in August, 2008 (two-thousand-and-eight).

The major political challenges are currently the **abolishment of all town Ombudsman facilities** in Italy through a finance law for the year 2010 (two-thousand-and-ten); and a bill now facing parliament to introduce a national Ombudsman. Italy is the one and only country in the European Union in which there is **no national Ombudsman**. What is incomprehensible in this connection is that any country which desires to join the EU (iih-juh) must incontrovertibly prove that it has a national Ombudsman in order to fulfil the membership criteria. And Italy, of all places, a founding member of the European Union, refuses to fulfil that selfsame requirement.

Anikó Muškinja Heinrich

The Provincial Ombudsman
of the Autonomous Province of Vojvodina
Republic of Serbia

Everyday Work of the Ombudsman – Problems and Solutions: An Exchange of Experience⁶⁵

Elaborating on the work of the institution of the Provincial Ombudsman of the Autonomous Province of Vojvodina and the problems it faces in its work and the ways of overcoming them while keeping the presentation simple, comprehensible and – first and foremost – interesting, is challenging, indeed.

The Ombudsman⁶⁶ institutions in the Republic of Serbia (RS) have been established on three levels: national⁶⁷, provincial⁶⁸ and local⁶⁹. The definitions of these three institutions are similar, but not identical. The common characteristics of the Serbian National Ombudsman (SO) and the Provincial Ombudsman of the Autonomous Province of Vojvodina (PO) are that both institutions are independent, unbiased and autonomous institutions protecting citizens' rights and taking care of human rights and freedoms protection and improvement in the light of the Serbian Constitution, confirmed and published international human rights treaties, generally accepted international law regulations and national laws. The PO jurisdiction have been somewhat broadly defined since the Provincial Parliamentary Decision on the Provincial Ombudsman⁷⁰ stipulates that the PO also protects the rights of citizens granted by the APV regional legal acts and their provisions, especially from the violations committed by the provincial or local (i.e. town or municipal) authorities, organizations and public services acting on behalf of authorities and/or public services founded by the Province or a town or municipality on its territory.⁷¹

The Local Self-Government Law provides for establishment of the 'local' Ombudsman institution as a possibility (but not an obligation): local self-government units are free to decide whether and in what way they will further regulate the establishment of such an institution by their own corresponding local legal act. The Law has no provisions indicating that these institutions bear any characteristics of independence and autonomy before the founding local self-government. The jurisdiction of the PO and the local ombud institutions in relation to their respective self-governments overlap partially: the local ombudspersons monitor the observation and exercise of citizens' rights, determine their violations by the local self-government legal acts, as well as by the local authorities' or public services actions or faulty performance and that only in cases of violation of regulations and general legal acts of the local self-government units in the same way the PO does.⁷²

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⁶⁵ Background paper for presentation at the EOI Annual Conference in Novi Sad, Vojvodina, Serbia held on 23 September 2011. Translation from Serbian: Ankica Dragin.

⁶⁶ The term 'ombudsman' is synonymous with the officially used Serbian term '*zaštitnik građana*' (literally: the citizens' protector).

⁶⁷ The Republic of Serbia (RS).

⁶⁸ The Autonomous Province of Vojvodina (APV), the northern province of the Republic of Serbia.

⁶⁹ Cities, towns or municipalities in RS.

⁷⁰ The founding document of the PO.

⁷¹ Generally referred to as the provincial or local authorities.

⁷² The jurisdiction of PO has been explained in the previous passage.

The PO, as an independent and autonomous institution protecting and improving human rights of each individual was established on the base of a relevant Decision⁷³ of the Assembly of the APV passed in 2002, which seems a now long ago from today's perspective. It was a Decision concerning foundation of the first institution of such kind on a level higher than local in the then Federal Republic of Yugoslavia.⁷⁴ Once the Assembly of APV had elected the first PO and his deputies in 2004, the actual establishment of the institution continued with organization of its executive service to perform its expert, administrative and logistics work, providing also for basic conditions for the institution's functioning.

