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Improving the Effectiveness of the Administrative Judiciary and Strengthening
the Institutional Capacity of the Council of State

Comparative Report on Ombuds

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List of Abbreviations

ADR	Alternative dispute resolution
CoE	Council of Europe
EU	European Union
IOI	International Ombudsman Institute
LGSCO	Local Government and Social Care Ombudsman
MOU	Memorandum of Understanding
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institutions
PHSO	Parliamentary and Health Service Ombudsman
SPSO	Scottish Public Services Ombudsman

The List of Selected European Countries

Austria
Bosnia and Herzegovina
Bulgaria
European Ombudsman
Denmark
England
France
Finland
Germany
Greece
Northern Ireland
Ireland
Kosovo
Macedonia
Malta
Moldova
Montenegro
Poland
[Russia]
Scotland
Slovenia

Statement of purpose and objectives of the report

This comparative report for Enhancing the role of the Ombudsman (Activity A.3.4) has been prepared within the scope of the EU/ CoE Joint Project on “Improving the Effectiveness of the Administrative Judiciary and Strengthening the Institutional Capacity of the Council of State” in Turkey. The overall objective of this project is to foster public confidence in the administrative judiciary by further strengthening its independence, impartiality and effectiveness, and by increasing public awareness of it. The comparative report aims to collect evidence from a range of Ombuds¹ (the Member States of the CoE) about how they operate and where there are relevant examples of best practise. The focus is on four specific themes that have been identified to be of practical relevance to inform recommendations of how to strengthen the role of the Turkish Ombud, thereby reducing the number of disputes before the administrative courts.

1. The Ombud, persons and democratic participation
2. The Ombud, public authorities and democratic public administration
3. The Ombud as part of a ‘regulatory network’
4. The refinement of the Ombud’s ‘technique’

This is the first draft report and has been developed on the basis of a review of European examples and it will be up-dated and finalised following the initial consultation meetings take place with the Turkish Ombuds and relevant stakeholders.

The Ombuds institution and its evolution

Ombuds have become a feature of most countries’ institutional frameworks around the world. They differ however, in their mandate, their role, their relationship to other institutions and the justice system. They all need to be understood in their historical – political – and institutional contexts. In other words, each Ombuds model has its purpose within its setting satisfying specific needs (e.g. enhancing democracy, enhancing human rights, providing a balance between the individual grievance and the state).

Ombuds are widely regarded as a flexible and adjustable means to solve disputes.² Ombuds operate in the realm of public and administrative law, dealing with disputes in which citizens challenge the state. The European Union established the institution of a European Ombud in 1995 as a means for citizens to raise complaints about EU institutions’ maladministration.³

The Ombud model has been introduced into different legal systems, faced with economic, social, political and cultural challenges, and nevertheless remains an ever-evolving model of alternative dispute resolution (ADR).⁴ Due to its potential to process a high proportion of unmet legal needs for certain types of problems and disputes, the Ombuds draws its strength from its variety of contextual

¹ A note on terminology: we use the term Ombud as singular, Ombuds as plural and Ombudsman when it is in the name of the institution.

² Reif, L (2004) *The Ombudsman, Good Governance and the Internatioal Human Rights Sytem* (Mauritinus Nijhoff Publishers Leiden); M Seneviratne 2002 *Ombudsmen Public Services and Adminstratice Justice* (Butterworths Lexis Nexis); T Buck, R Kirkham and B Thompson 2011 *The Ombudsman Enterprise and Administrative Justice* (Ashgate).

³ Magonette, P. (2003), European Governance and Civic Participation: Beyond Elitist Citizenship? *Political Studies*, 51: 144-160

⁴ Creutzfeldt, N (2018) *Ombudsmen and ADR* Palgrave.

and conceptual adaptations.⁵ However, these adaptations create many new issues, such as new and confusing vocabularies⁶; an ongoing inquiry into the basic purpose and meaning of an Ombuds⁷; and diversity in decision-making processes. Despite these variations, or even because of them, the model is very attractive to many legal systems.⁸

In 2008, Kusko-Stadelmayer⁹ wrote a book on comparative information on Ombuds' powers and practices in Europe. This book aims to comprehensively demonstrate the legal basis of parliamentary ombudsman institutions throughout Europe, analysing them in a comparative way and thereby revealing their organisational and functional diversity. (Although written 13 years ago it provides a good repository.)

The abiding theme among Ombuds in Europe is that about the importance of the Ombuds as *extra-legem* players who avoid legalism, look beyond the law to fairness, and act as sources of education and socialisation in democratic and human rights practice. Two main principles guide the institution of the Ombuds, the Paris principles and the Venice principles.

The Paris principles¹⁰ set out a framework to set up national institutions to *protect* human rights (including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities) and *promote* human rights (through education, outreach, the media, publications, training and capacity building, as well as advising and assisting the Government).¹¹ An Ombud is one example of a national institution that provided the right to good administration stated in Article 41 of the Charter of Fundamental Rights of the European Union. This formally sets up the close connection between ombuds and human rights.

In "The Institution of Ombudsman"¹² recommendation report issued by the Council of Europe Parliamentary Assembly, a general characterization of the Ombuds institution was made, recommendations for maintaining its independent and impartial quality were listed and good management principles were emphasized. From 2017 to 2019, the Parliamentary Assembly submitted another recommendation report, "Ombudsman Institutions in Europe - the need for a set of common standards"¹³ in order to ensure the independence of the ombuds.¹⁴

⁵ Carl, S. (2012), Definition and Taxonomy of Public Sector Ombudsmen. *Can Public Admin*, 55: 203-220

⁶ M Doyle, V Bondy and C Hirst (2014) *The use of informal resolution approaches by ombudsmen in the UK and Ireland: A mapping study* <http://repository.essex.ac.uk/20856/1/the-use-of-informal-resolution-approaches-by-ombudsmen-in-the-uk-and-ireland-a-mapping-study-1.pdf>

⁷ O'Brien, N. (2015), What Future for the Ombudsman?. *The Political Quarterly*, 86: 72-80.

⁸ N Creutzfeldt (2021) The role of ombuds – a comparative perspective in *Handbook of Comparative Dispute Resolution*, (eds) Moskaty, Palmer and Roberts.

⁹ Kusko-Stadelmayer, G. (ed.) *European Ombudsman-Institution: a comparative legal analysis regarding the multifaceted realisation of an idea* (2008)

¹⁰ United Nations Human Rights Office of the High Commissioner, *The Paris Principles* (1993) available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

¹¹ Paris Principles at 25: Strong National Human Rights Institutions Needed More Than Ever: <https://www.coe.int/en/web/commissioner/-/paris-principles-at-25-strong-national-human-rights-institutions-needed-more-than-ever>

¹² Parliamentary Assembly. 2003. *The Institution of Ombudsman. Recommendation*, Council of Europe.

¹³ Parliamentary Assembly. 2019. *Ombudsman Institutions in Europe - the need for a set of common standards. Recommendation*, Council of Europe.

¹⁴ p.5 report – H Yilmaz

However, not all of the Paris principles are applicable to all ombuds due to their diversity mentioned above.

In 2019 the *Venice principles*¹⁵ were published to protect the ombuds institution. They set out, for the first time, 25 basic international principles for the operation of ombuds. They are equivalent to the Paris principles mentioned above, setting out the standard for national human rights institutions.

The Venice principles are an international reference text listing the legal principles essential to their establishment and functioning in a democratic society.¹⁶ Their aim is to empower the ombuds in their role to strengthen democracy, the rule of law, good governance and the promotion of human rights and fundamental freedoms. The Council of Europe's steering committee for human rights played an active role in the process.

The guidelines for Ombuds are intended to support the proper establishment and functioning of the institution, the stability of democracies and the protection of fundamental rights. Among the Council of Europe states, the link between Ombuds and human rights was recognised early on and grew stronger over the years. The PACE recommendation 757 (1975) 1615 92003) states clearly:

The Assembly notes that the development of methods of human rights protection has influenced the role of the ombudsman in that respect for human rights is now included in the standards to be respected by a good administration, on the basis that administrative actions which do not respect human rights cannot be lawful. National constitutional and legal circumstances particular to each country, furthermore, may dictate that ombudsmen in different countries require mandates conferring various additional responsibilities with respect to human rights protection. Nevertheless, the Assembly believes that the role of intermediary between individuals and the administration lies at the heart of the ombudsman's functions.

National institutions can call themselves human rights institutions after following the accreditation process to demonstrate compliance with international standards. Many institutions throughout Europe have acquired this quality, among them are Ombuds. The best institutional choice and structure for Turkey is discussed in a paper by Eren:¹⁷

In case the Ombud and national human rights institution are formed together, the determination of power and duties will be important. The Ombud institution can be assigned with the examination of the violation of human rights originating from public administration, while Turkish national human rights institution can handle the violations of human rights "deriving from the private space". In this way, there will be no conflict of power between these two institutions. With its structure to enable the pluralist representation the national human rights institution will play the role of a bridge between the government and the civil

¹⁵ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e)

¹⁶ 25 Venice Principles – Democratic ABC for Ombudsman institutions, available at:

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=09000016809386e0

¹⁷ Eren, A (2011, Volume 15, No.3) National Human Rights institutional models in comparative law and the case of Turkey: <https://dergipark.org.tr/tr/download/article-file/789437>

society, while the ombudsman institution will have a function between the civil society and the parliament. In case both obtain Status A conformable to Paris Principles, these will assume the role of a bridge at national and international level in their own field. (pp 191-2)

The Turkish Ombud is compatible with the most part of the Venice principles through the law on the law No 6238 on the Ombud Institution. However, there are some principles that still need to be put onto the agenda to improve the current structure of the Ombud. As a result of their introduction a decrease in workload of the administrative judiciary is anticipated though the adoption of the principles of good governance. Three examples:

1. ***The power of ex-officio investigations.*** As stated in Article 16 of the Venice Principles, it is important for the Ombud to examine and investigate on its own initiative. Those Ombuds who have the authority to act *ex officio* regularly visit prisons, places where children are kept in custody, psychiatric institutions, refugee camps and other similar administrations. An Ombud that has ex-officio powers could heavily influence the development of human rights and the rule of law to be rooted in the resolution of problems of victims such as the disabled, children and women in the society, for example. It might also prevent future violations. Additionally, ex officio powers enable the examination of systemic or structural problems, which give them a huge preventive potential and are one of the most effective methods of combating violations on a large scale.
2. ***The power to file a case to the constitutional court.*** In several countries the Ombuds have powers, as a prevention mechanism, to participate in litigation and to file cases to the Constitutional Court. This is stated in the Venice principles and Paris principles as well as EU progress reports. Here we can imagine five different scenarios.
 1. Filing a case with the court or tribunal;
 2. Participating in a case as a third party;
 3. Initiating the procedure in the Constitutional Court to determine the conformity of the law with the Constitution;
 4. Participating as the third party in the case pending in the Constitutional Court following a constitutional complaint;
 5. Participating as the third party in the case pending in the European Court of Human Rights.

