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# A COMPARATIVE REVIEW ON OMBUDS

## Recommendations of Action for the Turkish Ombudsman and Guidelines for the Ombudsman and Public Authorities

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





# **A COMPARATIVE REVIEW ON OMBUDS**

**Recommendations of Action for the  
Turkish Ombudsman and Guidelines  
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**Project on Improving the Effectiveness of the Administrative Judiciary :  
and Strengthening the Institutional Capacity of the Council of State :**

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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

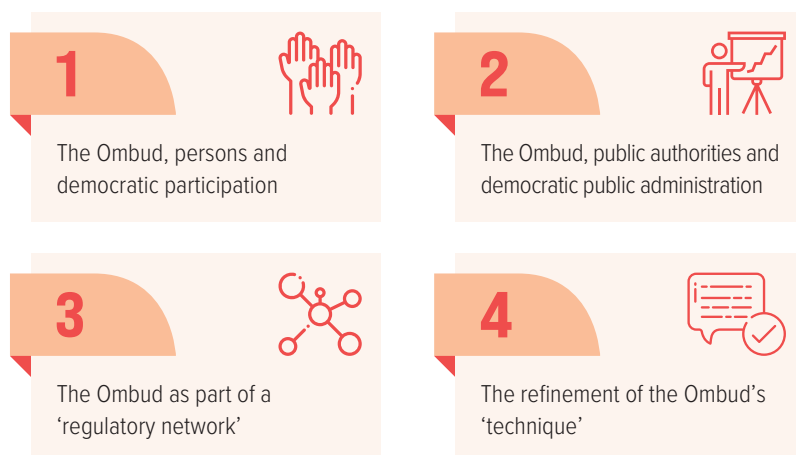
## THE LIST OF SELECTED EUROPEAN OMBUDS INSTITUTIONS

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

(\*)This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

## 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 “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 Ombuds<sup>1</sup> 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 Ombudsman, thereby reducing the number of disputes before the administrative courts.



The report was drafted on the basis of a review of European examples and was submitted for comments to the initial consultation meeting with the Turkish Ombuds and relevant stakeholders. This is the **second iteration** of the report and includes updates and incorporates helpful suggestions from stakeholders.

<sup>1</sup> A note on terminology: we use the term Ombud as singular, Ombuds as plural, Ombuds institution for referring to the institutional body and Ombudsman when it is the name of the institution.



## METHODOLOGY

The first chapter of the report presents the specific themes and addresses the issues discussed in comparative review. The second chapter provides specific recommendations in relation to four thematic areas and the third chapter of the report focuses on recommended guidelines on what further work needs to be done, based on the information and recommendations presented in the first and the second chapters and responding directly to the main principles of good administration as outlined in the report.

Both the recommendations and the guidelines are integral parts of the report and make this comparative report unique in terms of presentation of an in-depth overview for strengthening the Turkish Ombudsman (**‘the Ombud’**).

## 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>2</sup> Reif, L. (2004) *The Ombudsman, Good Governance and the International Human Rights System* (Mauritius Nijhoff Publishers Leiden); M Seneviratne 2002 *Ombudsmen Public Services and Administrative Justice* (Butterworths Lexis Nexis); T Buck, R Kirkham and B Thompson 2011 *The Ombudsman Enterprise and Administrative Justice* (Ashgate).

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

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).<sup>4</sup> 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 and conceptual adaptations.<sup>5</sup> However, these adaptations create many new issues, such as new and confusing vocabularies<sup>6</sup>; an ongoing inquiry into the basic purpose and meaning of an Ombuds<sup>7</sup>; and diversity in decision-making processes. Despite these variations, or even because of them, the model is very attractive to many legal systems.<sup>8</sup>

In 2008, Kusko-Stadlmayer<sup>9</sup> 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.

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<sup>4</sup> Creutzfeldt, N (2018) *Ombudsmen and ADR* Palgrave.

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

<sup>6</sup> Doyle, M., Bondy V. and Hirst, C. (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>.

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

<sup>8</sup> Creutzfeldt, N. (2021) The role of Ombuds – a comparative perspective in *Handbook of Comparative Dispute Resolution*, (eds) Moskati, Palmer and Roberts (Edward Elgar).

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

The **Paris Principles**<sup>10</sup> 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).<sup>11</sup> 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”**<sup>12</sup> 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”<sup>13</sup> in order to ensure the independence of the Ombuds.<sup>14</sup> However, not all of the Paris Principles are applicable to all Ombuds due to their diversity mentioned above.

In 2019 the **Venice Principles**<sup>15</sup> 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.

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

<sup>11</sup> 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>.

<sup>12</sup> Parliamentary Assembly. 2003. The Institution of Ombudsman. Recommendation, Council of Europe.

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

<sup>14</sup> p.5 report – H Yilmaz.

<sup>15</sup> Principles on the Protection and Promotion of the Ombudsman Institution (“The Venice Principles”) 2019 available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD(2019)005-e)

The Venice Principles are an international reference text listing the legal principles essential to their establishment and functioning in a democratic society.<sup>16</sup> 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) and 1615 (2003) 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:<sup>17</sup>

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<sup>16</sup> 25 Venice Principles – Democratic ABC for Ombudsman institutions, available at: [https://search.coe.int/directorate\\_of\\_communications/Pages/result\\_details.aspx?ObjectId=09000016809386e0](https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=09000016809386e0)

<sup>17</sup> 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>, See also Saygin, E. (2009), Improving Human Rights through Non-judicial National Institutions: The Effectiveness of the Ombudsman Institution in Turkey. European Public Law, 15: 403-428. ([https://kluwerlawonline.com/journalarticle/Europ an+Public+Law/15.3/EURO2009030](https://kluwerlawonline.com/journalarticle/Europ+an+Public+Law/15.3/EURO2009030))



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 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 6328 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, nursing homes, refugee camps, women’s shelters<sup>18</sup> and other similar administrations provided that prior notification has been made. The Ombuds can also prepare special reports on the issues deemed necessary, without the existence of a complaint.

<sup>18</sup> There are too many complaints related to “discrimination” and the “protection of privacy” regarding the functioning of state-run women’s shelters. Women’s organizations are considering to file an administrative lawsuit or applying to the European Court of Human Rights on this matter after the case N.K who was murdered by her ex-husband in front of a shelter in 2017. There are shelters that help women who are under protection and escape from violence, they are identified with different names such as women’s guest houses in Turkey.

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, aged 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. According to Article 74/6 of the Turkish Constitution, the institution of the Ombudsperson established under the Grand National Assembly of Turkey examines complaints on the functioning of the administration. Further, the Law on the Ombudsman No. 6328 (Article 4) states that the Ombudsman institution was established as a public legal institution with private budget under the Office of the Speaker of the Grand National Assembly of Turkey and having headquarters in Ankara with the purpose of performing the tasks delegated to it under this Law.

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 Principles, Principle 2.

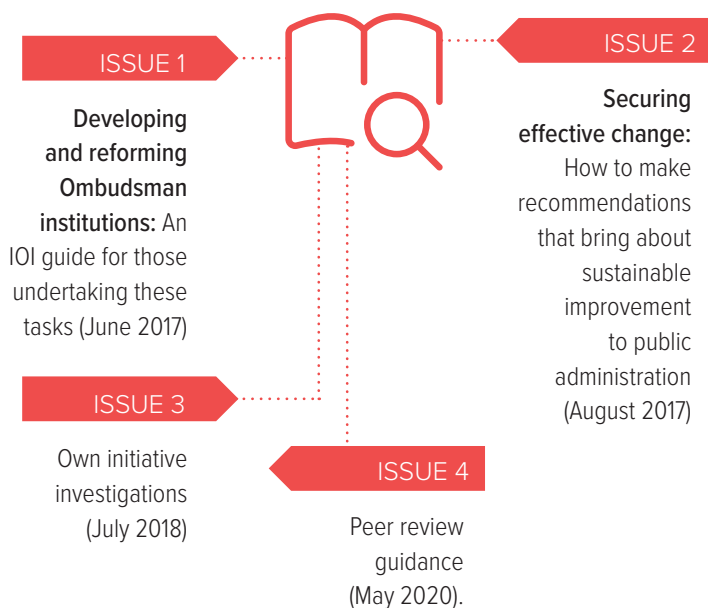
**The International Ombudsman Institute (IOI)** <sup>19</sup>, established in 1978, is the only global organisation for the co-operation of more than 200 independent Ombuds institutions from more than 100 countries worldwide. The IOI is organised in six regional chapters (Africa, Asia, Australasia & 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 papers<sup>20</sup> 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 Ombuds institutions and highlight ways of working which

<sup>19</sup> <https://www.theioi.org/the-i-o-i>

<sup>20</sup> The OIO Best Practise Papers, available at: <https://www.theioi.org/publications/ioi-best-practice-papers>

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.



A Council of Europe Parliamentary Assembly held that Ombuds institutions in Europe need a set of common standards:<sup>21</sup>

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.

<sup>21</sup> Council of Europe, Ombudsman Institutions in Europe – the need for a set of common standards, available at: <https://pace.coe.int/en/files/28089>



## 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. Further, the reports can include examples of Ombuds recommendations.

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

# CHAPTER 1

## A COMPARATIVE REVIEW ON OMBUDS:

### Selected Themes of Importance to Consider for Developing The Turkish Ombud Model

The Turkish Ombud was set up by law in 2012 and became operational in 2013 and is, as such, a relatively young institution.<sup>22</sup> 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, persons 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.

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<sup>22</sup> Turkish Ombud annual report 2019, available at: <https://www.Ombudsman.gov.tr/kdk-pdf/2019-yillik-rapor-ingilizce/mobile/index.html>

## 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.<sup>23</sup> 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.

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.

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<sup>23</sup> 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

## **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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> The Polish Ombud is very well known and is one of the institutions enjoying high public trust.<sup>27</sup>

<sup>24</sup> Beckman, L and Ugglä, 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 Kirkham Research Handbook on the Ombudsman (2018 Edward Elgar).

<sup>25</sup> 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>

<sup>26</sup> 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>

<sup>27</sup> Zaufanie do instytucji publicznych (2016) available at: [http://www.tnsglobal.pl/archiwumraportow/files/2016/11/K.068\\_Zaufanie\\_do\\_instytucji\\_O10a-16.pdf](http://www.tnsglobal.pl/archiwumraportow/files/2016/11/K.068_Zaufanie_do_instytucji_O10a-16.pdf)

### ► 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.<sup>28</sup>

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 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, their 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.<sup>29</sup> 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.

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<sup>28</sup> Benjamin, K, (2017) Ombud Services host UK roadshow, available at: <https://www.campaignlive.co.uk/article/Ombudsman-services-hosts-uk-roadshow/1422944>

<sup>29</sup> Irish Ombud, Happy Ombudsday! Available at: <https://www.Ombudsman.ie/news/happy-Ombudsday/>

**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 Ombud<sup>30</sup> urged students to bring complaints. Their 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. They said that at Thursday's meeting they had urged all providers of public services to "*use complaints as a source of learning*". They also encouraged students who are unable to resolve complaints locally to bring their complaint to their office.

Another example from Kosovo.<sup>31</sup> 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.<sup>32</sup>

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\* This designation is without prejudice to positions on status, and is in line with UN-SCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence

<sup>30</sup> 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>

<sup>31</sup> EQUINET, Ombudspersons Institution available at: [https://equineteurope.org/author/kosovo\\_oik/](https://equineteurope.org/author/kosovo_oik/)

<sup>32</sup> The Republic of Kosovo Ombud Annual Report 2018, available at: <https://www.oik-rks.org/en/2019/04/08/annual-report-20188/>

## ► Outreach Programme

Further, outreach campaigns are another means by which an Ombud can become more visible. In Austria, the Ombud (*Volksanwaltschaft*)<sup>33</sup> has a regular slot on national television.<sup>34</sup> In short 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.<sup>35</sup> They meet consumers and public-facing organisations, charities, businesses and their representatives. They also visit communities 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 programme<sup>36</sup> 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.

<sup>33</sup> <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>

<sup>34</sup> Bürgeranwalt, available at: <https://der.orf.at/unternehmen/programmangebote/fernsehen/sendungen/sendungen-a-c/buergeranwalt104.html>; <https://tv.orf.at/buergeranwalt>

<sup>35</sup> <https://www.financial-Ombudsman.org.uk/news-events>

<sup>36</sup> <https://www.Ombudsman.wales/wp-content/uploads/2018/04/PSOW-Outreach-Strategy-2016.pdf>

## **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. Especially after the public health crisis triggered by COVID-19, it has been more visible that the measures taken by governments to tackle the pandemic are not neutral; they affect some in Europe more than others, with disproportionately negative effects on certain groups, often already in a disadvantaged socioeconomic position and at risk of discrimination. That is why European Network of Equality Bodies has stated that it is needed to be use an intersectional approach to the most vulnerable within all marginalised groups (for example Roma women, Muslim women, older persons with disabilities).<sup>37</sup> Likewise, European Union Agency for Fundamental Rights (2020) has highlighted Ombuds institutions have prepared reports to raise awareness in a number of vulnerable situations, namely: — people living in institutional care settings, including hospitals, nursing homes, prisons and refugee camps or reception facilities; — particular groups, including persons with disabilities, homeless people, older people, Roma and Travellers, and women and children at risk of domestic violence, discrimination and intolerance.<sup>38</sup>

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 on-line 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.

<sup>37</sup> EQUINET (2020). Recommendation for a fair and equal Europe: Rebuilding our Societies after Covid-19, available at: [https://equineteurope.org/wp-content/uploads/2020/06/equinet\\_rebuilding-recommendation\\_A4\\_03-web.pdf](https://equineteurope.org/wp-content/uploads/2020/06/equinet_rebuilding-recommendation_A4_03-web.pdf)

<sup>38</sup> European Union Agency for Fundamental Rights (2020). Coronavirus pandemic in the EU – Fundamental rights implications, available at: CORONAVIRUS PANDEMIC IN THE EU – FUNDAMENTAL RIGHTS IMPLICATIONS (europa.eu)



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.<sup>39</sup>

The literature on unmet legal needs<sup>40</sup> 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 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.<sup>41</sup>

The approach that the Ombud is left with is that of 'fire-fighting'.<sup>42</sup> 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).

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<sup>39</sup> PHSO, Accessibility, available at: <https://www.Ombudsman.org.uk/accessibility>

<sup>40</sup> Genn H Paths to Justice (Hart); Dunleavy, P. The Future of Joined-up Public Services (2010).

<sup>41</sup> 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/>

<sup>42</sup> 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.

A report commissioned by the International Bar Association in 2018<sup>43</sup> 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.