Since the PO, based on its founding legal act, protects the rights of citizens granted by provisions of the APV regional legal acts, especially from the violations committed by the provincial or local (i.e. town or municipal) authorities, organizations and public services acting on behalf of authorities and/or public services founded by the Province or a town or municipality on its territory, the establishment of the Serbian National Ombudsman (SO) in 2007 had no consequences regarding the work of the PO as far as its operation was concerned. The PO's main aim being human rights protection and improvement, ever since its foundation its major task has been to monitor the implementation of regulations, control the lawfulness, effectiveness and efficiency of the aforementioned authorities', organizations, public services' and institutes' actions and proceedings.

In exercising its broadly defined jurisdiction, the PO receives and investigates complaints in which citizens indicate their human rights violations due to authorities' faulty or poor performance. If the PO has determined that a citizen's human rights violation resulted from authorities' faulty or unlawful action, the PO sends the authorities in charge an official opinion with a suggestion or an official recommendation on how to eliminate the consequences of their actions in question. The PO also informs authorities in charge, as well as the general public on such human rights violations. This institution also has the authority to mediate in peaceful conflict resolution related to human rights violations, to organize consultations on human rights observation and exercise, as well as to collect information on various regulations and overall legislation implementation in the human rights field. Besides its regular annual report to the Assembly of the APV on its activities in the preceding year, which assesses the state of human rights and legal security in the Province, the PO – on its own initiative, as well as on the request of the Assembly of the APV as its founder – may as well produce and submit special reports on the state of human rights in the APV.

The quality of human rights protection and improvement in the APV progresses constantly, though the administration's unlawful work that implies potential or actual citizens' human rights violations by failure to observe primarily the procedure-related legislation is still obvious. Besides authorities' failure to act primarily according to the General Administrative Procedures Law and rules of good governance, the level of the administration's ignorance of the material law in some areas of its work is apparent. Most complaints to the PO relate to the local self-government authorities' work, as well as to that of the national authorities, while the number of those relating to the provincial authorities is smaller. The citizens indicate irregularities in their work resulting primarily from lack of expertise with the administration employees, their lack of interest or motivation to do timely and quality work, including failure to observe basic procedural rules. The administration employees lack knowledge of relevant regulations and they barely or never refer to them in their work, or they do it in a faulty manner.

⁷³ The highest level legal act passed by the Assembly of the Autonomous Province of Vojvodina (i.e. equal to the regional parliament).

⁷⁴ The only ombud institutions founded earlier than the PO were some local ones, e.g. that in the Municipality of Backa Topola in APV.

However, it is undisputable that few reported cases could be referred to as human rights violations in a broader sense. In most cases the circumstances and evidence point to faulty or unlawful work causing citizens' rights violations due to the local administration employees' unprofessionalism: lack of expertise, easy-going attitude at work, unwillingness to face problems that have been pointed out to them, lack of consciousness concerning responsibility for one's own work, untimeliness and breaching deadlines, often along with an arrogant and even rude attitude.

As far as elimination of irregularities is concerned, it is evident that a certain number of local self-government administration units 'resist' the process of correcting observed and/or determined irregularities, as well as the implementation of recommendations for observation of lawfulness and suggestions for improvement and advancement of their work. At the same time, they are often trying to justify their unlawful performance one way or another, but with time it has become evident that the faults in their work do not get repeated, while the opinions and suggestions of the PO get implemented in similar subsequent cases. It is important to note that most irregularities are eliminated during the PO investigation procedure itself.

On the other hand, the provincial authorities are mostly willing to eliminate the irregularities during the PO investigation. Just like the public service companies, the provincial authorities do respond to the PO's addresses to communicate their statements concerning allegations in the complaint in question; they also duly present the requested documentation and implement the recommendations.

Besides the Provincial Ombudsperson, elected by the Assembly of the APV, the protection of human rights of the citizens of Vojvodina falls into jurisdiction of his/her five deputies elected to a six-years' mandate by the very same Provincial Assembly. The fields and scope of their work are specifically regulated: two are in charge of general human rights issues while the PO related Provincial Parliamentary Decision regulates the specialized fields of work of the other three deputies. One of the PO Deputies is in charge of national minority rights protection, another is in charge of children's rights and the third specialized PO Deputy deals with gender equality issues.