Currently, the opportunity to intervene in proceedings at all levels of the domestic and international judiciary systems, as a third-party submitting amicus curiae briefs, should be seen as one of the main practical tools available to Ombud institutions. It is worth emphasizing that national institutions for the protection of human rights, including the Ombud, are increasingly using the option to act as a third party not only in proceedings pending before national courts but also international human rights bodies. Networks of the Ombuds in Europe are establishing ever closer cooperation with the European Court of Human Rights to strengthen their participation in proceedings in Strasbourg. This opportunity has been recently used in several cases by Ombuds from France, Poland, Georgia, Greece, Czech Republic, Armenia. Here also see principle 19 of the Venice

principles: 'Following an investigation, the Ombudsman shall preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts.'

3. **Authority of the Ombuds.** Article 3 of the Venice Principles outlines a high authority for Ombuds Institutions. In Turkey the status of Ombud person has changed with the Presidential Government System. Even though the competences of the Ombuds have not changed in the Presidential System, their financial and personal rights have changed (Decree Law No 703, Article 110). Even though the Ombud person has the authority to inspect bodies of public administration and collect information and documents, their status given to them by administrators does not reflect this.

The PACE recommendation 1615 (2003) lists as essential characteristics for Ombuds to operate effectively its 'establishment at constitutional level in a text guaranteeing the essence of the characteristics [...], which elaboration and protection of these characteristics in the enabling legislation and statute of office.' Further, one of the opinions issued by the Venice commission stated that 'a constitutionally defined mandate and status are essential [...] for consolidation and strengthening of this institution and its efficiency, for its stability and its independence, as well as for its appearance of independence and impartiality.' For examples, see: Venice Commission opinion 808/2015 on the People's Advocate of the Republic of Moldova; Opinion 318/2004 on the Ombud of Serbia; opinion 425/2007 on the possible reform of the Ombud in Kazakhstan; Venice Principle, principle 2.

The *International Ombudsman Institute* (IOI)¹⁸, established in 1978, is the only global organisation for the cooperation of more than 200 independent Ombuds institutions from more than 100 countries worldwide. The IOI is organised in six regional chapters (Africa, Asia, Australasia & Pacific, Europe, the Caribbean & Latin America and North America). In its effort to focus on good governance and capacity building, the IOI supports its members in a threefold way: training, research and regional subsidies for projects.

The IOI introduces a new publication series of best practice papers¹⁹ with a view to provide guidance material in the form of a series of papers to address the key features which inform strong and independent control mechanisms. The Best Practice Papers draw on the experience of Ombudsman institutions and highlight ways of working which are likely to bring about successful results. They are published on the IOI website, where they are accessible to the wider public. Currently the papers cover four issues and also include a guiding framework on how to write a best practise paper.

- Issue 1 - Developing and reforming Ombudsman institutions: An IOI guide for those undertaking these tasks (June 2017); Issue 2 - Securing effective change: How to make recommendations that bring about sustainable improvement to public administration (August 2017); Issue 3 - Own initiative investigations (July 2018); Issue 4 - Peer review guidance (May 2020).

A Council of Europe Parliamentary Assembly held that Ombuds institutions in Europe need a set of common standards.²⁰

¹⁸ <https://www.theioi.org/the-i-o-i>

¹⁹ The OIO Best Practise Papers, available at: <https://www.theioi.org/publications/ioi-best-practice-papers>

²⁰ Council of Europe, Ombudsman Institutions in Europe – the need for a set of common standards, available at: <https://pace.coe.int/en/files/28089>

The Assembly encourages all member States of the Venice Commission, regardless of whether they are Council of Europe member States, that have not yet done so to promptly establish a “traditional” ombudsman institution with a broad mandate, allowing individuals to complain about cases of maladministration and violations of their human rights and fundamental freedoms, in line with the Venice Principles, and to co-operate with the Venice Commission to this end.

Annual reports

Ombuds issue annual reports that they usually submit to Parliament and also publish on their website. In cases where the Ombuds report about the state of human rights and the rule of law within a country and the parliament debates this report, it can be broadcasted on TV, social media and disseminated to the most important institutions representing the State and civil society. The annual reports also contribute to the standing of the Ombud and the way he/she are perceived by the authorities and by society.

Against this background of an evolving Ombud landscape around the world and a call for shared standards, the following report presents themes that were chosen to consider for the development of the Turkish Ombud model.

Selected themes of importance to consider for developing the Turkish Ombud model

The Turkish Ombud has been in action since 2012 and is, as such, a relatively young institution.²¹ Harnessing the potential and appetite to develop this institution, the following discusses four selected themes that would form crucial steps in grounding the Ombud institution in solid foundations. These themes are (1) the Ombud, citizen and democratic participation; (2) The Ombud, public authorities and democratic public administration; (3) The Ombud as part of the regulatory framework; and (4) The refinement of the Ombud technique.

Examples from Ombuds in European countries are drawn upon to help explore these themes.

1. The Ombud, persons and democratic participation

Trust in an institution needs to be built and then maintained. This is a challenge. For the Ombuds to promote trust in its own institution and in public services / government, it needs to be perceived as providing a fair service by its users. This includes a combination of managing expectations and preventing disengagement.²² Ideally, the Ombuds needs to be perceived as part of a larger system to support persons in their grievances. The personality of the individual holding the position of Ombuds is significant. Typically, the person who is chosen to fill the role of the Ombud is an important public figure. A lot of responsibility rests on this role, also in relation to public visibility, trust and acceptance of the institution.

²¹ Turkish Ombud annual report 2019, available at: <https://www.ombudsman.gov.tr/kdk-pdf/2019-yillik-rapor-inglizce/mobile/index.html>

²² Creutzfeldt, N. (2016) A voice for change? Trust relationships between ombudsmen, individuals and public service providers, *Journal of Social Welfare and Family Law*, 38:4, 460-479, DOI: [10.1080/09649069.2016.1239371](https://doi.org/10.1080/09649069.2016.1239371)

Public trust in Ombuds is generated in different ways. In countries where the Ombud is a long-established institution (e.g. in Nordic countries), it is seen as part of the system to hold the administration to account. Persons are used to the fact that an Ombud exists and knows what the powers are. This is not true for countries in which an Ombud is a fairly new part of the system. The lack of public trust can be detrimental for the development and acceptance for the Ombud model. To build trust an Ombud institution needs to be transparent and accountable. For example, the process of appointment, terms of office, funding, recruitment and outlook of staff, communication and participation in civil society. Some of these themes are covered in the Venice principles and appear in Ombud terms of reference or explanation of their work on their websites – outward facing.

a. The Ombud's public profile and public trust / visibility

The original structure and purpose of an Ombud institution is to strengthen democracy and to protect the individual where there is an imbalance of power between the citizen and the state. In its role to investigate complaints about government departments / public organisations that might have treated individuals unfairly or provided poor service to them, Ombuds remain not well known.²³ Work needs to be done to bring the Ombuds to the public consciousness as a means to resolve grievances. Public trust is an important ingredient for the Ombuds to maintain its legitimacy. This, in turn, depends on the visibility and knowledge of the institution. Of course, it differs from country to country if the Ombud is well known.

Surveys

There are several ways to enhance public visibility of the Ombud institution. For example, the Welsh Ombud reported that a national survey exposed high public awareness of the institution.²⁴ The Ombud, Nick Bennett, said that high visibility was crucial to ensure Welsh public service users knew how and where to complain, and to make sure that lessons were learnt when things went wrong. The European Ombud, in 2006, held a public workshop to explore how to best raise awareness about the work and to encourage people to complain.²⁵ The Polish Ombud is very well known and is one of the institutions enjoying high public trust.²⁶

Training and roadshow

Another example is a private sector Ombuds in the UK (Ombudsman Services). In 2017 the Ombud started roadshows, where a branded van drove through cities to educate people about how they can complain about energy providers.²⁷

The Polish Ombud, for example, is also active on social media and keeps people up to date with reporting on important issues and debates on current themes. The use of public TV and media are

²³ Beckman, L and Ugglå, F *An Ombudsman for Future Generations*, in *Institutions for Future Generations* (eds Gonzales-Ricy and Gosseries) (2016 OUP); Creutzfeldt, N *Ombudsmen and ADR* (2018 palgrave); Hertogh and Krikham *Research Handbook on the Ombudsman* (2018 Edward Elgar).

²⁴ IOI, Public awareness of ombudsman service at a record high (2020) available at: <https://www.theioi.org/ioi-news/current-news/public-awareness-of-ombudsman-service-at-record-high>

²⁵ O'Reilly, E. (2006) Raising awareness about the right to complain – the next steps for the European Ombudsman, available at: <https://www.ombudsman.europa.eu/en/historical/en/10348>

²⁶ http://www.tnsglobal.pl/archiwumraportow/files/2016/11/K.068_Zaufanie_do_instytucji_O10a-16.pdf

²⁷ Benjamin, K, (2017) Ombud Services host UK roadshow, available at: <https://www.campaignlive.co.uk/article/ombudsman-services-hosts-uk-roadshow/1422944>

effective tools for advertising and raising awareness. The Ombud also holds meetings in schools. An important form of the Polish Ombud activity every year is a series of his regional meetings in person with residents and representatives of civil society, during which the institution is presented and problems bothering the local community are raised and discussed. These problems, if they are serious enough, then become part of the action plan of the institution.