During the corona pandemic, many Ombuds are actively involved in discussions emergency measures and their effect on human rights and freedoms by teleworking. They have prepared reposts to stress the importance of observance of human rights and freedoms even in the state of emergency (pandemic) and calls for special protection of vulnerable groups. For example, in Portugal, the Ombud institution is “in permanent session” to protect democracy, legality and human rights

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<sup>43</sup> 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.

in line with the law on the regime of the state of emergency. They are also highlighted how fundamental rights of citizens/non-citizens could be violated in some vulnerable cases because of the countries' poor capability of digitalisation<sup>44</sup>. 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.

The CoE has issued a training manual for judges and prosecutors on ensuring women's access to justice in 2017 by giving attention to importance of raising awareness on gender equality and developing positive discrimination measures which are also called positive action, positive measures or special measures.<sup>45</sup> 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

<sup>44</sup> Sigma (2020). Public Administration: Responding to the COVID-19 Pandemic Mapping the EU member states' public administration responses to the COVID-19 pandemic, available at: <http://www.sigmaweb.org/byexpertise/strategicframeworkofpublicadministrationreform/SIGMA-mapping-response-EU-members-coronavirus.pdf>

<sup>45</sup> 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>

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)<sup>46</sup> 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.<sup>47</sup> 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 the prevalence of gender stereotypes that create inequalities regarding the accession of women and men to the public sphere). 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

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<sup>46</sup> Hertogh, M and Kirkham, R (2018) Research Handbook on the Ombudsman (Edward Elgar). <https://www.elgaronline.com/view/edcoll/9781786431240/9781786431240.00022.xml>

<sup>47</sup> EQUINET, Ombudsman for Equality, available at: [https://equineteurope.org/author/finland\\_oe/](https://equineteurope.org/author/finland_oe/)

cases to Ombuds. Even if women bring cases to the Ombuds, often their accompanying partners name is on the complaint. This situation highlights gender stereotypes and sexism that prevent women from acting independently in the public sphere and equal access to justice.

The Council of Europe contributes to achieving the goals set in relevant international instruments, such as the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)<sup>48</sup>, the Beijing Platform for Action<sup>49</sup>, and the UN 2030 Agenda for Sustainable Development<sup>50</sup> that are all of relevance to the equal access of women. The Council of Europe has also three ground-breaking, unique and comprehensive conventions in the area of human dignity: - Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)<sup>51</sup>; - Council of Europe Convention on Action against Trafficking in Human Beings<sup>52</sup>; - Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)<sup>53</sup>. These gender equality-related international instruments and conventions was also mentioned as relevant in The Council of Europe gender equality strategy 2018-2023<sup>54</sup> which has six strategic objectives:

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<sup>48</sup> UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), available at: <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

<sup>49</sup> The Beijing Platform for Action, available at: [https://beijing20.unwomen.org/~media/headquarters/attachments/sections/csw/pfa\\_e\\_final\\_web.pdf](https://beijing20.unwomen.org/~media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf)

<sup>50</sup> UN 2030 Agenda for Sustainable Development, available at: <https://sustainable-development.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

<sup>51</sup> Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), available at: <https://rm.coe.int/168046031c>

<sup>52</sup> Council of Europe Convention on Action against Trafficking in Human Beings, available at: <https://rm.coe.int/168008371d>

<sup>53</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), available at: <https://rm.coe.int/1680084822>

<sup>54</sup> CoE, Gender Equality Strategy 2018-2023, available at: <https://rm.coe.int/strategy-en-2018-2023/16807b58eb>

- (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 contribution of women to communities needs to be acknowledged and the high cost of gender inequalities needs to be remedied. Within these strategy documents, most EU member states, international organisations and non-governmental organisations are acting to tackle the specific impact of the COVID-19 crisis on women's rights. Most recent issued European Parliament resolution of 21 January 2021 on the gender perspective in the COVID-19 crisis and post-crisis period<sup>55</sup> strongly emphasized the specific administrative issues which require to work in accordance with above-mentioned international human rights documents.

The EU has laws on gender equality and non-discrimination.<sup>56</sup> 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.<sup>57</sup>

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<sup>55</sup> European Parliament resolution of 21 January 2021 on the gender perspective in the COVID-19 crisis and post-crisis period, available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0024\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0024_EN.html)

<sup>56</sup> 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>

<sup>57</sup> 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>

#### **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 2008<sup>58</sup>, the European Ombud underlined the importance of NGOs in pointing out possible instances of maladministration in EU institutions. They provided their decisions about Poland<sup>59</sup> and Greenpeace.<sup>60</sup> In 2010, they presented a new strategy for greater involvement of citizens and civil society.<sup>61</sup> The strategy outlines the Ombud's intention to meet the expectations of complainants and of other stakeholders, to increase their 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 co-operation between the Ombud institution, public institutions and the civil sector.<sup>62</sup> 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

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<sup>58</sup> European Ombudsman, Ombudsman: NGOs can help EU institutions do their job better, available at: <https://www.Ombudsman.europa.eu/en/press-release/en/236>

<sup>59</sup> <http://www.Ombudsman.europa.eu/decision/en/061807.htm>

<sup>60</sup> <http://www.Ombudsman.europa.eu/decision/en/062740.htm>

<sup>61</sup> 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=2ahUKEwjmm6qciPjtAhVIRhUIHW4xDOKQFjAAe-gQIBRAC&url=https%3A%2F%2Fwww.Ombudsman.europa.eu%2Fexport-pdf%2Fen%2F5332&usg=AOvVaw3aCFNqRKPbZVzhdro1QLt3>

<sup>62</sup> Strengthening the cooperation between the Ombudsman institution and public institutions and civil society organisations (2018), available at: [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](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)

implemented in Bosnia and Herzegovina.<sup>63</sup>

In Poland, for example, there is a Social Council at the Office of the Commissioner.<sup>64</sup> 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 2017<sup>65</sup> in Russia, for example, that National Human Rights Institutions (NHRIs) have become hallmarks of good governance and democracy.<sup>66</sup> It is not entirely clear however how they operate on regional level where democracy and human rights are under pressure. Drawing on interviews, their 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. They found that civil society and the Ombud were brought closer together by this pressure. Interestingly, they 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 include<sup>67</sup>:

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<sup>63</sup> Strengthening the Human Rights Ombudsman to fight discrimination in Bosnia and Herzegovina (2018) available at: <https://www.coe.int/en/web/national-implementation/projects-by-geographical-area/bosnia-and-herzegovina-hf-disco>

<sup>64</sup> Commissioner for Human Rights, available at: <https://www.rpo.gov.pl/en/content/social-council-office-commissioner>

<sup>65</sup> 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>

<sup>66</sup> The Turkish Ombud is not an NHRI – we add this example for the purpose of comparison.

<sup>67</sup> European Ombudsman, The role of Ombudsman Institutions in Open Government, OECD working paper on public governance no 29 (2018), available at: <https://www.oecd.org/gov/the-role-of-Ombudsman-institutions-in-open-government.pdf>



### 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.<sup>68</sup> 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.

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<sup>68</sup> 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 Greece<sup>69</sup> 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.<sup>70</sup>

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.

To Human rights centres that are connected to the Ombuds the best examples are from Finland and Slovenia. In Finland, the Human Rights Centres 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.*

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<sup>69</sup> 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

<sup>70</sup> 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.

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.

## 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.<sup>71</sup> 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.

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<sup>71</sup> PHSO, Principles of Good Administration (2009), available at: <https://www.Ombudsman.org.uk/sites/default/files/page/0188-Principles-of-Good-Administration-bookletweb.pdf>

One of the Scottish Public Services Ombudsman's (SPSO) responsibilities is to set and monitor complaints handling standards for the public sector in Scotland. These standards are published as the Model Complaints Handling Procedures (MCHP) and define how we expect each public service sector to handle complaints quickly and simply, with local and early resolution by empowered and well-trained staff.

The MCHP aim to standardise and mainstream complaints handling procedures so they are all closely aligned:

- A shared definition of what is and what is not a complaint
- A two-stage process where complaints are resolved as close to the frontline as possible
- Frontline resolution of complaints within five working days
- An investigation stage of 20 working days, which provides the organisation's final decision
- Recording of all complaints
- Active learning from complaints through reporting and publicising complaints information.<sup>72</sup>

They SPSO work with public bodies under their jurisdiction to provide essential advice, guidance and training on complaints handling, share learning and best practice, and ultimately enable a more efficient delivery of Scottish public services.<sup>73</sup> They also offer a support and Intervention Policy was launched in 2019 and formalises the mechanisms they use to offer support to organisations and take intervention when required, for example if certain complaints handling issues are recurring. The policy offers clarity to public bodies regarding what to expect from the SPSO, how and when.

The European Ombud has a code of good administrative behaviour<sup>74</sup>, stating the public service principles to be:

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<sup>72</sup> Model Complaint Handling Procedures, available at: <https://www.spsso.org.uk/the-model-complaints-handling-procedures>

<sup>73</sup> SPSO, how we offer support and guidance, available at: <https://www.spsso.org.uk/how-we-offer-support-and-guidance>

<sup>74</sup> European Ombudsman, The European Code of Good Administrative Behaviour (2002) available at: <https://www.Ombudsman.europa.eu/en/publication/en/3510>

- 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.<sup>75</sup> The Europe and Central Asia UNDP issued a guide for Ombuds Institutions: how to handle complaints.<sup>76</sup>

The Ombudsman Association in the UK<sup>77</sup>, 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 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

<sup>75</sup> IOI training, available at: <https://www.theioi.org/ioi-activities/training>

<sup>76</sup> UNDP Guide for Ombudsman Institutions: How to handle complaints (2014) [https://www.eurasia.undp.org/content/rbec/en/home/library/democratic\\_governance/guide-for-Ombudsman-institutions-how-to-handle-complaints-.html](https://www.eurasia.undp.org/content/rbec/en/home/library/democratic_governance/guide-for-Ombudsman-institutions-how-to-handle-complaints-.html)

<sup>77</sup> <https://www.Ombudsmanassociation.org>

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.<sup>78</sup>

The Scottish Public Sector Ombudsman (SPSO) provides training for public sector complaint handlers.<sup>79</sup> They have developed courses for frontline staff to support their complaint handling in different sectors, this training is currently free.

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.<sup>80</sup>

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.<sup>81</sup>

The Local Government and Social Care Ombudsman (LGSCO) in the UK offers complaints handling training.<sup>82</sup> 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. Further, an Ombuds review can prevent issues from arising in the first place and avoid problems occurring between private persons and administrative authorities. Here, guidelines can be developed for administrative authorities in carrying out their duties, as well as guidelines for Ombuds staff on best practise.

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<sup>78</sup> Ombudsman Association, Service Standards Framework (2017), available at: [https://www.Ombudsmanassociation.org/docs/OA17\\_Service\\_Standards\\_2017\\_Final.pdf](https://www.Ombudsmanassociation.org/docs/OA17_Service_Standards_2017_Final.pdf)

<sup>79</sup> SPSO, training available at: <https://www.spsso.org.uk/training>

<sup>80</sup> Ombudsman Wales, Complaints Standards Authority, available at: <https://www.Ombudsman.wales/complaints-standards-authority/?emergency=1>

<sup>81</sup> PHSO, Complaints standards, available at: <https://www.Ombudsman.org.uk/csf>

<sup>82</sup> LGSCO, training, available at: <https://www.lgo.org.uk/training>

## **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.<sup>83</sup> 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. In 2019 the Turkish Ombud received the majority of complaints (if we ignore the complaints for economy, finance and tax grievances due to the COVID-19 pandemic) proportionally (24,66%) from public personnel for public personnel regime and 11,28% from other employees under the social security scheme. In the UK, for example the Ombud does not deal with employment disputes, rather the specific employment tribunal does this<sup>84</sup>. 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.

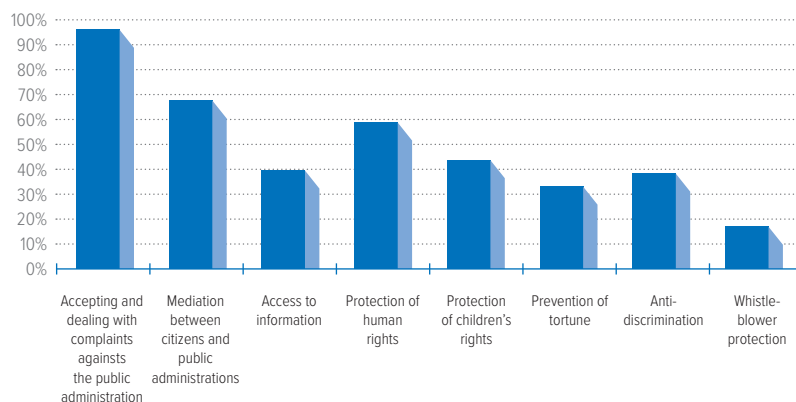
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<sup>83</sup> 2016 act: <https://www.legislation.gov.uk/nia/2016/4>

<sup>84</sup> HMCTS, Employment Tribunals, available at: <https://www.gov.uk/employment-tribunals>



Table 1: Ombuds institutions areas of activity according to their mandate



Source: OECD working paper on public governance<sup>85</sup>

### 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 proposals<sup>86</sup>:

- 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;

<sup>85</sup> European Ombudsman, The Role of Ombudsman Institutions in open Government OECD working paper no 29, available at: <https://www.oecd.org/gov/the-role-of-Ombudsman-institutions-in-open-government.pdf>

<sup>86</sup> Law Commission, Public Services Ombudsman (2011), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/247386/1136.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/247386/1136.pdf)

- 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;
- 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.<sup>87</sup>

### Coordination 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-Stadlmayer<sup>88</sup> 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.

<sup>87</sup> Buck et al; Kirkham, R and Gill, C (2020) A Manifesto for Ombudsman reform (Palgrave Macmillan).

<sup>88</sup> Kucsko-Stadlmayer, G. Relations between Ombudsmen and the Courts The viewpoint of the Venice Commission Round Table with the Russian Commissioners for Human Rights 22/23 November 2011, Samara Region, available at: [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewig1-RufjtAhXzmF-wKHZwKBBIQFjABegQIBhAC&url=https%3A%2F%2Fwww.coe.int%2Ft%2Fdemocracy%2Fmigration%2FSource%2Fnhrs%2Fpmc%2FSamara\\_PresKucsko.doc&usg=AOvVaw3BMbjQQy3oDpSkO59JV-TV](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewig1-RufjtAhXzmF-wKHZwKBBIQFjABegQIBhAC&url=https%3A%2F%2Fwww.coe.int%2Ft%2Fdemocracy%2Fmigration%2FSource%2Fnhrs%2Fpmc%2FSamara_PresKucsko.doc&usg=AOvVaw3BMbjQQy3oDpSkO59JV-TV)

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.<sup>89</sup> 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 Stuhmke<sup>90</sup> 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 Ombud 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 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.’