Along with the institution's officials (i.e. the Provincial Ombudsperson and his/her Deputies), the responsibility of human rights protection of the citizens' of the APV – directly or indirectly – is a task of another twenty-two employees in the institution, their professional profiles corresponding to the specific tasks required by the institution's profile. These employees constitute the so-called Executive Service headed by its General Manager.

The citizens file their complaints mostly by mail, though the number of those doing it in person is not negligible. They usually come to the institution to complain, so their statement gets recorded in writing by the executives or they fill in the complaint form themselves. E-mail complaints are ever more common, either in the form of a message or letter, or by filling in an on-line complaint form. The complaint form is available in all six languages in official use in the Provincial authorities and services: Serbian (both in Cyrillic and Latin script), Hungarian, Slovak, Romanian, Ruthenian and Croatian.

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The PO has no major problems in its work. It is encouraging that the institution is ever closer to the citizens of Vojvodina. The ever increasing number of filed complaints and addresses indicates that the citizens have grasped the role and functions of the Ombudsman institution. However, the number of citizens' addresses that cannot be treated as complaints is still very high. People often address the institution just asking for advice, expressing their dissatisfaction with the general situation in the society, commenting the legislation, etc. The complaints also often relate to the work of various subjects whose work the PO is not authorized to monitor. There is a large number of complaints concerning the judiciary, the Ministries and national authorities, as well as business associations are not the APV or any of the local self-governments on its territory. The citizens' complaints concern cases of mobbing, discrimination, labour related problems, official position abuse and alike.

Whenever the PO gets a complaint it is not authorized to act upon, the institution refers to the broadest possible interpretation of its jurisdiction and authority stated by its founding legal act in order to provide the complainants with advice on other possibilities of their human rights protection and exercise. In 2011 the PO conducted a small research study concerning the (free) legal aid services with the local self-governments in the APV. Its findings indicate that, in spite of the Local Self-Government Law provisions obliging the authorities to establish such services locally, legal aid provision functions in a very small number of municipalities and in a way that does not meet the ever more urgent citizens' need for legal advice. Therefore the official position of the PO has become that, whenever possible and in cases the PO is not in charge (anymore), a complainant should get a written advice pointing out the regulation, procedure and the relevant authority to address in further pursuing assistance with resolution of his/her problem.

Besides providing assistance to the citizens, such work of the PO is at the same time an opportunity for all employees to keep up to date with all legislation and get informed timely, which should in turn facilitate their work and performance. Furthermore, the PO does extensive PR and media work within its objective capabilities in order to keep the expert and general public up-to-date with all the happenings in the institution. It is often in a position to do baseline research studies to measure the current state of human rights in certain fields which later provide a platform for further human rights monitoring not only for the institution itself, but for other social actors as well.

The PO is often invited to contribute to various expert and social events advocating for human rights protection and improvement. Some of its major contributions lately have been recommendations to the ECRI's latest report on Serbia, as well as participation in the CoE's research study advocating for improvement of children's rights before the judiciary. The versatility of topics and methods of the PO everyday work is the result of its constant strife to keep up-to-date with the most current human rights standards, as well as to apply them to the specific needs of each individual addressing the institution on daily basis. The challenge of doing this in a consistent, substantially authoritative and just way within the existing socio-economical, legislative and logistical circumstances has been an inspiration rather than a setback ever since its foundation.

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THE OMBUDSMAN IN EUROPE: STRUCTURE, FUNCTIONS AND DISCRETIONARY POWERS (crediti 6) [primo semestre]

Introduction

This course would inaugurate one the first chairs on the Ombudsman in Italy and would allow an activity of exchange with the other European universities which hold similar courses. It would also allow to create a privileged connection with the EOI (European Ombudsman Institute) and the IOI (International Ombudsman Institute), which works for the diffusion of the Ombudsman at an international level.