The relationship between the media and the Ombuds play an indispensable role, ensuring that they report on important matters undertaken by the Ombuds, his/her interventions and reports. Television and social media are especially important.

Open days

Another way to promote the Ombuds institutions are open days, the OmbudsDay is an example. Every second Thursday of October Ombuds organisations around the world celebrate OmbudsDay.²⁸ This tradition originated in the US and serves as an opportunity to educate and raise awareness among the public about the history and practises of the Ombud. The goals of OmbudsDay are to:

- Educate the public about the role of ombuds
- Explain the wide variety of services that ombuds provide
- Encourage greater use of ombuds programs and services
- Highlight the value ombuds bring to the institutions and constituents they serve

Further examples of open days are the Irish Ombud and the Kosovo Ombud. The Irish Ombud²⁹ urged students to bring complaints. His office received more than 300 complaints about education services last year, including concerns over poor communication, admission procedures, delays in grants and the appeals or complaints process. He said that at Thursday's meeting he had urged all providers of public services to "use complaints as a source of learning". He also encouraged students who are unable to resolve complaints locally to bring their complaint to his office.

Another example from Kosovo.³⁰ Between 2000-2005 the Ombud held open days as one of the most important exercise to build trust in the institution by showing that the Ombud reaches out to people, to local communities, who can more easily and directly share their problems. Open days are an important vehicle for access to the institution and provide persons with the opportunity to talk to the Ombud and to file a complaint. This continued in some fashion after 2005.³¹

Outreach programme

Further, outreach campaigns are another means by which an Ombud can become more visible. In Austria, the Ombud (*Volskanwaltschaft*)³² has a regular slot on national television.³³ In short

²⁸ Irish Ombud, Happy Ombudsday! Available at: <https://www.ombudsman.ie/news/happy-ombudsday/>

²⁹ The Irish Times, Ombudsman urges students to bring complaints to him, available at: <https://www.irishtimes.com/news/education/ombudsman-urges-students-to-bring-complaints-to-him-1.2760626>

³⁰ EQUINET, Ombudspersons Institution, https://equineteurope.org/author/kosovo_oik/

³¹ The Republic of Kosovo Ombud Annual Report 2018, available at: <https://www.oik-rks.org/en/2019/04/08/annual-report-2018/>

³² <https://volksanwaltschaft.gv.at/en/about-us>; Dahlvik, J., Pohn-Weidinger, A., & Kollegger, M. (2020). Independence despite Political Appointment? The Curious Case of the Austrian Ombudsman Board, *NISPAcee Journal of Public Administration and Policy*, 13(2), 181-210. doi: <https://doi.org/10.2478/nispa-2020-0020>

³³ <https://der.orf.at/unternehmen/programmangebote/fernsehen/sendungen/sendungen-a-c/buergeranwalt104.html>; <https://tv.orf.at/buergeranwalt>

reportages the audience learns about a specific case and then the pros and cons are discussed. The *Volksanwaelte* are in discussion with lawyers, patient representatives, and occasionally other Ombuds.

The Financial Ombudsman Service (FOS) in the UK does outreach work.³⁴ They meet consumers and public-facing organisations, charities, businesses and their representatives. They also visit communicates across the UK to share experiences and answer questions. They also take part in conferences, networks and events.

In the Welsh Ombud's outreach strategy and work programme³⁵ the outreach strategy has three objectives: (1) awareness: Ensuring the people who need us, know about us, providing appropriate and timely information about our services, sharing good practice and lessons learnt from our investigations. (2) engagement: engage effectively with stakeholders by establishing a two-way communications channel, utilise established networks/umbrella organisations to engage with wider audience i.e. WCVA and County Voluntary Councils, Utilise the range of communications channels available to improve engagement. (3) accessibility: Ensuring our services are accessible to all, targeting hard to reach groups, developing products/services to improve accessibility, develop Social Media methods to extend the reach.

b. Access to the Ombud (including digital access and access for marginalised and disadvantaged groups)

Although Ombuds are set up to cater for everyone's complaints, the reality is – in most countries – that the institution is mainly used by those who could also access the court system (and afford a lawyer). In other words, people that are educated, middle-aged, employed and usually male. In order to serve everyone's needs the Ombuds needs to reach out to all groups of society. This can take various forms. For example, an online process could assist in individuals being able to access the Ombuds process remotely from wherever they are. This, of course, can only be done if a stable internet connection, digital literacy and an appropriate device are available. In some countries public libraries and town halls are a space where people can come and use the internet. This would expand the reach of an Ombud and can be accompanied with posters explaining what the role of the Ombuds is, for example. The Turkish Ombud receives digital applications.

In connection with online access, some Ombuds adjust for disabled people and for minority languages. Illiteracy is a big issue that needs to be managed if access is to be meaningful. For example, in the UK the PHSO offers access for the blind, people who are hearing impaired or deaf and for people with learning disabilities.³⁶

The literature on unmet legal needs³⁷ and marginalisation tells the story of not many cases being brought to an Ombud, as most people do not know where to turn for help. Further, the most disadvantaged in society are excluded from access. for example, the UK *PHSO (2011)* found that disabled people, young people and unemployed people were particularly unlikely to complain even when they had a grievance; *EHRC (2010)* and *LSRC Research Paper No 14 (2006)* suggested that

³⁴ <https://www.financial-ombudsman.org.uk/news-events>

³⁵ <https://www.ombudsman.wales/wp-content/uploads/2018/04/PSOW-Outreach-Strategy-2016.pdf>

³⁶ PHSO, Accessibility, available at: <https://www.ombudsman.org.uk/accessibility>

³⁷ Genn H *Paths to Justice* (Hart); Dunleavy, P. *The Future of Joined-up Public Services* (2010).

unresolved legal problems more generally are far more likely to affect those in temporary accommodation, single parents, disabled people, younger and less economically active people.³⁸

The approach that the Ombud is left with is that of 'fire-fighting'.³⁹ If a complaint is brought to the Ombuds they can react to it. Some Ombuds can start an investigation (ex-officio) if they have the powers. Ideally, if the Ombuds had own-initiative powers, to prevent fires from spreading, then many issues might be fixed before they affect many people (more below).

A report commissioned by the International Bar Association in 2018⁴⁰ into access to justice of Ombuds schemes found that:

For ombudsman structures to be fully effective, citizens from all backgrounds and with differing needs must be both aware of, and comfortable using, ombudsman services. Research conducted for this report has shown that many ombudsmen have a strong appreciation of the challenges faced by certain groups in accessing their services and have taken steps to ensure that these difficulties are adequately handled without impacting on the quality of justice.

The extent to which Ombuds can provide adequate assistance for persons to access the institution also depends on the budget. Internal regulations must provide for a procedure to be followed to assist with physical access, with access for various disabilities, translation, for example.

Electronic access to the Ombud makes it easier for many people to file a complaint but it does not solve problems, especially for illiterate people, digitally excluded people, less educated people and poor people. Therefore, it is very beneficial to have regional offices (or a regular space in a town hall or local office) which enables people to have personal contact with the institution. Especially in Turkey as such a large country it is important to enable a significant part of the population to effectively use the Ombud.

The Ombud needs to make an active effort to ensure access for marginalised and disadvantaged groups. Part of this concerns access issues for women which will be discussed in the next part.

c. Specific access issues for women

A practitioner's toolkit on Women's access to justice programming was issued in 2018 by the UN. Globally, women face barriers to obtaining justice in their capacities as claimants, victims, witnesses or offenders, often driven by institutional, policy and legislative failure to remove discrimination, gender bias, stereotyping, stigma, indifference, corruption and impunity. Women who face multiple and intersecting forms of discrimination as well as those affected by conflict and its aftermath, are often at the backend of justice service delivery. The toolkit provides practical guidance on how to address these issues in the context of: marriage, family and property rights, ending violence against women, and women in conflict with the law.

³⁸ See Nick O'Brien UKAJI A review of research on public sector ombuds; <https://ukaji.org/2018/01/30/what-do-we-know-and-what-do-we-need-to-know-a-review-of-research-on-public-sector-ombuds/>

³⁹ Harlow, C., & Rawlings, R. (2009). The Parliamentary Ombudsman: Firefighter or fire-watcher? In *Law and Administration* (Law in Context, pp. 528-569). Cambridge: Cambridge University Press.

⁴⁰ J Beqiraj, S Garahan and K Shuttleworth, Ombudsman schemes and effective access to justice: A study of international practices and trends, International Bar Association, October 2018.

The CoE has issued a training manual for judges and prosecutors on ensuring women's access to justice in 2017.⁴¹ This manual has a specific focus on Armenia, Azerbaijan, the Republic of Moldova, Ukraine and Belarus. The manual has been designed with two central aims: to provide guidance for judges and prosecutors on steps that can be taken in their daily practice to improve women's access to justice and to provide a tool for national training institutions responsible for the training of judges and prosecutors in implementing initial and in-service curriculum on women's access to justice. This capacity-building tool is aimed at judges and prosecutors but it also is a reference tool that can be used more generally.

In a recent Handbook chapter, Reif (2018)⁴² wrote about strengthening gender equality, women's access to justice and protection and promotion of women's rights. She addresses gender equality in public administration and the methods by which ombuds institutions can strive for gender equality in their operations and in public administration, the notion of women's access to justice that includes NHRIs and other ombuds institutions, and barriers to women's access to ombuds institution justice. It provides examples where ombuds institutions have applied international human rights norms to protect and promote women's rights. Ombuds institution attention to women's rights is often limited. Accordingly, this chapter proposes reforms to strengthen ombuds protection and promotion of women's rights, promote gender equality internally and in public administration, and enhance women's access to justice.

In Finland, for example, there is an Ombud for equality.⁴³ The ombudsman for equality is an independent authority whose main duty is to supervise compliance with the Act on Equality between women and men. The Ombuds has powers on matters related to gender, gender identity and gender expression. The powers of the Ombud consist of both combatting discrimination and promoting equality.

There are few statistics in Ombuds annual reports on the distribution of complaints made by women (and men). An exception is found in the 2019 Kosovo Ombud annual report, that states they received 27% complaints from women and 73% complaints from men (one reason for this could be that it is a very traditional rural society). Because there is no coherence in reporting the data, the available sources are not really comparable. Speaking more generally, it is a challenge to know the accurate number of women bringing cases to Ombuds. Even if women bring cases to the Ombuds, often their accompanying partners name is on the complaint.