<sup>89</sup> 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 88<sup>th</sup> Plenary Session Venice (14-15 October 2011)

<sup>90</sup> 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

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 cases where complainants of the Ombud files a case in the administrative judiciary, courts can request documents regarding the application to the Ombud, through an interim decision. Findings of the Ombud regarding the dispute and the expert examination reports contributes to the acceleration of the case. For example, after applying to the Ombud and receiving a decision, the lawyers of the applicants to the administrative judiciary can request the court to ask for examination results in the Ombud to be used as evidence in the case they have filed, by stating that they have applied to the Ombud and received a decision in favour. The judge can also request ex officio the examination documents and results related to the dispute from the Ombud. In this case, the Ombud is attached to the ongoing administrative case as a third party.

### **2 A judge request to have the Ombud involved**

After applying to the OI and receiving a decision, the lawyers of the applicants to the administrative judiciary can request the court to ask for examination results in the OI to be used as evidence in the case they have filed, by stating that they have applied to the OI and received a decision in favour. The judge can also request ex officio the examination documents and results related to the dispute from the OI. In this case, the OI is attached to the ongoing administrative case as a third party. 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 Om-

bud 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 can be used by the courts in favour of plaintiff individuals and ruling for indemnifications.<sup>91</sup>

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

#### ► Memorandum of Understanding (MOU)

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.<sup>92</sup> While this MoU is not a legal or binding agreement, both THO and the regulator are committed to working to it. Each organisation 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.<sup>93</sup> This memorandum of understanding

<sup>91</sup> As examples to the reports 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. [e.g. <https://www.Ombudsman.gov.tr/syrians/report.html> ].

<sup>92</sup> Memorandum of Understanding between the Regulator of Social Housing and the Housing Ombudsman (2017) available at: <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-regulator-of-social-housing-and-the-housing-Ombudsman>

<sup>93</sup> FOS, Memorandum of Understanding between the FCA and the FOS, available at: [https://www.financial-Ombudsman.org.uk/files/2628/memorandum\\_of\\_understanding-with-FCA-December-2015.pdf](https://www.financial-Ombudsman.org.uk/files/2628/memorandum_of_understanding-with-FCA-December-2015.pdf)

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.<sup>94</sup> 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)



<sup>94</sup> Kucsko-Stadlmayer, European Ombudsman-Institutions (2008 Springer); <https://www.oecd.org/gov/the-role-of-Ombudsman-institutions-in-open-government.pdf>; ...

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 2014<sup>95</sup> mapped the use of informal resolution approaches by Ombuds 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 offer<sup>96</sup>: Informal early settlement; Settlement by party agreement (Negotiation and Mediation); Early neutral evaluation; Conciliation; Settlement by third party decision; Arbitration; Adjudication; Expert determination.

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 way<sup>97</sup>:

Enquiries	The helpline manages all <b>enquiries</b> into the organisation whether by telephone, digitally or post.
Complaint	We describe an <b>enquiry</b> as a <b>complaint</b> 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.

<sup>95</sup> 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](https://www.researchgate.net/publication/311675615_The_use_of_informal_resolution_approaches_by_Ombudsmen_in_the_UK_and_Ireland_2014)

<sup>96</sup> Gill, C, Williams, J, Brennan, C, and Hirst C, Models of ADR – a report for the Legal Ombudsman (2014), available at: <https://www.legalOmbudsman.org.uk/media/he4bm-jpx/models-alternative-dispute-resolution-report-141031.pdf>

<sup>97</sup> PHSO, Annual Report 2019-20, available at: <https://www.Ombudsman.org.uk/publications/annual-report-and-accounts-2019-20>

<b>Assessment</b>	A stage in our process, when a complaint is allocated to a caseworker and we <b>assess</b> 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.
<b>Assessment decision</b>	We have <b>assessed</b> 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.
<b>Resolution</b>	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.
<b>Investigation</b>	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.
<b>Upheld complaint</b>	We have completed an investigation and found a failing that has not been put right.
<b>Partly upheld complaint</b>	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.
<b>Not upheld complaint</b>	We have completed an investigation and found that there were no failings.
<b>Out of jurisdiction</b>	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 can be given as the 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 “*Défenseur des droits*” is the French Ombudsperson. They offer different ADR techniques to resolve cases. One of the methods they use is mediation, this needs to be distinguished from the mediation offered by companies or independent mediators<sup>98</sup> in France.<sup>99</sup> The institutional mediation<sup>100</sup> 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).<sup>101</sup>

In Germany, the *Petitionsausschuss*<sup>102</sup> (Petitions Committee) experiences first-hand how legislation impacts on ordinary people. Any complaints and requests that are addressed to the Bundestag (through an online platform) are passed to the committee which examines these

<sup>98</sup> 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).

<sup>99</sup> 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.

<sup>100</sup> Institutional mediation see the National Assembly’s Report on the Evaluation of Mediation between individuals and public administration (doc AN, 2702, 20 February 2020).

<sup>101</sup> See pp.23-30 in Gilberg 2020

<sup>102</sup> <https://www.bundestag.de/ausschuesse/a02>

petitions. Their role is to keep an eye on how the laws are working in practise or how they might be causing new problems, or whether the Bundestag needs to look at a particular issue in more detail. Article 17 of the German *Grundgesetz* states that:



‘Everyone has the right, individually or in association with others, to address requests or complaints in writing to the competent authorities and to the parliament.’



Anyone who writes to the Petitions Committee of the German Bundestag turns to the “original with the triple guarantee”: (1) receipt of the petition is confirmed; (2) then the petition is examined by the committee; (3) and finally - and this is certainly the biggest difference to private providers - the petitioners receive a reasoned decision from the committee about how their submission was dealt with. For a petition to be heard in public, it needs 50,000 supporters within four weeks.

Submissions to the *Petitionsausschuss* can take on three forms; petitions, multiple or collective petitions and other.

**Petitions:** (1) Petitions shall be submissions in which requests or complaints are made on one’s own behalf, for third parties or in the general interest. (2) Requests shall be demands and proposals for acts or omissions by organs of state, authorities or other institutions discharging public functions. They shall in particular include proposals for legislation. (3) Complaints shall consist in objections to acts and omissions by organs of state, authorities or other institutions discharging public functions.

**Multiple:** (1) Multiple petitions shall be individually written submissions concerning the same matter. (2) Collective petitions shall be collections of signatures concerning the same matter. (3) Mass petitions shall be a large number of submissions concerning the same matter, the text of which is completely or largely identical.

**Other:** Petitions shall not include requests for information and mere statements, critical remarks, reproaches, statements of approval or other expressions of opinion without a specific request.

## **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.<sup>103</sup> 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 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 powers<sup>104</sup>, 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. This is particularly important in countries where government measures to protect women and children from violence are not sufficient. Thus, it is possible for Ombuds to intervene to protect the rights of vulnerable groups that do not even have the power to apply.

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.

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<sup>103</sup> 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).

<sup>104</sup> 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>

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

In Germany, in part II of the Act on the Powers of the Petitions Committee (procedural rules) of the German Bundestag Section 7 states that: *The courts and administrative authorities shall be bound to render administrative assistance to the Petitions Committee and the members commissioned by it.*<sup>105</sup> The committees discuss and deliberate on items referred to them by the plenary. They also have the right to take up issues on their own initiative, allowing them to set priorities in the parliamentary debate. When necessary, they draw on external expertise – usually by holding public hearings. At the end of a committee's deliberations, a majority of its members adopt a recommendation for a decision and a report, which serve as the basis for the plenary's decision.<sup>106</sup>

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 their remit on their own initiative or where they receive a complaint from a person aggrieved by such actions. There is no statutory limitation on this power but it is noteworthy that they will exercise this power where there is a 'substantial public interest and importance are concerned'.<sup>107</sup> In addition, any Committee of the

<sup>105</sup> Deutscher Bundestag, The Legal Framework for the Work of the Petitions Committee, available at: [https://www.bundestag.de/resource/blob/795668/9237e7d47f800e-9458e7509c5595daf9/Rechtsgrundlagen\\_Englisch-data.pdf](https://www.bundestag.de/resource/blob/795668/9237e7d47f800e-9458e7509c5595daf9/Rechtsgrundlagen_Englisch-data.pdf)

<sup>106</sup> Deutscher Bundestag, The Petitions Committee, available at: <https://www.btg-bestellservice.de/pdf/80170000.pdf>

<sup>107</sup> Parliamentary Ombudsman Malta: [www.Ombudsman.org.mt/index.asp?](http://www.Ombudsman.org.mt/index.asp?)

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.

Some triggers suggested for an own initiative investigation<sup>108</sup>:

- 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 their own initiative, take up a matter within their remit.

The Law no. 05/L - 019 on Ombudsperson in Kosovo, 28 May 2015<sup>109</sup>; 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*

<sup>108</sup> Northern Ireland Ombudsman, Power to commence an own Initiative investigation, available at: <https://business.senedd.wales/documents/s37921/PSOW%2016b%20-%20Northern%20Ireland%20Ombudsman.pdf>

<sup>109</sup> LAW No. 05/L -019 ON OMBUDSPERSON, OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVA / No. 16 / 26 JUNE 2015, PRISTINA

*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 most close 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 North Macedonia” nos. 60/2003, consolidated text published in the “Official Gazette of the Republic of North Macedonia” no. 143/2008.<sup>110</sup>

*Article 13. The Ombudsman may institute a procedure on his/her own initiative if they assess 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.*

*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<sup>111</sup> with amendments states that 19. (3) (prev. text of Para 02 –SG 29/12, in force from 11.05.2012) *The Ombudsman shall act on his initiative when he estab-*

<sup>110</sup> Law on the Ombudsman: <http://Ombudsman.mk/upload/documents/Zakon%20na%20NP.PDF>

<sup>111</sup> [https://www.legislationline.org/download/id/6577/file/Bulgaria\\_law\\_on\\_Ombudsman\\_2004\\_am2013\\_en.pdf](https://www.legislationline.org/download/id/6577/file/Bulgaria_law_on_Ombudsman_2004_am2013_en.pdf)

*lishes that the necessary conditions for 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 (38) <sup>112</sup> Paragraph 3 of the Article provides that for the Human Rights Protector to act on his or her own initiative the consent of the victim would be required. This Article refers to the general powers of the Protector and its possibility of different type of actions, such as investigative powers and the right to make human rights violations public. Therefore, in certain cases, in particular, where serious human rights violations have allegedly occurred or the rights of particularly vulnerable persons have allegedly been violated, the Protector should be entitled to act without seeking such consent in the general interest.

Generally, the Ombud cannot be limited by the law in deciding to initiate ex officio investigations if its scope falls within their competence. Such a decision should solely depend on their 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'.

<sup>112</sup> [https://www.legislationline.org/download/id/3550/file/Joint%20Opinion%20on%20the%20law%20on%20the%20protector%20of%20human%20rights%20and%20freedoms%20of%20Montenegro%2019%20October%202011\\_en.pdf](https://www.legislationline.org/download/id/3550/file/Joint%20Opinion%20on%20the%20law%20on%20the%20protector%20of%20human%20rights%20and%20freedoms%20of%20Montenegro%2019%20October%202011_en.pdf)

## ► Own-Initiative Powers

Gill (2020)<sup>113</sup> 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 Ombuds<sup>114</sup> has own-investigations and inspections powers as expressed in the Ombudsman Act<sup>115</sup>, chapter 5: Own-initiative investigations and inspection.

<sup>113</sup> Kirkham, R and Gill, C (2020) A Manifesto for Ombudsman Reform (Palgrave Macmillan) available at: <https://www.palgrave.com/gp/book/9783030406110>

<sup>114</sup> Gotze, M (2010) The Danish Ombudsman - A National Watchdog with Selected Preferences, 6 Utrecht L. Rev. 33, available at: <https://heinonline.org/HOL/Landing-Page?handle=hein.journals/utrecht6&div=5&id=&page=>

<sup>115</sup> The Danish Ombudsman Act, available at: <https://en.Ombudsmanden.dk/loven/>





### Own-initiative investigations and inspection.

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 Act<sup>116</sup>, 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.<sup>117</sup> 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

<sup>116</sup> <https://www.finlex.fi/en/laki/kaannokset/2002/en20020197.pdf>

<sup>117</sup> 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.

conflicts emerge unexpectedly or are taken to the public arena by the media.<sup>118</sup>

### ► 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 Ombuds generally are not binding but the public body must have a cogent reason for disagreeing with them (see more examples below).

### 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.

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 states:

*Obligation of cooperation and the consequences of refusal;*

*1. All authorities are obliged to respond to the Ombudsperson on their requests on conducting investigations, as well as provide adequate support according to their request.*

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<sup>118</sup> Diez, L (2018) The use of own-initiative powers by the Ombudsman, in Research handbook on the Ombudsman (eds) M Hertogh and R Kirkham (Edward Elgar) Available at: <https://www.elgaronline.com/view/edcoll/9781786431240/9781786431240.00029.xml>

*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 find that such action is necessary for the performance of his or her duties [...].*

Law on the Ombud of the Republic of North Macedonia” No. 60/2003, consolidated text published in the “Official Gazette of the Republic of North 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 15<sup>th</sup> July 1987 on the Commissioner for Human Rights<sup>119</sup> 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.*

In Moldova, the law No. 52 on the people advocate (Ombud) of 3<sup>rd</sup> 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;*

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<sup>119</sup> Journal of Laws Dz.U. of 2014, item 1648

*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 article 19<sup>120</sup>: The case investigation is able to interact with the court (laid out in the Administration of Justice Act).

*(1) Authorities which fall within the jurisdiction of the Ombudsman shall be under obligation to furnish the Ombudsman with such information and to produce such documents etc as he may demand ex officio.*

*(2) The Ombudsman may demand written statements from authorities which fall within his jurisdiction.*

*(3) The Ombudsman may subpoena persons to give evidence in court on any matter of importance to his investigations. This 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.*

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<sup>120</sup> [https://www.legislationline.org/download/id/3873/file/Denmark\\_Ombudsman\\_Act\\_1996\\_en.pdf](https://www.legislationline.org/download/id/3873/file/Denmark_Ombudsman_Act_1996_en.pdf)

The Organic Law of Georgia on the public defender of Georgia No. 2146 of 23 June 1999 – LGH I 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. 278<sup>121</sup>; 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 their 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.