Furthermore, thanks to my being the outgoing Ombudsman of the Provincia di Milano, I could try to attain the accreditation of our university as a research centre on the Ombudsman both at a European and an international level, which would in consequence attract students from other universities.

Course Subject

The institution of the Ombudsman is based on the idea that citizens should be entitled to complain against specific acts and behaviors of their rulers and that their complaints should be investigated by an independent body. In Europe, the establishment of a specific office to investigate citizen complaints against public bureaucracy is relatively recent, having started in Sweden in the early nineteenth century.

The diffusion of the Ombudsman in Europe in the last decades, has confirmed the extraordinary adaptability of the institution and the permeability of the Countries that belong to the continental democratic culture, with respect to this particular juridical instrument. At present, all the Countries which are part of the European Union (UE) have introduced in their system a similar institution; the majority of them (25 over 27) have created a national Ombudsman, while Germany and Italy have opted for regional and local Ombudsmen.

The UE, too, instituted an Ombudsman in 1993: together with the Court of Justice it is part of a concretely more transparent network of government for the European citizens. Lastly, with regard to the European Council, 45 of the 47 member States have created national and regional figures of Ombudsman. Such a vast diffusion, which in part depends also on the circumstance that the UE includes the institution of an Ombudsman among the requirements for the acceptability of new member States, has brought this institution to the attention of the scientific community, thus inspiring new comparative studies.

We can agree with some scholars upon the fact that each *Ombudsman*, even within the European context that shows a relevant cultural homogeneity, has its peculiar aspects; however, these peculiarities have very little to do with the distinction between *Common Law* and *Civil Law* countries, and can rather be ascribed to the different administrative, legal and political contexts in which each Ombudsman has to work in.

The general purpose of the Course is to analyze different features of public bureaucracy and the problem of its control. Thanks to a socio-legal method of analysis we reflect upon the social function of the Ombudsman in Europe and its legal structure.

The first step of the analysis is the comparison of the various European Ombudsman-institutions. This study intends to investigate the structure of Ombudsman institutions by comparing the legal bases of the different institutions (constitutional embodiment or simple act of Parliament); their organization (independence, relation with the parliament, requirements for qualification, number of incumbents, appointment, term of Office and conditions for removal from it, incompatibility, immunity, remuneration, budget and staff) and the national, regional or municipal level of action.

The second step of the analysis is to illustrate the functions of Ombudsman institutions in their political, economical and cultural context. In fact, Ombudsmen came to be seen as useful in helping to meet the problem of expanding bureaucracy in the modern welfare state and to improve human rights. In particular, the increase in the powers of discretion given to European governments led to a need of protection against administrative arbitrariness.

Bibliography

Following, some of the suggested books, essays and papers on the topics of the course:

M.A. Quiroz Vitale (ed) *The Ombudsman and Bureaucracy. Law, Discretion and Control*, Mimesis, Milano 2010;

Gadlin, H. (2000), «The Ombudsman: What's in a Name? », in *Negotiation Journal*, January 2000, p.p. 37-48;

Harlow, C. e Rawlings, R. (2007), «Promoting Accountability in Multilevel Governance: A Network Approach» in *European Law Journal*, Vol. 13, No. 4, pp. 542-562;

Magnette, P. (2003), «Between parliamentary control and the rule of law: the political role of the Ombudsman in the European Union», in *Journal of European Public Policy*, V.10, n.5, pp. 677-694;

Rowatt, D.C. (2007), «The American distortion of the Ombudsman concept and its influence on Canada », in *Canadian Public Administration / Administration Publique du Canada*;

Ugla, F. (2004), «The Ombudsman in Latin America», in *Journal of Latin American Studies*, V. 36, p.p. 423-450;

Bousta, R. (2005), «The Ombudsman proposal for a definition» in Reif, L.C. (ed.) *The International Ombudsman Yearbook*, V. 9, Kluwer Law, The Hague, 2005 p.p.36-49;

Bull, Th. (2000), «The Original Ombudsman: Blueprint in Need of Revision or a Concept with More to Offer?» in *European Public Law*, V. 6, n.3. p.p. 334-344.