The Council of Europe gender equality strategy 2018-2023⁴⁴ has six strategic objectives: (1) prevent and combat gender stereotypes and sexism; (2) prevent and combat violence against women and domestic violence; (3) ensure the equal access of women to justice; (4) achieve balanced participation of women and men in political and public decision-making; (5) protect the rights of migrant, refugee and asylum-seeking women and girls; (6) achieve gender mainstreaming in all policies and measures. This strategy highlights that in the current context of economic uncertainties, austerity policies and measures, political unrest and rising inequalities, the essential

⁴¹ CoE, Training Manual for Judges and Prosecutors on Ensuring women's access to justice, available at: <https://rm.coe.int/training-manual-women-access-to-justice/16808d78c5>

⁴² Hertogh, M and Kirkham, R (2018) *Research Handbook on the Ombudsman* (Edward Elgar). <https://www.elgaronline.com/view/edcoll/9781786431240/9781786431240.00022.xml>

⁴³ EQUINET, Ombudsman for Equality, available at: https://equineteurope.org/author/finland_oe/

⁴⁴ CoE, Gender Equality Strategy 2018-2023, available at: <https://rm.coe.int/strategy-en-2018-2023/16807b58eb>

contribution of women to communities needs to be acknowledged and the high cost of gender inequalities needs to be remedied.

The EU has laws on gender equality and non-discrimination.⁴⁵ For example, the Recast Directive (2006/54/EC) on equal opportunities and equal treatment of women and men in employment and occupation has brought together some older directives. EU member states are required to align their national legislation with these directives and candidate countries, when accessing the EU need to comply with the *acquis* on gender equality and non-discrimination.⁴⁶

d. The role, and development, of the 'advice sector' and civil society

To be able to have a wide reach and impact it is important for the Ombuds to work closely with NGOs and civil society. Ideally, building a network of organisations that can direct individuals towards the Ombuds and for the Ombuds to be kept informed about issues arising. Individuals need to be empowered to solve problems and know where to take their problems. Educating the public plays an important role in the success of, and trust in, the Ombuds.

In a press release in 2008⁴⁷, the European Ombud underlined the importance of NGOs in pointing out possible instances of maladministration in EU institutions. He provided his decisions about Poland⁴⁸ and Greenpeace.⁴⁹ In 2010, he presented a new strategy for greater involvement of citizens and civil society.⁵⁰ The strategy outlines the Ombudsman's intention to meet the expectations of complainants and of other stakeholders, to increase his institution's effectiveness as an alternative means of resolving disputes with the EU administration, and to be recognized as the driving force in putting persons at the centre of the Union's administrative culture.

In 2018, the CoE held an event in Trebinje, in Bosnia and Herzegovina, to establish further cooperation between the Ombud institution, public institutions and the civil sector.⁵¹ The agreed outcome was training for the general and expert public on human rights in coordination with the International Human Rights Organisation (IHRO). Similar action was implemented in Bosnia and Herzegovina.⁵²

⁴⁵ European Equality Law Network, Key EU directives in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/legal-developments/16-law/76-key-eu-directives-in-gender-equality-and-non-discrimination>

⁴⁶ European Equality Law Network, Transposition of EU directives on gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/legal-developments/16-law/77-transposition-of-the-eu-directives-on-gender-equality-and-non-discrimination>

⁴⁷ European Ombudsman, Ombudsman: NGOs can help EU institutions do their job better, available at: <https://www.ombudsman.europa.eu/en/press-release/en/236>

⁴⁸ <http://www.ombudsman.europa.eu/decision/en/061807.htm>

⁴⁹ <http://www.ombudsman.europa.eu/decision/en/062740.htm>

⁵⁰ European Ombudsman, Ombudsman: New strategy for greater involvement of citizens and civil society, available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjmm6qciPitAhVIRhUIHW4xDOkQFjAAegQIBRAC&url=https%3A%2F%2Fwww.ombudsman.europa.eu%2Fexport-pdf%2Fen%2F5332&usq=AOvVaw3aCFNqRKPbzVzhdro1QLt3>

⁵¹ https://www.coe.int/en/web/sarajevo/ombudsman-news/-/asset_publisher/wP7uSfVC5LUV/content/strengthening-the-cooperation-between-the-ombudsman-institution-and-public-institutions-and-civil-society-organisations?inheritRedirect=true

⁵² <https://www.coe.int/en/web/national-implementation/projects-by-geographical-area/bosnia-and-herzegovina-hf-disco>

In Poland, for example, there is a Social Council at the Office of the Commissioner.⁵³ The Social Council supports the Commissioner in performing statutory tasks maintains contacts with public authorities and with other entities, in particular non-government organisations.

Van der Vet found in 2017⁵⁴ in Russia, for example, that National Human Rights Institutions (NHRIs) have become hallmarks of good governance and democracy.⁵⁵ It is not entirely clear however how they operate on regional level where democracy and human rights are under pressure. Drawing on interviews, his essay examines how Russian nongovernmental organisations (NGOs) established a shadow Ombud—the Human Rights Council (HRC)—to protest against the appointment of an Ombud in St Petersburg and put pressure on authorities to inaugurate a new and independent Ombud. He found that civil society and the Ombud were brought closer together by this pressure. Interestingly, he also emphasised the importance of the individual that fills the role of the Ombud.

The involvement of stakeholders can happen at different levels and can include⁵⁶:

- **Information:** An initial level of participation characterised by a one-way relationship in which the government produces and delivers information to stakeholders. It covers both on-demand provision of information and “proactive” measures by the government to disseminate information.
- **Consultation:** A more advanced level of participation that entails a two-way relationship in which stakeholders provide feedback to the government and vice-versa. It is based on the prior definition of the issue for which views are being sought and requires the provision of relevant information, in addition to feedback on the outcomes of the process.
- **Engagement:** When stakeholders are given the opportunity and the necessary resources (e.g. information, data and digital tools) to collaborate during all phases of the policy-cycle and in the service design and delivery.

Collaboration with stakeholders [NGOs/ civil society] can provide opportunities for joint projects and public awareness raising. This is beneficial, for example, to identify systemic problems of public administration, propose innovative solutions and recommendations and strengthen future collaboration. These collaborations can also promote public trust in the Ombuds institution.

A report by the UK PHSO (‘Six Lives’) illustrates the way in which an ombud can engage with civil society organisations. ⁵⁷ In that instance, the Health Service Ombud and the Local Government Ombud investigated complaints brought to their attention by Mencap (an organisation representing the interests of people with learning disabilities) and made on behalf of the families of Mark Cannon, Warren Cox, Edward Hughes, Emma Kemp, Martin Ryan and Tom Wakefield, who died whilst in NHS or local authority care between 2003 and 2005.

⁵³ <https://www.rpo.gov.pl/en/content/social-council-office-commissioner>

⁵⁴ Van der Vet, F. (2017). In the Shadow of the Ombudsman: Civil Society and the Struggle for an Independent Human Rights Institution in St. Petersburg, Russia. *Europe - Asia Studies*, 69(8), 1201-1221. <https://doi.org/10.1080/09668136.2017.1372732>

⁵⁵ The Turkish Ombud is not an NHRI – we add this example for the purpose of comparison.

⁵⁶ <https://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.pdf>

⁵⁷ Six lives: the provision of public services to people with learning difficulties; <https://www.gov.uk/government/publications/six-lives-the-provision-of-public-services-to-people-with-learning-difficulties-2008-to-2009>

A further example in Greece⁵⁸ shows the importance of mobilisation of civil society to help mobilise a social space to create a social reality in which the European equality law is functioning.

In Denmark, legislation was passed as late as 1996, following a statement by the Ombud that failure to protect against discrimination in private workplaces rendered Denmark in breach of international obligations.⁵⁹

More generally, the UN CRPD has encouraged the co-ordination of Ombuds, NHRIs and civil society organisations, in particular those organisations run by disabled people themselves, as a means of strengthening the promotion and protection of human rights for disabled people.

Human rights centres that are connected to the Ombuds, examples from Finland and Slovenia. In Finland, the Human Rights Centers Parliamentary Ombudsman Act Finland (197/2002) states in *Section 19 b - Purpose of the Human Rights Centre* For the promotion of fundamental and human rights there shall be a Human Rights Centre under the auspices of the Office of the Parliamentary Ombudsman. *Section 19 d - Tasks of the Human Rights Centre*
(1) The tasks of the Human Rights Centre are:

1) to promote information, education, training and research concerning fundamental and human rights as well as cooperation relating to them; 2) to draft reports on implementation of fundamental and human rights; 3) to present initiatives and issue statements in order to promote and implement fundamental and human rights; 4) to participate in European and international cooperation associated with promoting and safeguarding fundamental and human rights; 5) to take care of other comparable tasks associated with promoting and implementing fundamental and human rights.
(2) The Human Rights Centre does not handle complaints.

In Slovenia, the Human Rights Ombudsman Act – 30 December 1993 with amendments)
HUMAN RIGHTS OMBUDSMAN COUNCIL AND HUMAN RIGHTS CENTRE
Article 50a (1) To promote and protect human rights and fundamental freedoms and to enhance legal certainty, the Human Rights Ombudsman Council (hereinafter: Council) shall be established as the Ombudsman's consultative body, and it shall function according to the principle of professional autonomy.
Article 50b (1) As an internal organisational unit within the Ombudsman, the Human Rights Centre (hereinafter: Centre) shall be established. (2) The tasks of the Centre shall include: promoting, informing, educating, training, preparing analyses and reports regarding individual fields of promoting and protecting human rights and fundamental freedoms.

⁵⁸ Nick O'Brien (2012) Social rights and civil society: 'Giving Force' without 'Enforcement', *Journal of Social Welfare and Family Law*, 34:4, 459-470, DOI: [10.1080/09649069.2012.753728](https://doi.org/10.1080/09649069.2012.753728)

⁵⁹ Lane, J and Videboek Munkhorn, N Danish and British protection from disability discrimination at work – present past and future; <http://eprints.hud.ac.uk/id/eprint/23332/1/LaneDanish.pdf> *Folketingets Ombudsmands Udtalelse FOU 1995.46* (Ombudsman opinion no. 46 in 1995) on Danish obligations under International Labour Organization Convention No. 111 on Discrimination (Employment and Occupation), 1958, ratified by Denmark in 1961, and under *United Nations International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, ratified by Denmark in 1971.