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<sup>121</sup> <https://matsne.gov.ge/en/document/download/33034/14/en/pdf>

## CONCLUSION

This chapter of the comparative report focused on the following themes, as they have been identified of practical relevance to inform recommendations about how to strengthen the role of the Turkish Ombud, thereby reducing the number of disputes before the administrative courts. These themes were:

- (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'; and
- (4) The refinement of the Ombud's 'technique'.

These themes showcased examples of other CoE countries to highlight different practises and to provide some guidance and inspiration. The Turkish Ombuds is comparatively speaking a young institution with a lot of potential to grow into a prominent actor in the protection of people's rights and to deal with a variety of cases. Close ties with the administration, civil society, and specialised groups are essential to establish a firm position of trust and collaboration.

In Annex 2 there are examples of complaint handling training that might be used as best-practise examples (for public authorities and for Ombuds staff).

## CHAPTER 2

### RECOMMENDATIONS FOR THE OMBUDSMAN

#### 1

#### BACKGROUND AND PURPOSE



- 1.1** The purpose of this chapter is to make recommendations for strengthening the Turkish Ombudsman ('the Ombud') as one of the alternatives to court proceedings and thereby reducing the number of disputes proceeding to the administrative courts and the heavy workload that currently falls to them.
- 1.2** This chapter should be read in conjunction with A Comparative Review On Ombuds (Chapter 1), which contains the comparative evidence on which it is based. It draws on that report and adds to it only insofar as is necessary to clarify, or reinforce, the rationale for the recommendations proposed.
- 1.3** The EU-CoE Joint Project of which this chapter forms part assumes a direct causal connection between a strengthened Ombud and reduction in court cases. This chapter accepts that assumption. The evidential basis for it in the Turkish context is not rehearsed here.



**1.4** The Ombud-institution is, at an international level, famously diverse in its functional responsibilities, supervisory criteria and mandate. To that extent, what constitutes the ‘strength’ of the institution in any particular context is likely to be contested. For practical purposes, and given the context of this project, it is assumed that the merits of the Ombud are to be assessed against the expectations created by the Venice Principles (2019). What, if any, impact conformity to those criteria will have on the administrative courts and their caseload in Turkey is beyond the scope of this study.

**1.5** The chapter recognises that the Turkish Ombud is a relatively new institution and has already been developed in conformity with the Paris Principles (on national human rights institutions) and with what is regarded as best practice by other Ombuds in Europe. To that extent, the chapter for the most part anticipates extension and reinforcement of existing practice rather than wholesale renewal, albeit in some specific instances more substantive innovation is proposed.

**1.6** The recommendations are in each case directed at the Turkish Ombud. In some cases, for example, legislative reform and extension of the Ombud’s mandate, the achievement of what is proposed will not be within the gift of the Ombud. In those instances, the recommendations are at least implicitly that the Ombud should use its best endeavours to secure the changes proposed, even though that may well entail a protracted process of negotiation and liaison with other agencies, including government.

## 2

## OVERVIEW OF STRATEGIC AIMS



## 2.1

The available empirical and comparative evidence discloses four strategic aims, as identified in the Report:

## STRATEGIC AIMS

- 1 **To facilitate enhanced democratic participation of natural and legal persons, including civil society organisations and those marginalised for any reason:** the key priority is improved access to, and heightened awareness of, the Ombud for natural and legal persons, especially civil society organisations and those marginalised, for example, on grounds relating to characteristics prohibited by European law.
- 2 **To enable enhanced democratic public administration:** the key priority is improved recognition of the Ombud, respect for and understanding of the Ombud's function, and familiarity with the Ombud's expectations, reports and recommendations.
- 3 **To establish effective regulatory networks:** the key priority is enhanced co-operation and co-ordination between the Ombud and other regulatory agencies.
- 4 **To enlarge the Ombud's technique and mandate:** the key priority is extension of the Ombud's reach, independence and impact.

## 2.2

The recommendations that follow are organised according to their bearing on these four strategic aims.

## 3

**RECOMMENDATIONS FOR THE OMBUD,  
PERSONS AND DEMOCRATIC PARTICIPATION**

The key priority in this area is to increase the visibility of the Ombud and facilitate easier access for more people.

### The Ombud's Public Profile and Public Trust/Visibility

**3.1** The available evidence suggests a gradual increase in the number of complaints referred to the Ombud since its foundation in 2012. We were told that public opinion surveys are conducted regularly and confirm that increase in recognition. It is important that there is a secure and transparent evidential base for measuring levels of awareness or for analysing in depth the profile and motivation of those people who are currently securing access to the Ombud. Without such fine-grained data it is difficult to identify gaps in awareness or measure progress with confidence. A more structured, transparent and cyclical process of data collection is desirable.



#### RECOMMENDATION 1

The Ombud should establish an annual public awareness survey, and compile annual data that provides more detail than at present on the profiles (e.g. by gender, race, age) of those who are currently referring complaints to the Ombud.

**3.2** We were told that the Ombud has been committed to holding regional meetings with citizens, civil society organisations, opinion leaders, village chiefs, and provincial administrators. We also heard about the network of Ombud Clubs, which had been established in universities, and about the facilitation of symposia, workshops and visits. It is suggested that as a result public recognition of the Ombud increases day-by-day, and that such progress is demonstrated by the studies that have been conducted. We have also been told that the Ombud, in addition to deploying a Press Adviser who reports directly to the Chief Ombudsman, has established an Institutional Communication Unit to

strengthen communication with civil society organisations and to deliver national promotional initiatives. Members of the national and local press have been invited to workshops, conferences and meetings organised by the Ombud. The Ombud has also made use of various social media.

Given the territorial extent of Turkey, its population and social structure, it is likely, however, that only a relatively small percentage of people are currently aware of the Ombud or inclined to make referrals to it, especially outside of Ankara and other major urban centres. It is therefore important to make the Ombud even better known, especially among those who are disadvantaged or marginalised. That ambition can be served by developing a network of regional offices (see below) and a communication strategy that ensures the most effective use not just of national but also of local and social media to celebrate the Ombud's successes, demonstrate impact and situate the Ombud as a respected voice in debates of national and local interest for all people, including, and especially, those disadvantaged or marginalised. Simultaneously, the Ombud should aim to develop the existing outreach programme by increasing the opportunities for roadshows and open days that are targeted and well publicised, especially in areas remote from Ankara and other urban centres, and with the ability to reach those who are disadvantaged and marginalised. Insofar as Covid restrictions exist, the Ombud should explore opportunities for a virtual programme of this sort until face-to-face gatherings are safe.



## RECOMMENDATION 2

The Ombud should develop a coherent and ambitious communication strategy that builds upon the existing deployment of national, local and social media (including, for example, by the use of Twitter) and of increasingly ambitious outreach work, especially outside of Ankara and other urban centres and through the deployment of regional offices (see below)

### Access to the Ombud (including digital access and access for marginalised groups)

#### 3.3

The Ombud is already able to receive complaints made by electronic means. We have been told that access is easy, free of charge,

fast and of high quality. Any written communication methods may be used, and information on methods of application is also available by telephone. Anyone, whether a Turkish national or not, has standing to make a complaint. It is possible to make complaint in the public interest, without the complainant demonstrating a violation of his or her rights. Complaints can be made by people from all sectors of society and we were told that the distribution of complaints indicates widespread recourse to the Ombud across society as a whole. We are also advised that when complaints are made orally, they can be accepted with assistance from the Ombud's office in completing the application form. We consider that the emphasis on complaints being made in writing and through a designated form is, however, likely to present a barrier for, or certainly discourage many people, including those with certain physical or mental impairments, or those who have limited literacy. The Ombud should therefore make it clear that there is no expectation that complaints in writing should comprise the default option but that it is equally acceptable for anyone, for whatever reason, to make their complaint by telephone or in person, and indeed that the Ombud encourages such non-written complaints. The Ombud should also make clear what support is available for such complainants. Such developments can form part of a developed policy of reasonable adjustment that covers the specific needs not just of disabled people but of everyone.



### RECOMMENDATION 3

The Ombud should develop a policy of reasonable adjustment that extends beyond disability to cover the needs of everyone who wishes to have access to the Ombud. In particular, such a policy should modify any perceived expectation that complaints should ordinarily be made in writing and enable the presentation of complaints in person, including through regional offices (see below). The Ombud should also publicise effectively the support available in the event of complaints not being made in writing.

## Specific Access Issues for Women

**3.4** It is widely recognised that women are likely to face specific barriers to access to the Ombud which in turn need specific remedy.

There is no single or simple remedy that is likely to be effective on its own. Instead, there is a need to target the visibility and access measures suggested above so that they have maximum impact in addressing the specific needs of women. In other words, the compilation of data on levels of awareness and actual use of the Ombud, the development of a communication strategy, and the implementation of a policy of reasonable adjustment should explicitly cover the needs of women across society and make dedicated provision for meeting those needs. We are aware that the Ombud has already taken a number of important steps in recent years to raise awareness of women's rights and to increase the number of complaints received from women, albeit with limited success. We are mindful that, in addition to maintaining such initiatives, the acquisition of an ex officio investigation power (see below) may prove especially productive in this regard.



#### RECOMMENDATION 4

The Ombud should target and make dedicated provision for meeting the needs of women in particular in all its work (including through the use of ex officio investigation powers, in the event of such powers being granted to it) to improve access and visibility of the Ombud.

#### 3.5

It is also important to develop a broader culture of awareness and understanding of women's issues, especially among public authorities. The Ombud should therefore target aspects of its training and support of public authorities (as recommended below) on women's issues in order to highlight this as a priority area of access.



#### RECOMMENDATION 5

The Ombud should target aspects of the training and support of public authorities at those aspects most likely to facilitate improved access to the Ombud for women.

## The Role and Development of the 'Advice Sector' and Civil Society

**3.6** We have been told that the Ombud has prioritised outreach work with prisoners and those detained in other institutions. Meetings have been held with civil society organisations to garner intelligence about such institutions and visits have been made to prisons and, for example, to temporary accommodation centres for Syrian refugees. If ordinary people are to navigate the complaints and appeal system and understand their entitlements, they will nevertheless need easy access to advice and information. Such advice and information can be provided by various means, including the internet, social media and conventional media, such as freely published advice leaflets. In addition, the attempt to enhance public information could be greatly advanced by the establishment of dedicated regional and local advice services, which are well known locally and are close to people's daily concerns. Although such an initiative will entail co-operation with government, where such advice centres do not exist, the Ombud should aim to secure from government the resources needed for the development of such advice centres and networks, including by financial grant from dedicated resources that are made available to it from government for this purpose.



### RECOMMENDATION 6

The Ombud should, in co-operation with government, supplement existing advice and information services for the public by facilitating the development of local and regional advice networks, including by financial grant from dedicated resources to be made available to it for this purpose.

**3.7** The development of civil society organisations as a source of access and also a source of intelligence is an important means of extending the scope and reach of the Ombud. In this regard, the Ombud can aim to situate itself as a central agency for the engagement of civil society organisations, so that the work of the Ombud can be embedded at grass-roots level across communities.

**RECOMMENDATION 7**

The Ombud should facilitate the further development and engagement of civil society organisations to promote its work.

**3.8**

It is important that the Ombud commands public respect and credibility. We have been told that the office is staffed by 120 university graduates who are experts in relevant fields of work, for example in law and political science, and who are supported by an additional 100 support personnel. The expert assistants receive 3 years' training before they start work as experts. We were also told that other members of staff join the office on temporary secondment, for example from roles as judges or inspectors. Whilst the practice of secondment may be beneficial it will be important to ensure that any such secondments do not entail a conflict of interest that might damage the credibility of the office. Whilst graduates in law and political science may have desirable skills and expertise, it is not unusual for an Ombud to employ people from a wider range of educational, professional and social backgrounds. Indeed, such diversity is likely to be highly desirable. We note also that there are statutory age limits for the senior office holders, and that pay differentials between Ombud staff and judicial staff serve to diminish the status of the Ombud in the eyes of the public.

**RECOMMENDATION 8**

The Ombud should take steps to ensure that its workforce is sufficiently diverse to reflect the diversity of the population as a whole and to ensure a sufficiently broad range of skill and experience among those employed at all levels; and to ensure through pay structures and other means that the status of the Ombud has parity with that of the senior judiciary.

**3.9**

We note that the Ombud already has the ability to establish regional offices but has so far chosen not to do so. We were told that since people may make their complaints electronically, and so from anywhere in the country, regional offices would not serve any useful



purpose. On the other hand, the establishment of a network of regional offices would send a strong message that the Ombud is there for the entire population, has a local presence and is in touch with local issues. Such regional offices could also usefully supplement and even stimulate the development of local advice networks. These would be valuable additional mechanisms for strengthening the profile and outreach potential of the Ombud.

**RECOMMENDATION 9**

The Ombud should review its current policy with a view to establishing an effective and well-resourced network of regional offices.

**3.10**

We are mindful of the importance of the Ombud having full independence in respect of the allocation of its annual financial grant from central government. Whilst operational independence also essential, its benefits will be seriously constrained if the Ombud lacks the autonomy to set its own strategic priorities and allocate funds accordingly, not least in respect of the sort of initiatives identified above. We therefore propose that the legislation governing the Ombud should be strengthened accordingly.

**RECOMMENDATION 10**

The legislation governing the Ombud should ensure that the Ombud's independence is protected from interference by the use of the budgetary process and that the Ombud has the ability to make its own budget proposals as part of the annual national budget process without fear of any reduction in overall budget that is disproportionate to budgetary reductions incurred more generally by the Parliament or Government.

## 4

## RECOMMENDATIONS FOR THE OMBUD, PUBLIC AUTHORITIES AND DEMOCRATIC PUBLIC ADMINISTRATION



The key priority in this area is to improve the quality of public administration so that public authorities conform to the principles of good administration and human rights, and thereby contribute to more responsive and humane practice on the part of public authorities.

### Training and Other Support for Public Authorities

**4.1** Complaint-handling is just one part of good administration. If the task of humanising the public administration is to be achievable, it is necessary for the Ombud to disseminate learning that pertains to the full range of administrative activity, not just the complaint-handling aspect.

**4.2** A first step is frequently the publication of principles of good administration. Whilst it is relatively easy to publish such materials, embedding them in daily practice is the real challenge. The delivery of workshops and training sessions, the production of short aides mem-oires, concise summaries and references to the principles in Ombud reports are all ways in which that challenge can be met.

**4.3** Furthermore, it is not always obvious what the protection or promotion of human rights means in the practical context of public administration. We were told that staff at the Ombud's office receives training on recent developments on issues relating to human rights and good governance. Such training needs to be cascaded to public authorities also. As well as highlighting the constitutional status of civil and political rights, the Ombud needs to demonstrate through training and support how social rights entitlements can also be realised on the ground.



### RECOMMENDATION 11

The Ombud should produce a range of materials and deliver (or facilitate the delivery by others of) a suite of training opportunities that help embed in public authorities best practice not just on good administration but on human rights, including social rights entitlement.

## Employment Disputes

**4.4** The Turkish Ombud is relatively unusual in having responsibility for responding to employment disputes arising in public authorities. The evidence suggests that such disputes account for a significant proportion of the Ombud's work. Where such responsibilities have existed elsewhere (e.g. in Northern Ireland), they have over time been removed from the Ombud's remit so that the Ombud can concentrate on matters that are more central to its remit of promoting good administration and promoting and protecting human rights. It would be preferable if such disputes could be removed entirely from the Ombud's jurisdiction in Turkey, or if not that they be handled within a specialist unit with a separate and dedicated budget. We recognise that any changes to the present arrangements will have potentially far-reaching consequences for those employed by public authorities and that any substantive change to the Ombud's remit in this regard would have to be co-ordinated carefully with other agencies and the central government. Nevertheless, we highlight here what we consider to be best practice and encourage the Ombudsman to review the current arrangements and explore any available options for reform insofar as they are able.



### RECOMMENDATION 12

The Ombud should be relieved of responsibility for responding to employment disputes in public authorities, or, as an alternative, the Ombud should establish a separately funded unit for such work.

## 5

**RECOMMENDATIONS FOR THE OMBUD AS PART OF A 'REGULATORY NETWORK'**

The key aim is to gain maximum traction from the Ombud's interventions by ensuring that the Ombud is not working alone but in collaboration with other regulatory agencies, especially the equality and human rights commission.

### **Co-ordination of the Ombud's Relationships with Other Institutions (including the administrative courts and the Equality and Human Rights Institution )**

**5.1** It is apparent that co-operation is needed, not just between the Ombud and public authorities, which at senior and strategic leadership levels must embrace such initiatives, but between the Ombud and other agencies with related and perhaps overlapping regulatory responsibilities. At an informal level, it makes sense, for example, for an Ombud with human rights *supervisory criteria* to liaise with the national human rights and equality institutions, so that a co-ordinated approach to problems can be adopted. Beyond simple liaison lies the possibility of a more formal memorandum of understanding between the agencies, so that remit and boundaries are more clearly defined and strategies aligned.

**RECOMMENDATION 13**

The Ombud should enter into formal memoranda of understanding with a targeted range of other regulatory bodies, including the administrative courts, so that sharing of intelligence, ways of working and reciprocal arrangements for the transfer of cases can be shared on a strategic basis.

**5.2** Increasingly Ombuds have also found themselves involved in more formal regulatory networks, for example as a result of the UN CRPD or OPCAT. Even where the Ombud is not formally part of such arrangements, the template for co-ordination and co-operation afford-

ed by such arrangements points towards the benefits of similar networks, which could be established at the Ombud's initiative.



#### RECOMMENDATION 14

The Ombud should take the initiative in establishing more formal networks of co-operation and co-ordination with other regulatory agencies for the sharing of intelligence, strategic planning, and best practice, and for the mutual benefit of reciprocal referrals in appropriate cases.

## 6

**RECOMMENDATIONS FOR THE REFINEMENT OF THE OMBUD'S 'TECHNIQUE'**

The key aim in this area is to ensure that the Ombud has a sufficiently rich suite of techniques and a vigorous enough mandate to enable the effective response to individual grievance and to secure sustainable improvements in good administration and conformity to human rights principles on the part of public authorities.

### The Power of Informal Dispute Resolution

**6.1** The Ombud is itself normally viewed as a relatively informal means of dispute resolution, at least in comparison with the judicial process. As part of that informal process, the Ombud is likely as a matter of course to engage in or facilitate a measure of negotiation between the parties, as a form of shuttle diplomacy conducted by telephone or in writing. An example of a more structured but still informal technique available to the Ombud is mediation. We have been told that the Ombud seeks solutions by a process of mediation between the public authority and the complainant. Mediation needs to be informed by well-established standards and processes for enabling a response to grievance that is fair, rights-based and constructive of future prevention as well as of retrospective remedy. Rights-based mediation entails recognition of the framework of law and principle within which the mediation is conducted and so involves a more actively interventionist role than that of a neutral conciliator or negotiator. The practice of rights-based mediation of this sort is a skilled activity that requires appropriate training and continuing development. We encourage the Ombud to build upon existing mediation practice as one of the most constructive forms of 'friendly resolution' available to it.

**RECOMMENDATION 15**

The Ombud should establish a dedicated resource for the development and practice of rights-based mediation as a way of enriching its available suite of informal resolution options.

## The Reach of Ex Officio and Thematic Investigation Powers

**6.2** Most national Ombuds in Europe have an ex officio investigation power. Such a power is mandated by the Venice Principles and offers an Ombud the ability to reach issues that may not attract complaint (e.g. because potential complainants lack access) or that are not easily identifiable by individual complainants. Although the use of ex officio or 'own initiative' investigation powers by the very many Ombuds who have them is frequently sparing, the reported impact is high. Such a power is complementary to, but different from, the ability to conduct 'systemic' or 'thematic' investigations. Such an ability to survey the scene in the light of cumulative experience of case handling is also essential if an Ombud is to play a preventive and not merely a reactive role. We have been told that the Ombud already issues Special Reports on matters of public interest and that these are widely disseminated to public authorities and judges. Such reports have, for example, included investigations of violation of entitlements in custody and alimony cases; on the situation of Syrians in Turkey; and on the Turkish response to the Covid-19 pandemic. The task of conducting thematic or ex officio investigations is, however, somewhat different from that of investigating individual complaints and therefore entails the additional provision of appropriate resources, including sophisticated strategic planning. For the avoidance of doubt, we wish to make it clear that such an ex officio power is quite different from, and broader in scope, than any powers that might be made available to the Ombud if it were to become a designated National Prevention Mechanism under OPCAT or some other international human rights treaty. We also wish to emphasise that even without such NPM status, the Ombud already has power to investigate complaints submitted by persons deprived of their liberty and should use that power, whenever appropriate, to issue reports, including special reports, and make recommendations.



### RECOMMENDATION 16

The Ombud should acquire a new power, and the necessary resources, to conduct ex officio investigations and, if necessary, special thematic reports that disclose patterns of bad practice.

### The Ability to Bring, and Intervene as a Third Party (*Amicus Curiae*) in, Court Proceedings

**6.3** The integrity of the Ombud entails proper distinction and separation from the judicial process. Nevertheless, there may be occasions when the experience and intelligence acquired by the Ombud puts it in a good position to contribute to court proceedings in the public interest. The recognised device for making such interventions is that of the *amicus curiae* or intervention in existing court proceedings by a recognised third party which is able to assist and inform the court without formally engaging in the process as one of the disputing parties. Such a power could be usefully supplemented by the grant of standing to the Ombud to commence litigation before the Constitutional Court, and indeed before other courts (including international human rights courts, for example, the European Court of Human Rights), on those issues that fall within its mandate. We have been told that sometimes the courts themselves add the Ombud as a third party in certain legal proceedings, to disclose relevant evidence which has been obtained, and to make available relevant decisions from other investigations. Extension of these existing functions so that they can be exercised at the initiative of the Ombud is desirable.



#### RECOMMENDATION 17

The Ombud should acquire explicit power at its own initiative to seek to intervene as *amicus curiae* in court proceedings, subject to the normal procedural safeguards observed by the domestic courts, and to bring legal proceedings before the courts, including the Constitutional Court.

### Binding Facts

**6.4** It is sometimes said that Ombuds ‘lack teeth’ and should be able to enforce their findings and recommendations. This is to misrepresent the distinctive Ombud system of justice, which entails a ‘mandate of influence’ not a ‘mandate of sanction’, and so is relatively unfettered by the procedural and evidential constraints of judicial adjudication. The Ombud, although more adjudicative than a purely negotiated form of justice is nevertheless separate from the law en-



forcement function of the courts. It is this mandate of influence, exercised through an inquisitorial, not adversarial, process, which enables the Ombud to engage in a form of deliberative decision-making. Such deliberative decision-making in turn sits comfortably with a model of reflexive regulation that holds out a better prospect of sustainable culture-change within an organisation than formerly fashionable models of command-and-control regulation. Although we realise that there will periodically be calls for the Ombud to acquire enforcement powers and the ability to make binding decisions and recommendations, we consider that in the longer-term this would be counter-productive and constrain the distinctive contribution that the Ombud can make by virtue of its mandate of persuasion.

**RECOMMENDATION 18**

The Ombud should resist calls for powers to enforce decisions or make legally binding findings.

**6.5**

Consistent with a measure of reticence in respect of binding powers, we wish, however, to reinforce the importance of the Ombud being able to conduct its investigations without hindrance from public authorities and to have full and open access to all the evidence it needs to complete a comprehensive investigation of the issues before it. We therefore encourage the Ombud to take what steps it can, including in collaboration with other agencies, to ensure that its access to evidence is unimpeded and that any contravention of such access by public authorities is reported in the Ombud's Annual Report and elsewhere, as appropriate.

**RECOMMENDATION 19**

The Ombud should regularly highlight any instances of lack of co-operation from public authorities in its conduct of investigations and draw attention to such unwarranted behaviour in the Annual Report and in such other ways as the Ombud judges appropriate.

**6.6** Being mindful also of the relatively recent establishment of the Ombud's office and its continuing need to have credibility in the eyes of public authorities and indeed of the public also, we propose that the office's status should be enhanced by explicitly linking the remuneration and status of the Chief Ombudsman to that of the senior judiciary and not to that of other public authorities.



#### RECOMMENDATION 20

The Ombud's credibility should be enhanced by steps explicitly to link the Chief Ombudsman's status to that of the senior judiciary, with all consequential adjustments to the status of all other staff in the Ombudsman's office according to their respective roles.

**6.7** The reciprocal relationship between the Ombud and the legislature is relatively undeveloped. We have been told about the Turkish Grand National Assembly Commission on Petition – Examination of Human Rights that has the job of selecting the Ombud and presenting the Ombud's annual reports to Parliament. There does not appear, however, to be a dedicated legislative committee with the task of liaising between the Ombud and Parliament and thereby increasing dialogue. To that extent, and in contrast to some other jurisdictions, the Ombud appears to have little direct engagement with the legislature, lacking the ability to trigger a debate, to scrutinise new legislation, apart of the ability to recommend amendments in the new legislation, recommend new bills or propose amendments to existing legislation. In the absence of legal enforcement powers, the Ombud's ability to make known to the legislature any examples of the executive's lack of co-operation or compliance with recommendations and to call upon its informed support is a potentially powerful device to have at its disposal. One aspect of this dialogue between the Ombud and the legislature is certainly the reception by the legislature of the Ombud's Annual Report and the opportunity to debate its contents. A second aspect, however, is the creation of a dedicated legislative committee to establish a close relationship with the Ombud and so help facilitate dialogue on a more informed basis than at present between the Ombud and the legislature as a whole.

**RECOMMENDATION 21**

The Ombud should, in co-operation with the legislature, take steps to ensure that there is ample opportunity for the legislature not only to receive and debate the Ombud's Annual Report, but also through means of a dedicated legislative committee to develop a close relationship with the Ombud and so enhance dialogue between the Ombud and the legislature as a whole.

**6.8**

Moreover, we are mindful of the importance of the general and residual entitlement of any Ombud to have a say in any proposed amendments of the law establishing its powers and remit. In furtherance of that entitlement, we consider that any such proposed amendments should be preceded by open, transparent and meaningful consultation with the Ombud (and indeed with others) and that the Ombud (not the government) should have the task of preparing draft amendments both to primary legislation concerning its establishment and operation, and to any associated rule of procedure, before adoption by Parliament.

**RECOMMENDATION 22**

The Ombud should have an explicit entitlement to comment on any proposed amendments to primary and secondary legislation affecting its establishment or operation, and to prepare the draft of any such amendments.

## CHAPTER 3

### **GUIDELINES FOR THE OMBUDSMAN AND PUBLIC AUTHORITIES**

#### **1. INTRODUCTION**

These guidelines, based on the best European practices and experiences<sup>122</sup>, are intended to help to strengthen the guarantees of protection of fundamental rights in the activities of public authorities and institutions in accordance with the principles of good administration, as one of the key elements of good governance in a modern democratic State.

Recently, the UN Human Rights Council emphasized that:



1. Transparent, responsible, accountable, open and participatory government, responsive to the needs and aspirations of the people, is the foundation on which good governance rests. Such a foundation is one of the indispensable conditions for the full realization of human rights;

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<sup>122</sup> See incl.: T. Buck, R.Kirkham, B.Thompson, *The Ombudsman Enterprise and Administrative Justice*, Routledge 2016.

2. Professional, accountable and transparent public service upholding the highest standards of efficiency, competence and integrity is one of the essential components of good governance;
3. States have core human rights obligations under human rights treaties and pertinent national laws, which are applicable to all public services. These include both positive and negative obligations, and the obligations to guarantee non-discrimination and ensure equality. If rights are violated in the context of public service provision, accountability must be ensured and in particular, remedies must be provided;
4. States are primarily responsible for enforcing human rights standards, but their accountability extends to all levels of government as well as other institutions to which States devolve authority<sup>123</sup>.



At this point, it is worth quoting also the Commissioner of Human Rights of the Council of Europe, who during the Athens conference in 2007 reminded that: *“disrespect of human rights is necessarily a form of maladministration and, the other way round, certain forms of maladministration do amount to violations of basic rights”*<sup>124</sup>.

The principles of good administration have been defined in particular in 2007 by the Committee of Ministers of the Council of Europe in its Recommendation to member states of this organization <sup>125</sup>.

Today, in Europe and the world, the Ombudsman institution performs an important and irreplaceable oversight and supporting function in the process of ensuring compliance by public administration with the generally recognized good administration standards.

As underlined by the Venice Commission in its “ Venice Principles” (Principle 1) *“The Ombudsman is an important element in a State based on democracy, the rule of law, the respect for human rights*

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<sup>123</sup> Excerpts from the resolution adopted by the United Nations Human Rights Council on 6 October 2020 (A/HRC/RES/45/9).

<sup>124</sup> Thomas Hammarberg, 10<sup>th</sup> Round Table of European Ombudsmen and the Council of Europe Commissioner for Human Rights, Conclusions, Athens, 12 – 13 April 2007.

<sup>125</sup> Appendix to Recommendation CM/Rec(2007)7 of the Committee of Ministers of the Council of Europe to member states on good administration.

*and fundamental freedoms and good administration*<sup>126</sup>.