2. The Ombud, public authorities and democratic public administration

a. The opportunities for offering training and other forms of support to public authorities (including on the role of the Ombud, on good administration and on good complaint handling)

It is very important for the Ombud office to be visible to the public it serves and to be understood in its functions by the public authorities. This can be achieved through training. There are different types of training: training for Ombuds and their staff and training for public authorities about what Ombuds do. Both are valuable to enhance the visibility and effectiveness of Ombuds. It further fosters better understanding of the Ombuds functions and thereby can play an active role in relieving the courts of their caseload.

Training

There is another distinction to be drawn here, between training public authorities in complaint handling (quite narrow) and training/supporting them in good public administration (the ambition of 'humane administration'). The UK PHSO's Principles of Good Administration an example of the latter, for example.⁶⁰ These six principles of good administration by public bodies are:

1. Getting it right; 2. Being customer focused; 3. Being open and accountable; 4. Acting fairly and proportionately; 5. Putting things right; 6. Seeking continuous improvement.

The European Ombud has a code of good administrative behaviour⁶¹, stating the public service principles to be: 1. commitment to the European Union and all citizens; 2. Integrity; 3. Objectivity; 4. Respect for others; 5. transparency.

'The Code helps citizens to know what administrative standards they are entitled to expect from the EU institutions. It also serves as a useful guide for civil servants in their relations with the public. By making the principle of good administration more concrete, the Code helps to encourage the highest standards of administration.'

Complaint handling

The International Ombudsman institute (IOI) provides training sessions for its members. These are aimed at strengthening their members' capabilities and to exchange best-practise.⁶² The Europe and Central Asia UNDP issued a guide for Ombuds Institutions: how to handle complaints.⁶³

The Ombudsman Association in the UK⁶⁴, for example, published in 2018 a Service Standards Framework for their members. The framework provides recommendations and guidance to member organisations to help them improve their own performance, embed good practice and demonstrate the quality of service they provide. The framework aims to clarify what service users

⁶⁰ <https://www.ombudsman.org.uk/sites/default/files/page/0188-Principles-of-Good-Administration-bookletweb.pdf>

⁶¹ <https://www.ombudsman.europa.eu/en/publication/en/3510>

⁶² <https://www.theioi.org/ioi-activities/training>

⁶³ https://www.eurasia.undp.org/content/rbec/en/home/library/democratic_governance/guide-for-ombudsman-institutions--how-to-handle-complaints-.html

⁶⁴ <https://www.ombudsmanassociation.org>

can expect. As a tool, it can be used to manage expectations and build trust and confidence in the services that members provide. In meeting the standards members can be more effective in providing individual redress and improving the services of the bodies in jurisdiction. The framework is also designed to enable members to report on their performance to the public and the organisations they are accountable to.⁶⁵

The Scottish Public Sector Ombudsman (SPSO) provides training for public sector complaint handlers.⁶⁶ They have developed courses for frontline staff to support their complaint handling in different sectors, this training is currently free. [In the final version of this report we will add some examples of the training in the annex.]

In Wales, a Complaint Standard Authority was created under the Public Services Ombudsman (Wales) 2019 Act to drive improvement in public services. They support effective complaint handling, collect published data and deliver training packages.⁶⁷

The Parliamentary and Health Service Ombudsman (PHSO) in the UK produced complaints standards, this is a single set of standards for staff to follow when handling complaints. They also provide standards for leaders to help them capture and act on the learning from complaints.⁶⁸

The Local Government and Social Care Ombudsman (LGSCO) in the UK offers complaints handling training.⁶⁹ It is an interactive workshop for councils and care providers to assist their complaint handling skills. This training is aimed at staff dealing with complaints at the higher stages of the process, and staff who investigate and make decisions about complainants.

In sum, it is important to keep in mind the different types of training, training not only aimed at Ombuds staff, but also training for the public authorities and NGOs.

b. The implications of the Ombud resolving public-authority employment disputes (workload focus)

The Ombud in Northern Ireland, for example, has the legal authority to investigate complaints and make recommendations, set out in the Public Services Ombudsman Act (Northern Ireland) 2016.⁷⁰ The Act provides the Ombud with significant powers to obtain information from public service providers and their employees. Their investigations are conducted in private, though the Ombud has the power to publish her reports where she considers it is in the public interest. Before publishing reports they take appropriate steps to protect the identity of the complainant.

The main areas of complaints that an Ombuds receives differ. They depend on the jurisdiction and remit. The Turkish Ombud receives the majority of complaints from employees about employment grievances (70%).⁷¹ In the UK, for example the Ombud does not deal with employment disputes,

⁶⁵ https://www.ombudsmanassociation.org/docs/OA17_Service_Standards_2017_Final.pdf

⁶⁶ <https://www.spsso.org.uk/training>

⁶⁷ <https://www.ombudsman.wales/complaints-standards-authority/?emergency=1>

⁶⁸ <https://www.ombudsman.org.uk/csf>

⁶⁹ <https://www.lgo.org.uk/training>

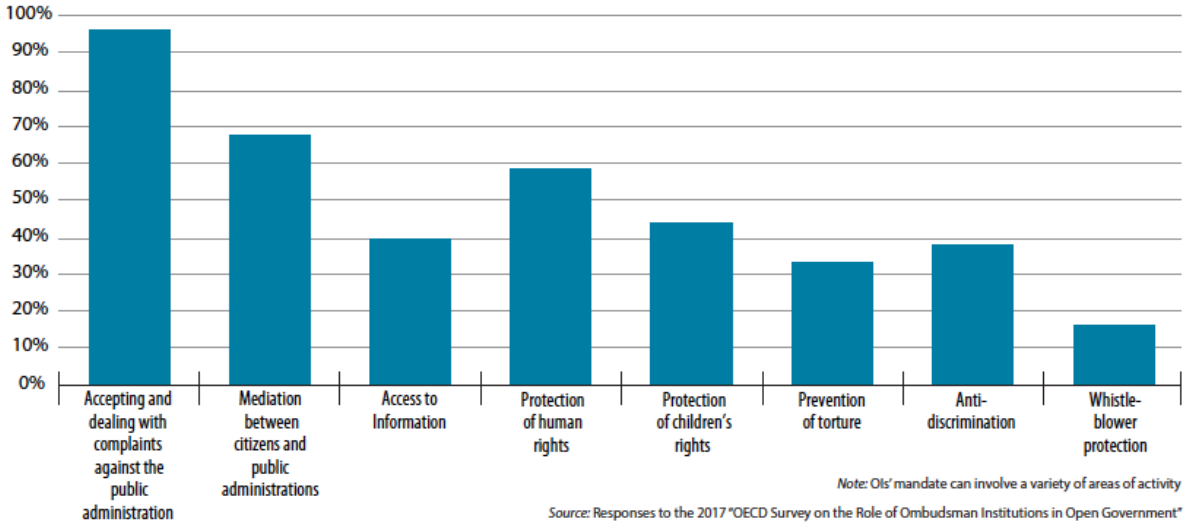
⁷⁰ Click here for a copy of the 2016 Act.

⁷¹ Cite annual report 2019

rather the specific employment tribunal does this.⁷² Arguably, this frees up the Ombud to focus on other cases. If the Turkish Ombud is to relieve the administrative courts then some consideration could be given to the type of cases the Ombud deals with. For the Ombud to play a bigger role in the public administration, a refocus of complaints from civil servants is advisable – where could they go?

If the Turkish Ombud has to retain this function, perhaps it needs to be located in a stand-alone unit, with separate budget, so it does not detract from the more fundamental ombud task of mediating between citizen and state (rather than between public officials and the state).

Table X: Ombuds institutions areas of activity according to their mandate



Source: OECD working paper on public governance⁷³

3. The Ombud as part of a 'regulatory network'

A few examples of Ombud bringing together NGOs, courts, other bodies and public inquiries are presented in examples of Greece (see above) and the UK.

In the UK, the Law Commission in 2011 recommended a co-ordination between the Ombuds and the courts in their call for a public services Ombud. In a consultation paper they made four proposals⁷⁴:

1. the creation of a specific power to stay an application for judicial review, so that suitable matters are handled by ombudsmen rather than the courts;
2. improved access to the ombudsmen by modifying the "statutory bar" – the rule that recourse may not be had to the ombudsmen if the complaint has or could be pursued in a court of law;

⁷² <https://www.gov.uk/employment-tribunals>

⁷³ <https://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.pdf>

⁷⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/247386/1136.pdf

3. a power for the ombudsmen to refer a question on a point of law to the courts; and
4. the removal of the MP filter in relation to the Parliamentary Commissioner for Administration.

There are calls by UK academics for a whole system approach and for the Ombud to play a stronger role in this system with more powers.⁷⁵

a. Co-ordination of the Ombud's relationships with other institutions (including the administrative courts and the Equality and Human Rights Commission)

The Venice Principle 13 states that 'The institutional competence of the Ombudsman shall cover public administration at all levels.'

Relationship between Ombuds and the courts

In 2011, a roundtable with the Russian Commissioners for HR, Kucsko-Stadlmayer⁷⁶ highlighted the differences between Ombuds and courts. The Ombud, an independent human right protector (with soft powers) should not interfere with independent institutions. Courts have to decide individual cases and can enforce human rights protection. Whilst the Ombuds is responsible to Parliament and public opinion, courts are separate from politics. Thus, the independence of both institutions and the principle of separation of powers demand a strict segregation of the two institutions and exclude a mutual control. Several international legal acts highlight the importance of this separation and its guarantee by the constitution.

According to the European standard, the Ombud should not have any authority over the jurisprudence of the courts, including administrative and constitutional courts, which are scrutinizing laws and administrative decisions.⁷⁷ The relation between the ombudsmen and the courts will always stay a sensitive issue, located between the separation of powers and the necessity to systematically improve the effectiveness of human rights protection.