In the 2003 report for the Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe its rapporteur emphasized that the Ombudsman institution *“can properly be described as an independent and impartial office responsible both for maintaining and improving the quality of public administration and for correcting acts of maladministration, located between citizens and the administrative authorities and intervening either in response to individual complaints or of his/ her own initiative. An Ombudsman is neither a partisan legal representative for the citizen nor a judicial officer. His/her duties are best discharged when acting as an independent, impartial intermediary between citizen and executive, investigating complaints or, of his own motion, situations of particular general concern, reaching conclusions of fact, and on the basis of those findings seeking a solution to the underlying situation satisfactory to all parties and/ or making recommendations for future improvements. Ombudsmen endeavour to improve administrative practices (...)”*<sup>127</sup>.

In this context, the words of the then Ombudsman of Ireland from already mentioned 2007 Athens conference should be added to the quoted report:

“

An Ombudsman should not confine himself or herself solely to the investigation of complaints. The long-term objective should be to improve overall standards of public administration. And one of the important ways of doing this is through adopting an educative role and by issuing guidance for public servants on how to deal with their clients, how to handle complaints and how to make appropriate redress when things go wrong <sup>128</sup>.

”

<sup>126</sup> Principles on the Protection and promotion of the Ombudsman institution (“The Venice Principles”) adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019).

<sup>127</sup> The institution of Ombudsman, Report for the Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe, 16 July 2003, rapporteur: Mrs Lili Nabholz-Haidegger, Switzerland.

<sup>128</sup> Emily O’Reilly, Speech to 10<sup>th</sup> Roundtable of European Ombudsman and the Council of Europe Commissioner for Human Rights, Athens, 12 April 2007.

The purpose of these short guidelines is to emphasize a set of rules regarding the conditions of cooperation of public authorities and institutions with the Ombudsman as one of the alternatives to court proceedings in his/her efforts to settle disputes between individuals and the State and in his/her investigations as well as in the process of implementing his/her recommendations which should lead to a reduction of cases brought to administrative courts.

## 2. THE TURKISH OMBUDSMAN'S COMPETENCE

- a** Complaints may be filed to the Ombudsman Institution concerning all public authorities and institutions, organizations that make use of public power and public resources and professional organizations with public institution status. Complaints could also be filed to the Ombudsman Institution with regards to legal persons in private law that provide public services. Within this framework, complaints could be lodged concerning public benefits associations and foundations and companies.
- b** The Ombudsman Institution has the power to investigate and examine complaints arising from all kinds of acts or actions of entities mentioned in para. a) and their attitudes and behaviours.

## 3. GUIDELINES

- a Channels of Communication with Public Authorities, Focal Points**
  - 1** It is important for the Ombudsman to build and maintain good channels of communications with each authority under the office's competence. The Ombudsman needs to be able to communicate clearly with each authority and help the authority better understand the Ombudsman's powers and responsibilities.
  - 2** To facilitate contacts and cooperation with the Ombudsman, the Prime Minister's Office, each ministry and other central state administration bodies, as well as at the level of provincial governor offices, should establish focal points of contact with the Ombudsman Institution – units or designated officials responsible for such contacts and cooperation for matters

within their respective competences. The existence of these focal contact points is of special importance particularly in urgent cases requiring the promptest response of the competent authorities to the Ombudsman's interventions.

#### **b The Ombudsman's Right to be Heard**

- 3** In the exercise of their mandate, the Ombudsman should, without undue delay, be entitled to meet with and to be heard by high-level representatives, including the highest, of all state organs and heads of other public institutions. They should also be able, at their request, to attend and speak at meetings of the parliament, the Government and other state bodies important in terms of their responsibilities.

#### **c Obligation to Provide Information or Documents**

- 4** During the course of an investigation conducted by the Ombudsman, the authorities or institutions from which they request information or documents, or a reaction to the allegations contained in the complaint, are obliged to provide them without delay, if circumstances permit it, or by no later than the date indicated by the Ombudsman in their request. As well as providing the information requested, the authorities or institutions should provide any other material in their possession which, in their opinion, could enable a complete and efficient explanation of the relevant facts and circumstances of the case.
- 5** A prompt and comprehensive explanation of the matter is essential not only for the person who filed the complaint with the Ombudsman but also for the general interest. In many cases, obtaining knowledge of the facts and possible errors committed by the authorities as quickly as possible is essential to effectively remedy any deficiencies and prevent their recurrence.
- 6** Inspections carried out by representatives of the Ombudsman of the office or other places belonging to the public authorities or institutions covered by the investigation, which are aimed at finding, becoming acquainted with or taking over essential information or documents, should be exceptional. The principle should be complete transparency and fair cooperation to fully establish the facts of the case.



- 7 Where there is a failure to meet the deadline set by the Ombudsman which should be reasonable in the circumstances, or failure to provide the requested information or documents, it is the responsibility of the authority to whom the request was addressed to provide an immediate explanation of this fact. In the event of absence or refusal to comply with the request, either in full or in part, the Ombudsman will inform a body of the higher authority and, if necessary, the relevant parliamentary committee and will expect an appropriate response. In certain situations, it may also be appropriate to inform the public about such an attitude on the part of the authorities.
- 8 The relevant authority shall launch investigation upon the application of the Chief Ombudsman or Ombudsmen on the officials that do not provide the requested information and documents without a legitimate reason.
- 9 Where there has been a lack of proper cooperation of the authorities with the Ombudsman, these cases must be indicated in the annual report and, in the event of a persistent and flagrant absence of cooperation, may also form the basis of a special report and, as a result, a separate debate in the parliament.

#### **d Hearings of Public Officials**

- 10 At any time during their investigations, the Ombudsman may conduct hearings of witnesses or other persons who can contribute to the resolution of the case. If a public official refuses, or is prevented from being interviewed, the Ombudsman may seek an explanation from the head of the competent administrative authority. Only very exceptional considerations may justify the exclusion of the hearing of such a person summoned by the Ombudsman for this purpose.

#### **e Correspondence with Persons Deprived of Liberty**

- 11 Correspondence addressed to the Ombudsman from places where persons are held in detention, in imprisonment or custody should be dispatched promptly by the administration of the respective institutions. Such correspondence should be received and dispatched in sealed envelopes, may not be the subject of any kind of censorship, nor may be opened. The

same applies accordingly to correspondence from the Ombudsman addressed to such persons.

#### **f Correspondence Through Governors' Offices**

- 12** Complaints to the Ombudsman and other correspondence addressed to them through governors' offices should be received by them in sealed envelopes and dispatched promptly and may not be opened.

#### **g Recommendation to Suspend the Execution of the Decision**

- 13** In exceptional cases, during the investigation, where the Ombudsman finds that the execution of an administrative or disciplinary decision may result in irreparable prejudice for the rights of the complainant, they may suggest to the competent government body to suspend the execution of the challenged measure for a specified period or until its completion. The Ombudsman should specify recommended measures and carefully justify why they decided to take such a step.
- 14** The authority concerned may refuse to comply with the suggestion, providing an explanation, without undue delay, of the reasons thereof, and in any case before executing the challenged measure. However, there must be very cogent reasons for refusing to agree to the suggestion in the Ombudsman's recommendation.
- 15** In cases where such a recommendation was issued it is required that it be treated with absolute priority in the Ombudsman Institution and completed at the earliest possible date.

#### **h Conducting Joined Systemic Investigations**

- 16** If the Ombudsman finds a trend of complaints in a particular area, they should select a small number of them, which are sufficiently representative of the whole, for more detailed investigation and issue a special report if deemed necessary.

#### **i Ex Officio Investigations**

- 17** The Ombudsman may conduct ex officio investigations on

their own initiative. When deciding whether to open such an ex officio investigation, the Ombudsman may consider information from any source. The Ombudsman shall notify the authorities concerned about the decision to open an ex officio investigation as soon as practicable. Rules relating to investigation proceedings in cases concerning individual complaints apply accordingly to ex officio investigations.

#### **j Persons Deprived of Their Liberty**

- 18** The Ombudsman shall have guaranteed access to any place where people are held by the state against their will. That access is normally not conditioned on receiving anyone's permission, providing the institution with advance notice of the visit and inspection or any other unreasonable conditions.
- 19** This access to persons held in such institutions should be understood both as a competence of the Ombudsman or persons acting on their behalf to have unconstrained contact with these individuals and as their right to seek such visits without constraints. Consequently, a person held in a closed institution should have the opportunity to freely communicate with the Ombudsman or their representatives without any supervision. This is not limited to conversations, but also covers all other means of communication.
- 20** Regardless of the mandate of the Human Rights and Equality Institution of Turkey (HREIT) which is the National Prevention Mechanism's (NPM) body in Turkey, the Ombudsman is competent to investigate complaints submitted by persons deprived of their liberty and to issue reports, including special reports, and to make appropriate recommendations. The Ombudsman may also consider necessary conducting investigations on his/her own initiative related to such persons.

#### **k Mediation**

- 21** Throughout the entire proceedings in the Ombudsman institution in a given case, the public authorities and institutions should participate in good faith in the Ombudsman's efforts to jointly find, by way of mutual agreement, an appropriate and satisfactory solution to the dispute brought to the Ombudsman.

- 22** The competent body should be empowered and ready to undertake any legally permissible obligation and action, including financial remedy, for the breach at stake. Such a general approach should be a predominant element of the authorities' policy on matters under investigation in the Ombudsman institution.

## **I Reports with Recommendations**

- 23** The report of an investigation can include recommendations for redress for the injustice caused to the complainant. It can also contain recommendations which seek to prevent recurrence of that particular maladministration.
- 24** Reports resulting from the Ombudsman's investigations should demonstrate that the case has been comprehensively and objectively investigated and the conclusions and recommendations have been formulated following thorough analysis.
- 25** In their reports, the Ombudsman should present extensive factual findings regarding the investigated problem, indicate the documents and other material on which the recommendations were based, and the legal arguments should meet the highest standards, taking account of the applicable legal framework in a given field and the international instruments at stake, especially those relating to human rights and principles of good administration.
- 26** The recommendations must be sufficiently clear and detailed for the authorities to whom they are addressed to see what particular action should be taken or procedure or process reviewed, as may be the case. In some specific situations, the Ombudsman may leave the authorities with a certain flexibility to decide how to implement the recommended measures that will ensure the achievement of its purpose and will be an adequate response to the problems identified.
- 27** Some of these recommendations should be specific and localized to the administrative authority or institution under review. In other instances, however, the nature of the recommendations made should be much more wide-ranging and challenging.

- 28** Where required, the Ombudsman should make broader constructive comments about the quality of the administrative processes they investigate. The clear aim is to improve the quality of decision-making so as to prevent, or at least to minimize the prospect of future repeat flaws occurring in administrative systems.
- 29** Even if it is not for the Ombudsman to question the merits of public decision-making, this does not prevent them from recommending that legislation or various regulations be reviewed on the basis that it is the law or rule that is causing subsequent criticized acts to occur within the administrative process.
- 30** When formulating a recommendation, the Ombudsman is obliged to take into account the actual possibility of it being implemented. This also applies to the deadlines set by the Ombudsman. When indicating the recommendation, the Ombudsman should take into account the conditions prevailing at the time.
- 31** Recommendations of the Ombudsman, which are generally an appropriate reaction to the violations or deficiencies identified, but which are objectively impossible to implement, at least under the prevailing conditions, jeopardize the authority of the Ombudsman institution and the trust in it on the part of the public institutions and the general public.
- 32** The authorities to whom the recommendations are addressed are obliged to regularly inform the Ombudsman about the state and progress of their implementation. In cases where there are delays or it is unlikely that the recommendations will be implemented, the authorities should provide the Ombudsman with convincing explanations as to the reasons why.
- 33** The Ombudsman should bear in mind that without legal powers of enforcement the strength of their reports is dependent on the quality of the evidence provided and the cogency of the subsequent arguments made. Therefore, the public authority or institution investigated should be given the opportunity to comment on the draft of any report to be issued. However, care needs to be taken that the process remains purely a form of ascertaining the facts contained in any proposed findings and recommendations, rather than comments on the Ombudsman's conclusions.

- 34** The Ombudsman should give their reports an impact that goes beyond the public authority or institution involved in the case. To this end, the Ombudsman should publish documents containing investigated reports which provide summaries of the most common forms of deficiencies identified or a synthesis of the learning that can be derived from all the investigation reports.

#### **m Publishing Combined Reports**

- 35** If the Ombudsman deems it appropriate, they may decide to publish combined reports joining the experience acquired through investigation reports in individual cases; this form of reporting enables the reports to exceed the description of examples of deficiencies revealed in these cases and concentrates more on the recommendations of good practice in the areas at stake.

#### **n Review Meetings**

- 36** The Ombudsman should, together with individual ministries and other governmental bodies, organise review meetings either regularly or ad hoc, as needed, to present information about their work, discuss problems revealed in the cases examined by the Ombudsman's office related to the areas falling within the competence of these ministries, discuss the state of implementation of recommendations and any difficulties or obstacles encountered in this process, etc.
- 37** Review meetings of this type serve not only the exchange of information and views and the search for improvements or solutions to issues that cause problems in practice but also serve to build an atmosphere of cooperation, better mutual knowledge and understanding and trust and, as a result, greater effectiveness of the Ombudsman in his/her relations with the authorities and in performing their mandate.

#### **o The role of the Parliament**

- 38** The Parliament should play a key role in the process of promoting and monitoring the implementation of the Ombudsman's recommendations and scrutinizing the reasons given for failure to

implement them. The Annual report of the Ombudsman addressed to the Parliament should present the activities of the Ombudsman institution in the reporting period and the state of protection of fundamental rights and the rule of law in the country, and indicate any identified trends of serious or systemic misconduct by the public authorities. The report must be subject to a public plenary parliamentary debate shortly after its submission.

- 39 The Ombudsman sends special reports to the Parliament in connection with the disclosed problems that require it, pointing to areas of particular concern, including cases where the authorities refuse to follow and implement the Ombudsman's recommendations. These reports should be debated by specialized parliamentary committees.
- 40 The Ombudsman, together with the Parliament, should adopt the rules enabling a proper exchange of information and materials and their regular cooperation with the relevant parliamentary committees.
- 41 Following the parliamentary debate on the Ombudsman's Annual report and in response to their special reports, the Government should be obliged to thoroughly analyse their conclusions and present their detailed position and explanations to the Parliament and the Ombudsman regarding all the problems raised in these reports.

#### **ö Amendments to the Law on the Ombudsman and the Regulation for the Setup and Operation of the Ombudsman Office**

- 42 It should be provided that any amendments concerning the Law on Ombudsman will require open, transparent and meaningful consultation, including with the Ombudsman at all stages of the law – making process.
- 43 The Ombudsman, not the Government, shall be entrusted with the preparation of a draft of any amendments to the Regulation for the set up and operation of the Ombudsman office. Only the Ombudsman shall prepare any proposed amendments to the applicable Rules of Procedure, which are then adopted by the parliament.

## ANNEX 1

### COUNCIL OF EUROPE MEMBER STATES (47) AND OMBUDSMAN INSTITUTIONS

<b>Albania</b>	Avokatı I Popullit
<b>Andorra</b>	Institució del Raonador del Ciutadà
<b>Armenia</b>	Hayastani Hanrapetut'yan Mardu Iravunk'neri Pashtpan
<b>Austria</b>	Volksanwaltschaft
<b>Azerbaijan</b>	Azərbaycan Respublikasının İnsan Hüquqları üzrə Müvəkkili
<b>Belgium</b>	De federale Ombudsman
<b>Bosnia and Herzegovina</b>	Institucija ombudsmena za ljudska prava
<b>Bulgaria</b>	Ombudsman na RB
<b>Croatia</b>	Pučki pravobranitelj
<b>Cyprus</b>	Grafeío Epitrópou Dioikíseos
<b>Czech Republic</b>	Veřejný ochránce práv
<b>Denmark</b>	Folketingets Ombudsmand
<b>Estonia</b>	Õiguskantsler
<b>Finland</b>	Eduskunnan Oikeusasiamies
<b>France</b>	Défenseur des droits
<b>Georgia</b>	Sakartvelos Sakhalkho Damtsveli
<b>Germany</b>	Petitionsausschuss
<b>Greece</b>	Synígoros tou Políti
<b>Hungary</b>	Alapvető Jogok Biztosa
<b>Iceland</b>	Umboðsmaður Alþingis
<b>Ireland</b>	Office of the Ombudsman
<b>Italy</b>	Coordinamento Nazionale dei Difensori Civici delle Regioni e delle Province autonome
<b>Latvia</b>	Valsts Tiesībsarga birojs



<b>Liechtenstein</b>	The Conciliation Board
<b>Lithuania</b>	Seimo kontrolierių įstaiga
<b>Luxembourg</b>	Ombudsman
<b>Malta</b>	Office of the Ombudsman
<b>Republic of Moldova</b>	Avocatul Poporului Ombudsman
<b>Monako</b>	(Ombudsperson under High Commissioner for Human Rights)
<b>Montenegro</b>	Zaštitnik ljudskih prava i sloboda Crne Gore
<b>Netherlands</b>	Nationale Ombudsman
<b>North Macedonia</b>	Narodniot pravobranitel
<b>Norway</b>	Sivilombudsmannen
<b>Norway</b>	Rzecznik Praw Obywatelskich
<b>Portugal</b>	Provedor de Justiça
<b>Romania</b>	Avocatul Poporului
<b>Russian Federation</b>	(Ombudsperson under High Commissioner for Human Rights)
<b>San Marino</b>	(Ombudsperson under High Commissioner for Human Rights)
<b>Serbia</b>	Protector of Citizens
<b>Slovak Republic</b>	Kancelária verejného ochrancu práv
<b>Slovenia</b>	Varuh človekovih pravic RS
<b>Spain</b>	Defensora del Pueblo
<b>Sweden</b>	Riksdagens ombudsmän - JO
<b>Switzerland</b>	The Banking Ombudsman
<b>Turkey</b>	Kamu Denetçiliği Kurumu
<b>Ukraine</b>	(Ombudsperson under High Commissioner for Human Rights)
<b>United Kingdom</b>	Parliamentary and Health Service Ombudsman

## ANNEX 2

### EXAMPLES OF COMPLAINTS HANDLING TRAINING

#### 1 TRAINING FOR PUBLIC AUTHORITIES

##### Parliamentary and Health Service Ombudsman (UK) Principles of Good Administration<sup>129</sup>

##### Introduction

This document gives our views on the Principles of Good Administration. It should be read in conjunction with our principles of Good Complaint Handling and Principles for Remedy.

##### Principles of Good Administration

Good administration by public bodies means:

##### 1 Getting it right

- All public bodies must comply with the law and have regard for the rights of those concerned. They should act according to their statutory powers and duties and any other rules governing the service they provide. They should follow their own policy and procedural guidance, whether published or internal.
- Public bodies must act in accordance with recognised quality standards, established good practice or both, for example about clinical care.
- In some cases a novel approach will bring a better result or service, and public bodies should be alert to this possibility. When they decide to depart from their own guidance, recognised quality standards or established good practice, they should record why.
- Public bodies should provide effective services with appropriately trained and competent staff. They should plan carefully when introducing new policies and procedures. Where public bodies are subject to statutory duties, published service standards or both, they should plan and prioritise their resources to meet them.

<sup>129</sup> <https://www.ombudsman.org.uk/sites/default/files/page/0188-Principles-of-Good-Administration-bookletweb.pdf>

- In their decision making, public bodies should have regard to the relevant legislation. Decision making should take account of all relevant considerations, ignore irrelevant ones and balance the evidence appropriately.
- Public bodies necessarily assess risks as part of taking decisions. They should, of course, spend public money with care and propriety. At the same time, when assessing risk, public bodies should ensure that they operate fairly and reasonably.

## **2 Being customer focused**

- Public bodies should provide services that are easily accessible to their customers. Policies and procedures should be clear and there must be accurate, complete and understandable information about the service.
- Public bodies should aim to ensure that customers are clear about their entitlements; about what they can and cannot expect from public body; and about their own responsibilities.
- Public bodies should do what they say they are going to do. If they make a commitment to do something, they should keep to it, or explain why they cannot. They should meet their published service standards, or let customers know if they cannot.
- Public bodies should behave helpfully, dealing with people promptly, within reasonable timescales and within any published time limits. They should tell people if things take longer than the public body has stated, or than people can reasonably expect them to take.
- Public bodies should communicate effectively, using clear language that people can understand and that is appropriate to them and their circumstances.
- Public bodies should treat people with sensitivity, bearing in mind their individual needs, and respond flexibly to the circumstances of the case. Where appropriate, they should deal with customers in a co-ordinated way with other providers to ensure their needs are met; and, if they are unable to help, refer them to any other sources of help.

## **3 Being open and accountable**

- Public administration should be transparent and information should be handled as openly as the allows. Public bodies should give people information and, if appropriate, advice that is clear, accurate, complete, relevant and timely.
- Public bodies should be open and truthful when accounting for their decisions and actions. They should state their criteria for decision making and give reasons for their decisions.
- Public bodies should handle and process information properly and appropriately in line with the law. So while their policies and procedures should be trans-

parent, public bodies should, as the law requires, also respect the privacy of personal and confidential information.

- Public bodies should create and maintain reliable and usable records as evidence of their activities. They should manage records in line with recognised standards to ensure that they can be retrieved and that they are kept for as long there is a statutory duty or business need.
- Public bodies should take responsibility for the actions of their staff.

#### **4 Acting fairly and proportionately**

- Public bodies should always deal with people fairly and respectfully. They should be prepared to listen to their customers and avoid being defensive when things go wrong.
- Public bodies should treat people equally and impartially. They should understand and respect the diversity of their customers and ensure equal access to services and treatment regardless of background or circumstance.
- The actions and decisions of a public body should be free from any conflict of interests should be declared. Public bodies should not act in a way that unlawfully discriminates against or unjustifiably favours particular individuals or interests.
- People should be treated fairly and consistently, so that those in similar circumstances are dealt with in a similar way. Any difference in treatment should be justified by the individual circumstances of the case.
- When taking decisions, and particularly when imposing penalties, public bodies should behave reasonably and ensure that the measures taken are proportionate to the objectives pursued, appropriate in the circumstances and fair to the individuals concerned.
- If applying the law, regulations or procedures strictly would lead to an unfair result for an individual, the public body should seek to address the unfairness. In doing so public bodies must, of course, bear in mind the proper protection of public funds and ensure they do not exceed their legal powers.

#### **5 Putting things right**

- When mistakes happen, public bodies should acknowledge them, apologise, explain what went wrong and put things right quickly and effectively.
- Putting things right may include reviewing any decisions found to be incorrect; and reviewing and amending any policies and procedures found to be ineffective, unworkable or unfair, giving appropriate notice before changing the rules.
- The actions of a well-run public body can sometimes bear more heavily on an individual because of their particular circumstances, even though statutory duties, service standards or both have been met. Public bodies should be alert

to this and respond flexibly to avoid or, where appropriate, put right any such undue effect.

- Public bodies should provide clear and timely information about methods by which people can appeal or complain. They should provide information about appropriate organisational or independent ways of resolving complaints. They should also consider providing information about possible sources of help for the customer, particularly for people who may find the complaints process daunting.
- Public bodies should operate effective complaints procedures which investigate complaints thoroughly, quickly and impartially; and which can provide an appropriate range of remedies to the complainant and any others similarly affected when a complaint is upheld. As a minimum, an appropriate range of remedies should include an explanation and apology from the public body to the complainant, remedial action by the public body, financial compensation for the complainant or a combination of these. The remedy offered should seek to put the complainant back in the position they would have been in if nothing had gone wrong. Where this is not possible -as will often be the case- the remedy offered should fairly reflect the harm the complainant has suffered.

## **6 Seeking continuous improvement**

- Public bodies should review their policies and procedures regularly to ensure they are effective; actively seek and welcome all feedback, both compliments and complaints; use feedback to improve their public service delivery and performance; and capture and review lessons learned from complaints so that they contribute to developing services.

## **European Ombudsman: The European Code of Good Administrative Behaviour:<sup>130</sup>**

### **Article 4 - Lawfulness**

The official shall act according to law and apply the rules and procedures laid down in EU legislation. The official shall in particular take care to ensure that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.

### **Article 5 - Absence of discrimination**

1. In dealing with requests from the public and in taking decisions, the official shall ensure that the principle of equality of treatment is respected. Members of the public who are in the same situation shall be treated in a similar manner.
2. If any difference in treatment is made, the official shall ensure that it is justified by the objective relevant features of the particular case.
3. The official shall in particular avoid any unjustified discrimination between members of the public based on nationality, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation.

### **Article 6 - Proportionality**

1. When taking decisions, the official shall ensure that the measures taken are proportional to the aim pursued. The official shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.
2. When taking decisions, the official shall respect the fair balance between the interests of private persons and the general public interest.

### **Article 7 - Absence of abuse of power**

Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The official shall in particular avoid using those powers for purposes which have no basis in the law or which are not motivated by any public interest.

<sup>130</sup> <https://www.ombudsman.europa.eu/en/publication/en/3510>

**Article 8 - Impartiality and independence**

1. The official shall be impartial and independent. The official shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.
2. The conduct of the official shall never be guided by personal, family, or national interest or by political pressure. The official shall not take part in a decision in which he or she, or any close member of his or her family, has a financial interest.

**Article 9 - Objectivity**

When taking decisions, the official shall take into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.

**Article 10 - Legitimate expectations, consistency, and advice**

1. The official shall be consistent in his or her own administrative behaviour as well as with the administrative action of the institution. The official shall follow the institution's normal administrative practices, unless there are legitimate grounds for departing from those practices in an individual case. Where such grounds exist, they shall be recorded in writing.
2. The official shall respect the legitimate and reasonable expectations that members of the public have in light of how the institution has acted in the past.
3. The official shall, where necessary, advise the public on how a matter which comes within his or her remit is to be pursued and how to proceed in dealing with the matter.

**Article 11 - Fairness**

The official shall act impartially, fairly, and reasonably.

**Article 12 - Courtesy**

1. The official shall be service-minded, correct, courteous, and accessible in relations with the public. When answering correspondence, telephone calls, and e-mails, the official shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked.
2. If the official is not responsible for the matter concerned, he or she shall direct the citizen to the appropriate official.

3. If an error occurs which negatively affects the rights or interests of a member of the public, the official shall apologise for it and endeavour to correct the negative effects resulting from his or her error in the most expedient way and inform the member of the public of any rights of appeal in accordance with Article 19 of the Code.

### **Article 13 - Reply to letters in the language of the citizen**

The official shall ensure that every citizen of the Union or any member of the public who writes to the institution in one of the Treaty languages receives an answer in the same language. The same shall apply as far as possible to legal persons such as associations (NGOs) and companies.

### **Article 14 - Acknowledgement of receipt and indication of the competent official**

1. Every letter or complaint to the institution shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period.
2. The reply or acknowledgement of receipt shall indicate the name and the telephone number of the official who is dealing with the matter, as well as the service to which he or she belongs.
3. No acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or pointless character.

### **Article 15 - Obligation to transfer to the competent service of the institution**

1. If a letter or a complaint to the institution is addressed or transmitted to a Directorate General, Directorate, or Unit which has no competence to deal with it, its services shall ensure that the file is transferred without delay to the competent service of the institution.
2. The service which originally received the letter or complaint shall inform the author of this transfer and shall indicate the name and the telephone number of the official to whom the file has been passed.
3. The official shall alert the member of the public or organisation to any errors or omissions in documents and provide an opportunity to rectify them.

### **Article 16 - Right to be heard and to make statements**

1. In cases where the rights or interests of individuals are involved, the official shall ensure that, at every stage in the decision-making procedure, the rights of defence are respected.



2. Every member of the public shall have the right, in cases where a decision affecting his or her rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken.

#### **Article 17 - Reasonable time-limit for taking decisions**

1. The official shall ensure that a decision on every request or complaint to the institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. The same rule shall apply for answering letters from members of the public and for answers to administrative notes which the official has sent to his or her superiors requesting instructions regarding the decisions to be taken.

2. If a request or a complaint to the institution cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the official shall inform the author as soon as possible. In such a case, a definitive decision should be communicated to the author in the shortest possible time.

#### **Article 18 - Duty to state the grounds of decisions**

1. Every decision of the institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.

2. The official shall avoid making decisions which are based on brief or vague grounds, or which do not contain an individual reasoning. passed.

3. If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of the decision and where standard replies are therefore sent, the official shall subsequently provide the citizen who expressly requests it with an individual reasoning.

#### **Article 19 - Indication of appeal possibilities**

1. A decision of the institution which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, and the time-limits for exercising them.

2. Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman under the conditions specified in, respectively, Articles 263 and 228 of the Treaty on the Functioning of the European Union.

**Article 20 - Notification of the decision**

1. The official shall ensure that persons whose rights or interests are affected by a decision are informed of that decision in writing, as soon as it is taken.
2. The official shall abstain from communicating the decision to other sources until the person or persons concerned have been informed.