In a recent paper Kirkham and Stuhmke⁷⁸ analysed the relationship between Ombuds and the courts in Australia and the UK. They argue that 'in both Australia and the United Kingdom, the ombudsman sector plays a specific role in the oversight of the administration of government, but there exists no clear overarching theoretical framework within which the institution is aligned with common law constitutionalism. An ombudsman's functionality is secured by gaining legal authority from parliament and effective power through executive acquiescence, but simultaneously to function effectively it must maintain a degree of separation from the executive and parliament. This situation creates a regulatory gap which the courts fill by acting in a supervisory relationship over the ombudsman sector. In turn, this raises the danger that the legitimacy gained through judicial oversight results in a loss of flexibility and uniqueness in the Ombud institution. Through an

⁷⁵ Buck et al; Kirkham Gill 2020

⁷⁶ https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwig1-RufitAhXzmFwKHZwKBBIQFjABegQIBhAC&url=https%3A%2F%2Fwww.coe.int%2Ft%2Fdemocracy%2Fmigration%2FSource%2Fnhrs%2Fpmc%2FSamara_PresKucsko.doc&usg=AOvVaw3BMbjQQy3oDpSkO59JV-TV

⁷⁷ CDL-AD(2011)034 JOINT OPINION ON THE LAW ON THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS OF MONTENEGRO by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Adopted by the Venice Commission at its 88th Plenary Session Venice (14-15 October 2011)

⁷⁸ Kirkham R, Stuhmcke A. The common law theory and practice of the ombudsman/judiciary relationship. *Common Law World Review*. 2020;49(1):56-74. doi:[10.1177/1473779520904963](https://doi.org/10.1177/1473779520904963)

empirical study of the case law on the sector, this article confirms that the courts have shaped and legitimised the role of the Ombud institution under the common law constitution. Yet this study also suggests that there is a risk that over-reliance upon the judiciary to perform a retrospective, reactive and intermittent control function can lead to an inappropriate imposition of judicial values on the ombudsman sector as well as the courts performing an unsuited regulatory role.’

In Slovenia, for example it is written in the Human Rights Ombudsman Act – 30 December 1993 with amendments), Article 24 ‘The Ombudsman shall not consider cases subject to court or other legal proceedings unless they involve undue delays or a clear abuse of power.’.

The Turkish Ombud has three types of relationships with the administrative courts:

1. Preventing disputes

An Individual can file a complaint with the Ombuds before going to court. If this happens then the period to file a case before the administrative courts is suspended. In other words, the right of the individual to apply to the administrative courts is reserved.

If the Ombud solves the case through an amicable solution then the administrative courts will not be addressed. This would place the Ombud as a mediation mechanism before the administrative judiciary. In some cases, the courts will take Ombud interim decisions and build on them in the first stage of the litigation and judgement is rendered without the need to revisit the substance.

2. A Judge request to have the Ombud involved.

Lawyers can request of the individual that is party to the administrative dispute to receive a decision from the Ombud. This can also be requested ex-officio by the administrative judge. In this case, the Ombud is added as a Third Party to the ongoing administrative litigation. This way, the Ombud has access to all the documents and can follow the process. In this example, the Ombud is requested to present decisions on similar issues during the litigation. The Ombud can be requested to add all the obtained expert reports, experts’ opinions and/or correspondences with other public administrations if the plaintiff has applied to the Ombud before. Administrative Courts may render decisions in favour of the individuals by referring to the Recommendations of the OI.

3. Ombud special reports.

The Ombud issues special reports on topics that are of public interest and published them on the website and disseminated them widely. These reports are used by the courts in favour of plaintiff individuals and ruling for indemnifications.⁷⁹

Examples of other options to create close ties with other organisations are MOUs and informal agreements.

Memorandum of understanding

Some Ombuds have put MOUs in place with other institutions, for example regulators to formalise arrangements in place to work together. For example, the Housing Ombudsman (THO) and the Regulator of Social Housing in the UK have a MOU since 2017.⁸⁰ While this MoU is not a legal or binding agreement, both THO and the regulator are committed to working to it. Each organisation

⁷⁹ As examples to the reports [link to website]; Special Report on Violations of Rights in Child Custody and Alimony, Workshop on Solutions to Animal Rights, Special Report on Syrians in Turkey, Special Report on Fight of Turkey Against Coronavirus, Report on Human Rights Violations by Armenian Armed Forces during the Azerbaijan-Armenia War, etc.

⁸⁰ <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-regulator-of-social-housing-and-the-housing-ombudsman>

will take steps to ensure that their staff are aware of what is in the MoU. They will keep staff updated about it, and about the responsibilities it places on each individual member of staff. The MoU will also be made public and placed on THO and the regulator’s websites.

The Financial Ombudsman Service and the Financial Conduct Authority in the UK also have a MOU.⁸¹ This memorandum of understanding provides a framework for the FCA and the Financial Ombudsman Service Limited to cooperate and communicate constructively to carry out their independent roles and separate functions.

These MOUs are creative ways of working together and they could be crafted between the Turkish Ombud and the HR Commission as well as the Administrative Courts.

4. The refinement of the Ombud’s ‘technique’

a. *The power of informal dispute resolution*

Ombuds have a large toolbox to draw upon when providing informal dispute resolution. This is a strength as it allows the ombuds to be flexible and creative in their way of resolving disputes.⁸² The ombuds play an important role to protect the individual from potential abuse by public bodies or by the administration. In many jurisdictions the ombuds also carry a human rights mandate.

“[The ombuds] public authority should be exercised in accordance with the law and with respect to fundamental human rights” – this principle of the rule of law, written down in many constitutions, provides the foundations for this institution. In today’s world, the Ombudsman is an unquestionable, important instrument of independent oversight of the public administration whose decisions are of great importance for the interests and rights and freedoms of people. Its vital task is to ensure the transparency of the administration.

(speech by Nowicki, 2007)

Ombuds have a range of ways to solve disputes that are brought to them. Not all Ombuds use the same set of approaches or terminology. A study in 2014⁸³ mapped the use of informal resolution approaches by Ombudsmen and complaint-handling organisations in the UK and Ireland. The authors found many possible terms for what Ombuds did (conciliation/early resolution / settlement/ informal resolution / local resolution / mediation / resolution / intervention / negotiated settlement) and call for a degree of consistency and standardisation.

A further attempt to classify the types of dispute resolution Ombuds offer⁸⁴: Informal early settlement; Settlement by party agreement (Negotiation and Mediation); Early neutral evaluation; Conciliation; Settlement by third party decision; Arbitration; Adjudication; Expert determination.

⁸¹ https://www.financial-ombudsman.org.uk/files/2628/memorandum_of_understanding-with-FCA-December-2015.pdf

⁸² Kucsko-Stadlmayer, European Ombudsman-Institutions (2008 Springer); <https://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.pdf>; ...

⁸³ Doyle, M; Bondy, V and Hirst, C (2014) The use of informal resolution approaches by ombudsmen in the UK and Ireland <https://www.researchgate.net/publication/311675615> The use of informal resolution approaches by ombudsmen in the UK and Ireland 2014

⁸⁴ <https://www.legalombudsman.org.uk/media/he4bmjpx/models-alternative-dispute-resolution-report-141031.pdf>

Some Ombuds choose to explain their approach to resolving disputes and the terminology they use in their annual reports. For example, the PHSO describes their work in the following way⁸⁵:

Enquiries	The helpline manages all enquiries into the organisation whether by telephone, digitally or post.
Complaint	We describe an enquiry as a complaint when we have looked at it in more detail and think it may be something we can help with. We receive complaints about UK Government departments, the NHS in England, and some other UK public organisations. We also receive 'out of jurisdiction' complaints.
Complaints handled	This refers to phone and written complaints that we have closed in a given year, regardless of outcome and stage of our process.
Assessment	A stage in our process, when a complaint is allocated to a caseworker and we assess whether we can and should investigate, or whether there are things we can do to resolve it or close it without the need for an investigation. This can include a preliminary examination of the issues raised in the complaint to understand what happened and whether there has been a service failure.
Assessment decision	We have assessed the details of a complaint and decided that we cannot add benefit by investigating. This could be because we cannot see that there has been a service failure or the organisation complained about has already put right mistakes made.
Resolution	A complaint closed with a positive outcome for the complainant without the need for an investigation, for example an apology, further explanation or financial remedy provided.
Investigation	The final stage in our process, an investigation is carried out if we have been unable to resolve the complaint and there is a possibility that there has been a service failure that has not been put right. We agree the scope of the investigation with all involved and request evidence from them in order to reach a decision.
Upheld complaint	We have completed an investigation and found a failing that has not been put right.
Partly upheld complaint	When people bring a complaint to us there are often various parts to it. Partly upheld refers to when we have completed an investigation and found a failing in some parts. These might be the most significant aspects of the overall complaint, with only minor parts not upheld, or conversely we might find that a very serious part of a complaint is not upheld while we find that there was a more minor service failing.

⁸⁵ <https://www.ombudsman.org.uk/publications/annual-report-and-accounts-2019-20>

Not upheld complaint	We have completed an investigation and found that there were no failings.
Out of jurisdiction	Out of jurisdiction refers to those complaints about an organisation that we cannot legally investigate.

Some examples from laws stating the type of resolution the Ombuds offers from Kosovo, Bulgaria and Moldova. In Kosovo the Law no. 05/L - 019 on Ombudsperson in Kosovo, 28 May 2015; 16.11. The Ombudsperson shall also exercise his/her competences through mediation and conciliation. In Bulgaria, the Ombudsman Act in force from 01.01.2004 with amendments; Art. 19. (1) The ombudsman shall: [...] 6. mediate between the administrative bodies and the affected persons for overcoming the admitted violation and reconcile their positions [...]. In Moldova, the Law on the People’s Advocate in Moldova 3 April 2014; Article 16 The People’s Advocate [...] d/ contributes to the amicable solution of the conflicts between public authorities and individuals.

Further examples of ADR techniques applied in the administrative justice system by Ombuds from France and Germany follow. The “Defenseur des droits” is the French Ombudsperson. He offers different ADR techniques to resolve cases. One of the methods he uses is mediation, this needs to be distinguished from the mediation offered by companies or independent mediators⁸⁶ in France.⁸⁷ The institutional mediation⁸⁸ that the Ombud offers includes three stages: (1) preparation stage; (2) analysis and exchange of views stage; and (3) active mediation stage. The timing of this ought to be an initial three months, which can be extended for another 3 months at the request of the mediator, as set out in Art 131-3 of the Civil Procedure Code. The main ADR models used in French administrative law are transaction (peaceful settlement), mediation and conciliation, and RAPO (mandatory preliminary administrative appeal).⁸⁹

In Germany,

- This will be added to the final version of the report.

b. The reach of ex officio investigation powers

Those Ombuds who have own-initiative powers make use of it in a successful way, as a recent analysis of 11 Ombuds states.⁹⁰ The matters that have been addressed in the investigations have usually led to a modification in legislation. This is a very powerful tool for an Ombud. Another

⁸⁶ individual mediators, the mediation process is not enshrined in a strict legal framework: the mediator is free to organize the mediation as long as the process follows “public order” principles, especially if it shall not be in breach of individuals’ rights (art. L. 213-3 CJA: the mediation agreement shall not breach such rights).

⁸⁷ Gilberg, K (2020) Reforms in the French Administrative Justice System and Alternative Dispute Resolution (ADR) Methods, Joint Project on Improving the Effectiveness of the Administrative Judiciary and Strengthening the Institutional Capacity of the Council of State.

⁸⁸ institutional mediation see the National Assembly’s Report on the Evaluation of Mediation between individuals and public administration (doc AN, 2702, 20 February 2020).

⁸⁹ See pp.23-30 in Gilberg 2020

⁹⁰ Diez, L (2018) The Use of own initiative powers by the ombudsman, in Research Handbook on the Ombudsman (eds) Kirkham, R and Hertogh, M (Edward Elgar)

argument for own-initiative powers of Ombuds is that such power can help access to justice for the most vulnerable in society. The Ombud could provide a voice to those who are marginalized and not heard.

The NI Ombud has own-initiative powers⁹¹, these own-investigation powers allow the Ombud to investigate if there is a reasonable suspicion that there is systemic maladministration, even if no complaint has been received.

The criteria for selecting subjects for potential own initiative investigations are one or more of the following:

1. The issue of concern has been identified by the Ombud to be one of public interest;
2. The issue of concern affects a number of individuals or a particular group of people.
3. The investigation has the potential to improve public services and;
4. The Ombud considers the investigation of the chosen issue is the best and most proportionate use of investigative resources.

The Irish Ombud has own initiative powers under Section 4(3) (b) of the Ombudsman Act 1980. These provisions confer a broad discretion and there are no limitations on when that power may be used.

The *Defenseur de Droites* in France is appointed by the President. Claimants (individuals and/or legal entities) may directly address their complaints to the *Defenseur de Droites* or to a Member of Parliament or a French Member of the European Parliament, who will forward the complaint to the Defender. The *Defenseur de Droites* also can decide to intervene on his own initiative and may recommend legislative modifications and be consulted by the Prime Minister on any draft laws concerning his/her areas of competence. This is set out in Law 2011-333. The *Defenseur de Droites* has wide investigatory powers. He has the authority to request an order from a judge in case of noncompliance with one of his/her investigation requests. The *Defenseur de Droites* can intervene before a court and decide on complaints (decisions or recommendations to the parties) but they are not legally binding.

In Germany – will be added in the final version

The Ombudsman Act 1995, section 13(2), provides the Maltese Ombud with a broad discretionary power to investigate the administrative functions of a body in his remit on his own initiative or where he receives a complaint from a person aggrieved by such actions. There is no statutory limitation on this power but it is noteworthy that he will exercise this power where there is a 'substantial public interest and importance are concerned'.⁹² In addition, any Committee of the House of Representatives may refer any matter that is under consideration by it to the Ombud for investigation. The Prime Minister may also at any time refer a matter for investigation by the Ombud.

⁹¹ Ombudsman of Northern Ireland, A paper prepared by the office of the NI Ombudsman on a power to commence an own initiative investigation, <https://business.senedd.wales/documents/s37921/PSOW%2016b%20-%20Northern%20Ireland%20Ombudsman.pdf>

⁹² www.ombudsman.org.mt/index.asp?

Some triggers suggested for an own initiative investigation⁹³:

- A complaint or series of complaints about a particular or similar issue;
- The Ombudsman's perception of significant public concern about an issue;
- The outcome of the Ombud's research on the issue;
- A media report;
- An organisation's own internal governance arrangements and external audit, having highlighted an issue;
- Report or reference from another oversight or integrity body;
- Identified as a result of scrutiny by a Committee of the Legislature.

The Parliamentary Ombudsman Act in Finland (197/2002) outlines in section 4 own initiative: The Ombudsman may also, on his or her own initiative, take up a matter within his or her remit. The Law no. 05/L - 019 on Ombudsperson in Kosovo, 28 May 2015; states in 16.4. The Ombudsperson has the power to investigate, either to respond to the complaint filed or its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights.

(art 6) If the Ombudsperson starts procedure on his/her own initiative or if any other person on behalf of the damaged person with the submission addresses to the Ombudsperson for initiating of the procedure, the consent from the person whose rights and freedoms have been violated is necessary. Exceptionally, in case the damaged party has died or cannot provide his/ her consent due to any other reason, it should be required from the closest relatives to him/her and in case none of them exists or contact is impossible, consent is not needed.

(art 7) When the Ombudsperson initiates procedure on his own initiative regarding the violation of rights and freedoms to a greater number of citizens, children or persons with lost abilities for action, consent required by paragraph 6 of this Article is not necessary.

The law on the Human Rights Ombudsman of Bosnia and Herzegovina, 22 January 2004, states in 2.2. The Institution shall act either on receipt of a complaint or ex officio.

The law on the Ombudsman of the Republic of Macedonia" nos. 60/2003, consolidated text published in the "Official Gazette of the Republic of Macedonia" no. 143/2008.

Article 13. The Ombudsman may institute a procedure on his/her own initiative if he/she assesses that the constitutional and legal rights of citizens determined in Article 2 of this Law have been breached.

In Slovenia, the Human Rights Ombudsman Act – 30 December 1993 (with amendments) states in 9 [...] The Ombudsman may also instigate proceedings on their own accord. The Ombudsman may address wider issues relevant to the protection of human rights and fundamental freedoms, and to the legal certainty of citizens in the Republic of Slovenia.

⁹³ <https://business.senedd.wales/documents/s37921/PSOW%2016b%20-%20Northern%20Ireland%20Ombudsman.pdf>

26. The Ombudsman may also instigate proceedings on their own accord. The consent of the person affected shall be required to initiate the procedure if such a procedure is initiated by the Ombudsman or filed by another person in the name of the person affected.

In Bulgaria, the Ombudsman Act in force from 01.01.2004 with amendments states that
19. (3) The ombudsman shall act on his initiative when he establishes that the necessary conditions for the protection of the rights and freedoms of the citizens are not created [...].

In Montenegro the Act of 29 July 2011 on the Human Rights Ombudsman states in *Article 28*. Protector shall examine violations of human rights and freedoms by his/her own initiative after he/she finds out that the act, action or failure to act of authorities violated human rights and freedoms. In order for Protector to act by his/her own initiative is required the consent of the victim.

Generally, the Ombud cannot be limited by the law in deciding to initiate ex officio investigations if its scope falls within his/her competence. Such a decision should solely depend on his/her belief in the need for such action.

c. The pros and cons of the ability to make binding findings and recommendations

Building on the previous point, this part introduces some arguments for and against having binding powers. The moral authority of the ombuds is important, there is a risk of legalism if the Ombuds has binding powers. In other words, the informal means of dispute resolution that is one of the strengths of the Ombud might be compromised. The former Irish Ombud, then European Ombud Emily O'Reilly encourages to think of the Ombud as having a 'mandate of influence, not of sanction'.

Own-initiative powers

Gill (2020)⁹⁴ wrote about Ombuds own-initiative powers in the UK:

Prior to 2016, own-initiative powers of investigation were not available to ombuds in the UK. The situation has now changed, with first the Northern Ireland Public Services Ombudsman (Public Services Ombudsman (Northern Ireland) Act 2016 ss.8–9, s.29) and then the Public Services Ombudsman for Wales (Public Services Ombudsman (Wales) Act, ss. 4–5,16) being granted own-initiative powers. Own-initiative powers are not available to the Scottish Public Services Ombudsman (Public Services Reform (Scotland) Act 2010) or to the Parliamentary and Health Services Ombudsman, and all English ombuds with a public service jurisdiction.

The IOI commissioned surveys of two regions and found that:

- Only 7 (15%) members of the Council of Europe (47 countries) do not currently have own-initiative powers.

For example, the Danish Ombuds⁹⁵ has own-investigations and inspections powers as expressed in the Ombudsman Act⁹⁶, chapter 5: Own-initiative investigations and inspection.

⁹⁴ <https://www.palgrave.com/gp/book/9783030406110>

⁹⁵ <https://heinonline.org/HOL/LandingPage?handle=hein.journals/utrecht6&div=5&id=&page=>

⁹⁶ <https://en.ombudsmanden.dk/loven/>

17.(1) The Ombudsman may take up a matter for investigation on his own initiative.
(2) The Ombudsman may undertake general investigations of an authority's case processing.

18. The Ombudsman may inspect any institution or company and any place of employment which fall within the jurisdiction of the Ombudsman. In addition to assessments pursuant to Section 21, and on the basis of universal human and humanitarian considerations, the Ombudsman may in connection with such an investigation assess matters concerning the organisation and operation of an institution or authority and matters concerning the treatment of and activities for users of the institution or authority.

The Finnish Ombud, as per the parliamentary Ombudsman Act⁹⁷, states the own initiative powers in section 4: The Ombud may also, on his or her own initiative, take up a matter within his or her remit.

The advantage of own-initiative power for an Ombuds is to expand its gravitas. The use of own-initiative powers helps the institution turn away from individual injustice and placing a wider focus on good administration. The fairness of the administrative process and the quality of internal redress procedures would be able to be investigated (Gill 2020 – p.84). the ability to investigate issues proactively brings a new dynamic into the administrative justice system.