**Article 21 - Data protection**

1. The official who deals with personal data concerning a citizen shall respect the privacy and the integrity of the individual in accordance with the provisions of Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.
2. The official shall in particular avoid processing personal data for non legitimate purposes or the transmission of such data to non-authorised persons.

**Article 22 - Requests for information**

1. The official shall, when he or she has responsibility for the matter concerned, provide members of the public with the information that they request. When appropriate, the official shall give advice on how to initiate an administrative procedure within his or her field of competence. The official shall take care that the information communicated is clear and understandable.
2. If an oral request for information is too complicated or too extensive to be dealt with, the official shall advise the person concerned to formulate his or her demand in writing.
3. If an official may not disclose the information requested because of its confidential nature, he or she shall, in accordance with Article 18 of this Code, indicate to the person concerned the reasons why he or she cannot communicate the information.
4. Further to requests for information on matters for which he or she has no responsibility, the official shall direct the requester to the competent person and indicate his or her name and telephone number. Further to requests for information concerning another EU institution, the official shall direct the requester to that institution.
5. Where appropriate, the official shall, depending on the subject of the request, direct the person seeking information to the service of the institution responsible for providing information to the public.

**Article 23 - Requests for public access to documents**

1. The official shall deal with requests for access to documents in accordance with the rules adopted by the institution and in accordance with the general principles and limits laid down in Regulation (EC) 1049/2001.
2. If the official cannot comply with an oral request for access to documents, the citizen shall be advised to formulate it in writing.

**Article 24 - Keeping of adequate records**

The institution's departments shall keep adequate records of their incoming and outgoing mail, of the documents they receive, and of the measures they take.

**Article 25 - Publicity for the Code**

1. The institution shall take effective measures to inform the public of the rights they enjoy under this Code. If possible, it shall make the text available in electronic form on its website.
2. The Commission shall, on behalf of all institutions, publish and distribute the Code to citizens in the form of a brochure.

**Article 26 - Right to complain to the European Ombudsman**

Any failure of an institution or official to comply with the principles set out in this Code may be the subject of a complaint to the European Ombudsman in accordance with Article 228 of the Treaty on the Functioning of the European Union and the Statute of the European Ombudsman.

**Article 27 - Review of operation**

Each institution shall review its implementation of the Code after two years of operation and shall inform the European Ombudsman of the results of its review.

2 TRAINING FOR OMBUDS STAFF

Local Government and Social Care Ombudsman (UK) Online complaints handling training:<sup>131</sup>

Course outline Effective Complaint Handling Online workshop	Local government& Social Care OMBUDSMAN
<p><b>Start</b></p> <p><u>Your Experience Of Making Complaints</u></p> <p>Looking at the complaints process from the complainant's point of view.</p> <p><u>Customer care issues</u></p> <p>What is important to complainants? What makes pursuing a complaint a better experience for the complainant?</p> <p><u>Investigating complaints</u></p> <p>Looking at the stages of the investigation process.</p> <p><b>Break</b></p> <p><u>Complaint resolution and remedies</u></p> <p>A presenaton and discussion drawing on the Ombudsman's recommended principles for resolving/remedying complaints.</p> <p><u>Making and communicating the decision</u></p> <p>What decision is going to be communicated, are how?</p> <p><u>Learning from complaints</u></p> <p>An exercise in which participants are asked to identify what can be learned from complaints.</p> <p><u>The benefit of complaints to your organisation</u></p> <p>How complaints can bring positive benefits.</p> <p><u>Review of the day</u></p> <p>Q&amp;As about the course and work of the Ombudsman</p> <p><b>Finish</b></p>	

<sup>131</sup> <https://www.lgo.org.uk/training>

**Course overview**  
**Effective Complaint Handling**  
**Online workshop**

**Local government&**  
**Social Care**  
**OMBUDSMAN**



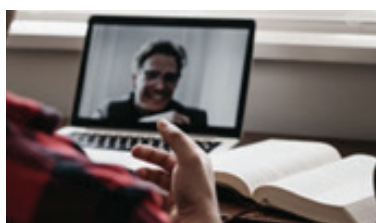
An online skills course in investigating complaints delivered live by experienced Ombudsman staff. Participants can draw on knowledge gained from our experience of over four decades of complaints investigation, decision-making and remedy recommendations.

The aim of the course is to help participants to develop their skills in:

- Defining and analysing complaints
- Planning investigations
- Making the best use of source of information
- Evaluating information and making sound decisions
- Communicating decisions effectively
- Resolving and learning from complaints

The course uses a variety of activities including:

- the participants' experiences of making complaints and our experience of what can go wrong
- The Ombudsman's overview of an investigation and the principles for resolving complaints
- Practical strategies for investigating complaints
- How your organisation can learn from complaints



The training is aimed at:

- Staff dealing with complaints at the higher stages of the process, such as managers and corporate complaints officers
- Staff who investigate and make decisions about complaints

By the end of the course learners will be able to:

- List five things that are important to people when they complain
- Describe the stages of the complaint handling process
- Accurately identify, define and summarise complaints
- List five sources of useful evidence for investigations
- Identify appropriate elements of a comprehensive decision letter and proportionate remedies for injustice
- Discuss how learning from complaints can be used to drive service improvements

**PHSO complaint standard:<sup>132</sup>**

Summary of complaints standards framework: An effective complaint handling system...

- 1** Promotes a learning and improvement culture through supporting the entire organisation to see concerns and complaints as an opportunity to develop and improve its services and people. It sets clear expectations to embed an open, non-defensive approach to learning from feedback. The organisation regularly talks to its managers and leaders and the public about what it has learnt from feedback and how it has used the feedback to improve services for everyone. Staff receive regular support and training to deliver best practice in handling feedback.
- 2** Positively seeks feedback, to act on concerns and complaints and to recognise this as a positive way to improve services. It creates a positive experience by welcoming feedback and making it easy for people to raise concerns or make a complaint. Staff have the freedom to resolve issues quickly and to the satisfaction of everybody.
- 3** Is thorough and fair when looking into concerns and complaints and gives an open and honest answer as quickly as possible in light of the complexity of the issues. It makes sure people who give feedback - and staff involved in the issues - have their say and are kept updated when carrying out this work. It always makes sure people can see what staff are doing to look into the issues in a fair and objective way based on the facts.
- 4** Gives a fair and accountable decision about what happened and whether mistakes occurred or not. The decision recognises the experience of everybody concerned to ensure a culture of learning and accountability. The system makes sure staff have the confidence and freedom to offer fair remedies to put things right when needed, and to act to make sure any learning is identified and acted on to improve services.



<sup>132</sup> <https://www.ombudsman.org.uk/csf>

## **5 Promoting a learning and improvement culture**

An effective complaint system demonstrates its commitment to promoting a just and learning culture that is open and accountable when mistakes occur. It uses learning to improve its services.

It makes sure every member of staff knows their role in promoting a 'learning from complaints' culture. It puts in place clear ways to demonstrate how the organisation uses learning to improve.

- All relevant staff know how they can deliver a just and learning culture in their role via specific objectives. Staff can demonstrate meeting these objectives via practical examples.
- Every organisation has appropriate governance structures in place to ensure that senior staff regularly review information arising from complaints and are held accountable for ensuring the learning taken from feedback is acted upon to improve services.
- Organisations ensure staff are trained to identify complaints in a manner that meets the expectations given in this Framework.
- Organisations have clear processes in place to show how they capture learning from complaints, report on it, and use it to improve services. Organisations report on the feedback they have received and how they have used that feedback to improve their services. This information is easy to compare with that of other organisations.
- Organisations also publish the results of their success in meeting the expectations given in this Standards Framework by seeking feedback from those who raise complaints (as well as staff involved) on their experience. This shows how the organisation has performed towards meeting what users expect to see as described in My expectations.
- Organisations provide meaningful opportunities for those who use their service (and national and local groups who represent those users) to discuss how the organisation has used learning from complaints to improve local services.
- Organisations routinely share learning from complaints with other organisations (both locally and nationally) to build on insight and best practice.

## **6 Positively seeking feedback**

An effective complaint system goes out of its way to create a positive environment in which complaints are welcomed and resolved at the earliest opportunity. People know how to complain and can do this easily and without fear that it will affect their care.

People have confidence that their complaint will be taken seriously, will be looked at with empathy and will be answered as quickly as possible.

- All staff have the freedom to actively seek feedback to improve services and resolve issues quickly and effectively. Staff receive training in how to do this and how to ensure people know they are being listened to and treated with empathy, courtesy and respect.
- Organisations make sure people know how to access advice and support to raise a concern or make a complaint, including giving details of appropriate independent complaints advocacy and advice providers and other support networks.
- Organisations ensure staff who are subject to a concern or complaint are made aware and know how to get access to advice and support throughout the process.
- Organisations actively reassure people who use their services that their care will not be compromised if they raise a concern or make a complaint.
- Organisations clearly advertise how people can raise concerns and complaints in a way that suits them. Organisations offer a range of ways people can give feedback, including online.
- Organisations make it easy for anyone to raise a concern or make a complaint when they want to. It is easy for everybody to understand how the process works, including who can raise a concern or make a complaint and what will happen next.
- Each stage in the concerns and complaints procedure is responsive to the needs of each individual. Every stage meets the needs of minority and vulnerable groups and makes reasonable adjustments where required.
- Organisations ensure staff identify when issues raised in a concern or complaint might be better addressed via another route (such as through a regulator or by a legal claim). Staff provide advice on how a person can take that route (and where they can get further support) so they can make an informed choice. Staff will continue to look into any issues that are not covered by another route to ensure people get a complete answer to their concern or complaint.
- Staff make sure they respond to concerns and complaints at the earliest opportunity. Staff consistently meet expected timescales for acknowledging a concern or complaint and give clear timeframes for how long it will take to look into the issues, taking into account the complexity of the matter.
- Organisations regularly promote their wish to receive feedback from their users and promote how they use this learning to improve services.



## 7 Being thorough and fair

An effective complaint system makes sure staff take a thorough, proportionate and balanced look into the issues raised by a complaint, and makes sure people get a fair and open answer to their questions based on the facts and takes full accountability for mistakes identified.

- Organisations make sure staff are properly trained and have the appropriate level of experience and authority to take a thorough look into complaints.
- Organisations make sure all staff who look at complaints have the appropriate resources, support and protected time to do so in order to consistently meet the expectations given in this Framework.
- All staff handling complaints do so impartially. Where possible, organisations make sure they assign complaints to staff who have had no prior involvement or who have no actual or perceived conflict of interest. Where that is not possible, staff take clear steps to demonstrate their impartiality and how they will avoid any conflict of interest.
- Organisations publish a local complaints procedure that meets the standards set out in this Framework. Each procedure clearly sets out how staff will handle complaints and what quality standards and behaviours they are expected to follow when doing so.
- Staff actively listen and demonstrate a clear understanding of what the key issues are for the individual, and what outcomes they seek.
- Staff make sure everyone involved in a complaint (including staff) know how they will look into the issues. This includes what information complaints staff will need, who they will speak to, who will be responsible for making the final decision and how they will communicate that decision.
- Staff will agree timescales with everyone involved and will agree how people will be kept informed and involved. Staff provide regular updates throughout.
- At all times, staff have the freedom to look for ways they can resolve complaints at the earliest opportunity.
- Staff make sure everyone involved in a complaint has the opportunity to give their views and respond to emerging information. Staff act openly and transparently and with empathy when discussing this information and make sure they take everyone's comments into account.
- In complaints that involve multiple organisations, local complaints procedures identify and set out the roles and responsibilities of a 'lead organisation' and the other organisations involved to deliver a co-ordinated investigation and a holistic response.

## 8 Giving fair and accountable decisions

An effective complaint system makes sure organisations enable staff to give a fair and balanced account of what happened and what conclusions they reached on every complaint.

When appropriate, organisations openly identify times when things have gone wrong or services have had an unfair impact and take accountability for these.

Organisations ensure staff can offer a range of ways to put things right for the individual. Staff also look at what action will be taken to learn from the experience to continuously improve services and help support staff.

- Staff give a clear, balanced account of what happened based on established facts. Each account compares what happened with what should have happened, and gives clear references to any relevant standards, policies or guidance, based on objective criteria.
- Staff give everybody involved in a complaint meaningful opportunities to respond to initial views and take these into account in the final decision.
- Organisations ensure staff have the confidence to be open and honest when things have gone wrong or where improvements can be made. Staff ensure the right balance between taking accountability and identifying what learning can be taken from a complaint and how the learning will be acted on to improve services and support staff.
- Wherever possible, staff explain why things went wrong and identify suitable ways to put things right for people when mistakes have occurred. Staff should ensure the apologies and explanations they give are meaningful, sincere, and openly reflect what impact the mistake has had. Staff take human factors into account, and ensure any learning is acted upon. Staff use any learning to support staff complained about.
- Organisations empower staff to identify suitable ways to put things right for those raising complaints. Organisations provide guidance and resources to make sure any proposed action to put things right is consistent with others.
- For complaints that involve multiple organisations, the lead organisation provides a single response to the complaint that includes what the other organisations have done to look into the issues and the conclusions they reached. Where needed, the response clearly explains how each organisation will remedy any mistakes it made.
- Organisations make sure people are kept involved and updated on how the organisation is taking forward all learning or improvements relevant to their complaint.

- Staff make sure everyone is told about their right to complain to the Ombudsman in the written final response to a complaint.







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This Report is based on the analysis provided by the Council of Europe consultants as a result of a series of consultation meetings held with the Turkish Ombudsman Institution, civil society organisations, representatives of the public authorities and the members of the judiciary (from December 2020 to May 2021).

The Report presents a comparative overview of a range of Ombuds institutions, describing how they operate and illustrating relevant examples of best practices. The Report is structured on four specific themes of practical relevance and contains corresponding recommendations of how to strengthen the role of the Turkish Ombudsman, and puts forward a set of rules regarding the conditions of cooperation between the public authorities and institutions and the Ombudsman.

Ombudsman institutions play an important role in protecting the rule of law and human rights and have become an integral part of the modern model of good governance. The Council of Europe has long supported the establishment of independent and effective Ombudsman institutions within its Member States.

The Paris Principles relating to the status of national human rights institutions adopted by the UN General Assembly in 1993 remain the key document establishing the mission, powers and standards of the independence of (human rights) Ombudsmen.

The new Recommendation CM/Rec(2019)6 of the Committee of Ministers to Member States on the development of the Ombudsman institution was adopted on 16 October 2019. It has been preceded by the adoption of Principles on the Protection and Promotion of the Ombudsman Institution by the Venice Commission ("the Venice Principles"). These two documents are complementary and constitute an updated set of European standards covering all aspects of establishment and functioning of the Ombudsman institutions.

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