The Scottish government set up a Complaint Standards Authority, this is a quasi-regulatory body that sits within the SPSO.⁹⁸ Ex-officio powers of Ombuds should help address problems from a global perspective, removed from the individual complaint, to prevent such instances happening in the future. This means that ex-officio procedures need to focus on tackling those aspects that have not been complained about by individuals but nevertheless need the Ombuds intervention. Ex-officio powers should be an instrument when such conflicts emerge unexpectedly or are taken to the public arena by the media.⁹⁹

Binding decisions

An Ombud can usually not force an organisation to abide by its recommendation, however, in most cases the organisations do. Unlike a private sector Ombuds, whose decisions can be legally binding. If individuals are not happy with the Ombuds decision, they are able to take their complaint to a court (ECHR Art 6 'right to a fair trial'), but usually the court will take the Ombuds decision into account. Findings of the Ombudsman generally are not binding but the public body must have a cogent reason for disagreeing with them. (see more examples in section X)

d. The ability to bring, and intervene as a third party in, court proceedings

The boundaries of an Ombuds remit and powers differ around the world. In some countries the Ombud plays an active role in a court proceeding. This can be an advantage for the relationship between the Ombud and the court and help their collaboration.

⁹⁷ <https://www.finlex.fi/en/laki/kaannokset/2002/en20020197.pdf>

⁹⁸ Gill, C. (2014). The Evolving Role of the Ombudsman: A Conceptual and Constitutional Analysis of the "Scottish Solution" to Administrative Justice. Public Law, 662–681.

⁹⁹ <https://www.elgaronline.com/view/edcoll/9781786431240/9781786431240.00029.xml>

For example, the law on Ombudsperson in Kosovo states in *Article 16.9*. The Ombudsperson may appear in the capacity of the friend of the court (*amicus curiae*) in judicial processes dealing with human rights, equality and protection from discrimination. Further, Article 25

Obligation of cooperation and the consequences of refusal; 1. All authorities are obliged to respond to the Ombudsperson on his requests on conducting investigations, as well as provide adequate support according to his/her request. 2. Refusal to cooperate with the Ombudsperson by a civil officer, a functionary or public authority is a reason that the Ombudsperson requires from the competent body initiation of administrative proceedings, including disciplinary measures, up to dismiss from work or from civil service. 3. In case when the institution refuses to cooperate or interferes in the investigation process, the Ombudsperson shall have the right to require from the competent prosecution office to initiate the legal procedure, on obstruction of performance of official duty.

The law on the Human Rights Ombudsman of Bosnia and Herzegovina, 22 January 2004 states: 4.2. An Ombudsman [...] may initiate court proceedings or intervene in pending proceedings, whenever he or she finds that such action is necessary for the performance of his or her duties [...].

Law on the Ombud of the Republic of Macedonia" nos. 60/2003, consolidated text published in the "Official Gazette of the Republic of Macedonia" no. 143/2008. Article 12. To protect the human freedoms and rights in the cases where the party or the Ombudsman requires so, the court may enable the Ombudsman to act as a friend of the court (*amicus curiae*).

In Poland, for example, the Ombud can attend court hearings. The Law of November 6, 2008 on patient's rights and the Patient Ombudsman, Article 55 states that

In civil cases related to the violation of patients' rights, as defined in this Act and in separate provisions, the Ombudsman may, ex-officio or at the request of a party: 1) request the initiation of proceedings, 2) participate in the pending proceedings – with the rights of a prosecutor.

The Act of 15th July 1987 on the Commissioner for Human Rights ¹⁰⁰ Article 14 states that having examined a case, the Commissioner may:

- 4) demand that proceedings be instituted in civil cases, and participate in any ongoing proceedings with the rights enjoyed by the prosecutor,
- 5) demand that preparatory proceedings be instituted by a competent prosecutor in cases involving offences prosecuted ex officio,
- 6) ask for instituting administration proceedings, lodge complaints against decisions to administrative court and participate in such proceedings with the rights enjoyed by the prosecutor,
- 7) move for punishment as well as for reversal of a valid decision in proceedings involving misdemeanour, under rules and procedures set forth elsewhere,
- 8) lodge cassation or extraordinary appeal against each final and valid sentence, under rules and procedures set forth elsewhere.

¹⁰⁰ Journal of Laws Dz.U. of 2014, item 1648

In Moldova, the law no 52 on the people advocate (Ombud) of 3rd April 2014 states in article 25 on Procedural rules of the People's Advocate:

- (1) Based on the results of the complaint review, the People's Advocate has the right:
 - a) to submit to the court a request to protect the interests of the petitioner whose fundamental rights and freedoms were violated;
 - b) to intervene with the competent authorities with a demarche to initiate a disciplinary or criminal procedure against the responsible official who did commit violations which did generate the violations of the human rights and freedoms;
 - c) to intimate the public prosecutor on the committal of the offence provided by Art. 320 of the Contraventions code of the Republic of Moldova;
 - d) to intimate the public officials of all levels on the cases of negligence at work, violation of professional ethics, delay and bureaucracy.
- (2) The People's Advocate has the right to file a court action in relation with the detected facts of mass or severe violation of the human rights and freedoms. The application for summons submitted by the People's Advocate is exempted of the stamp duty.
- (3) The People's Advocate may intervene into the trial for conclusions for the protection of the legitimate rights, freedoms and interests of the persons.

And in Article 26. Intimation of the Constitutional Court:

The People's Advocate has the right to intimate the Constitutional Court in order to control the constitutionality of the laws and decisions of the Parliament, of the decrees of the President of the Republic of Moldova, of the Government decisions and orders, as well as of the international treaties the Republic of Moldova is party to.

The Danish Ombud, for example, as set out in the Ombud Act in chapter 6: The case investigation is able to interact with the court (laid out in the Administration of Justice Act).

19. (1) Authorities, etc. which fall within the jurisdiction of the Ombudsman shall be under an obligation to furnish the Ombudsman with such information and to produce such documents, etc. as he may demand.
- (2) The Ombudsman may demand written statements from authorities, etc. which fall within his jurisdiction.
- (3) The Ombudsman may subpoena persons to give evidence in court on any matter of importance to his investigations. The procedure is subject to the rules laid down in Chapter 68 of the Administration of Justice Act.
- (4) The Ombudsman may inspect any place of employment and shall have access to all premises.
- (5) If it is deemed necessary, the Ombudsman shall at any time, without a court warrant and upon suitable proof of identity, have access to inspect private institutions, etc. where persons are or may be deprived of their personal liberty, cf. section 7(1)(ii), and private institutions, etc. responsible for tasks directly related to children. If necessary, the police shall assist in carrying out the inspection.

The Organic Law of Georgia on the public defender of Georgia no 2146 of 23 June 1999 – LGH I no No 27(34), 6.7.1999, Art. 142 Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46,

4.8.2010, Art. 278¹⁰¹; Article 14.1 h) be authorised to apply to the court as an interested person, according to the Administrative Procedure Code of Georgia and request issuance of an administrative legal act or taking measures if the administrative body does not respond to or adopt his/her recommendation and there is sufficient evidence of discrimination.

Although the ombud is mainly *extra legem*, the ability to bring and intervene in court proceedings is one that many ombuds have, especially if the ombud is also the NHRI; the adoption of a major litigation function does however run the risk of depleting focus on other important and distinctive ombud functions; the desirability of such a power depends very much on local context; it is not immediately obvious that such power will reduce, rather than add to, the burden on the courts.

- Conclusion to be added after feedback from the meeting.

¹⁰¹ <https://matsne.gov.ge/en/document/download/33034/14/en/pdf>

COUNCIL OF EUROPE MEMBER STATES (47) AND OMBUDSMAN INSTITUTIONS

Albania – Avokatı I Popullit	Malta – Office of the Ombudsman
Andorra – Institució del Raonador del Ciutadà	Republic of Moldova – Avocatul Poporului Ombudsman
Armenia – Hayastani Hanrapetut'yan Mardu Iravunk'neri Pashtpan	Monaco – (Ombudsperson under High Comissioner for Human Rights)
Austria – Volksanwaltschaft	Montenegro – Zaštitnik ljudskih prava i sloboda Crne Gore
Azerbaijan – Azərbaycan Respublikasının İnsan Hüquqları üzrə Müvəkkili	Netherlands – Nationale Ombudsman
Belgium – De federale Ombudsman	North Macedonia – Narodniot pravobranitel
Bosnia and Herzegovina – Institucija ombudsmena za ljudska prava	Norway – Sivilombudsmannen
Bulgaria – Ombudsman na RB	Poland – Rzecznik Praw Obywatelskich
Croatia – Pučki pravobranitelj	Portugal – Provedor de Justiça
Cyprus – Grafeío Epitrópou Dioikíseos	Romania – Avocatul Poporului
Czech Republic – Veřejný ochránce práv	Russian Federation – (Ombudsperson under High Comissioner for Human Rights)
Denmark – Folketingets Ombudsmand	San Marino – (Ombudsperson under High Comissioner for Human Rights)
Estonia – Õiguskantsler	Serbia – Protector of Citizens
Finland – Eduskunnan Oikeusasiamies	Slovak Republic – Kancelária verejného ochrancu práv
France – Défenseur des droits	Slovenia – Varuh človekovih pravic RS
Georgia – Sakartvelos Sakhalkho Damtsveli	Spain – Defensora del Pueblo
Germany – Petitionsausschuss	Sweden – Riksdagens ombudsmän - JO
Greece – Synígoros tou Políti	Switzerland – The Banking Ombudsman
Hungary – Alapvető Jogok Biztosa	Turkey – Kamu Denetçiliği Kurumu
Iceland – Umboðsmaður Alþingis	Ukraine – (Ombudsperson under High Comissioner for Human Rights)
Ireland – Office of the Ombudsman	United Kingdom – Parliamentary and Health Service Ombudsman
Italy – Coordinamento Nazionale dei Difensori Civici delle Regioni e delle Province autonome	
Latvia – Valsts Tiesībsarga birojs	
Liechtenstein – The Conciliation Board	
Lithuania – Seimo kontrolierių įstaiga	
Luxembourg – Ombudsman	

