

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Resolution 80 (1999)¹ on the role of local and regional mediators/ombudsmen in defending citizens' rights

*(Extract from the Official Gazette of the Council of Europe
– June 1999)*

The Congress,

1. Recalling the texts adopted by Council of Europe bodies in the field of mediation;
2. Bearing in mind the results of the conference in Messina (Italy, 13-15 November 1997) on "Making the protection of rights more accessible to citizens: the ombudsman at local and regional level" as well as the Congress's survey on the institution of mediator, ombudsman and "civic defender" at local and regional level in Europe;
3. Noting the results of the activities conducted by the Council of Europe at the "Round Tables with European Ombudsmen" in Florence (7-8 November 1991), Lisbon (16-17 June 1994), Limassol (8-10 May 1996) and Malta (October 1998);
4. Considers that citizens are increasingly in need of an institution which is both attentive to their needs and able to bring pressure to bear on public authorities in the defence of their rights;
5. Believes that mediation can meet citizens' needs by facilitating their relations with local and regional institutions and points out that some European municipalities and regions have already set up mediators' or ombudsmen's offices offering citizens a readily accessible means of ensuring that their authorities are functioning properly;
6. Draws attention to the fact that the weaker categories of society, such as the disabled, minors, minorities and immigrants, who often have more contact with the public authorities than other categories, require a simple and reliable means of access to public procedures;
7. Draws attention to the fact that Norway created the post of children's ombudsman in 1981 and suggests examining the feasibility of making the defence and promotion of children's rights (under the 1989 United Nations Convention on the Rights of the Child) the responsibility of ombudsmen's offices, providing them with suitably qualified staff and adequate resources;

1. Debated by the Congress and adopted on 17 June 1999, 3rd sitting (see doc. CG (6) 9, draft resolution, presented by Mr M. Haas, Rapporteur).

8. Affirms that mediation, as a means of settling and avoiding disputes, can reduce the need for judicial proceedings and hence the caseload of the administrative and civil courts, and satisfy citizens' needs, facilitating relations between them and the local and regional authorities;

9. Considers that a number of countries need to set up an institution designed to ensure fairness, respect for the rule of law and good government and also able to communicate with the public;

10. Notes that, in various European countries, a number of local and regional authorities, which are by definition most in tune with citizens' needs, have already set up institutions of this kind, enabling citizens to contribute to improvements in the way the public authorities operate; recalls that it was Sweden which, in 1809, instituted, for the first time, the function of protection for citizens, followed by Finland in 1919;

11. Considers that the work of local and regional ombudsmen, who are able to investigate and monitor the proper functioning of the activities of public authorities, may help:

- to reduce the gap between public authorities and European citizens;
- to increase the efficiency and openness of administrative services by improving public access to administrative procedures;
- to establish genuine dialogue between the citizens and the public authorities by combining their efforts with those of the Citizen's Advice Bureaux which already exist within various authorities;

12. Points out that, in analysing the experiences of ombudsmen at local and regional level throughout Europe, the participants at the Messina Conference expressed a desire for this institution to be adopted in all European countries for the benefit of those citizens who do not yet have access to this type of protection;

Declares:

13. That the institution of local and regional ombudsmen contributes to the application of the principles of the European Charter of Local Self-Government;

14. That the practice of "civic mediation" should be reinforced where it already exists and set up officially in municipalities and regions which do not yet have this means of protecting citizens;

Adopts:

15. The principles governing the setting up of local and regional ombudsmen's offices as set out in the Appendix to this Resolution;

Recommends:

I. That local and regional authorities which do not have this institution:

16. Set up municipal and regional ombudsmen's offices with appropriate legal instruments, powers, infrastructure

and staffing, bearing in mind the principles governing the institution of the ombudsman at local and regional level ;

17. Consider, where necessary, pooling the resources of smaller municipalities to set up shared ombudsmen's offices ;

II. *That local and regional authorities which do have this institution :*

18. Take heed of the aforementioned principles with a view to reforming this institution where appropriate ;

19. Set up a transnational network of local and regional ombudsmen to pool experience and investigate possibilities of co-operation or co-ordination to solve citizens' problems vis-à-vis the public authorities ;

20. Improve the quality and the flow of information for citizens about the possibilities offered by such an institution ;

Requests that the appropriate bodies :

21. Plan to hold conferences, seminars and other events, preferably in central and eastern European countries, designed to promote awareness and encourage the setting up of this means of protecting citizens ;

22. Set up within the Congress a select group of local and regional ombudsmen with a consultative and advisory role in the work of the Congress.

Appendix

Principles governing the institution of the mediator at local and regional level

Preamble

1. The diversity of legal systems in European countries, the different forms of decentralisation in these countries and the variety of approaches to the appointment of ombudsmen at local and regional level suggest that we should propose a general model which might be applied in the various member countries of the Council of Europe in a way that takes the particular features of each system into account.

Legal framework

2. In view of the diversity of legal systems in Council of Europe member countries, it would be inappropriate to lay down rigid principles regarding the type of legal rules to be used to institute ombudsmen (constitutional laws, specific laws, statutes of regions or municipalities, decrees, regulations, etc.). Each relevant body may, in accordance with domestic law, adopt legal measures appropriate to its particular aims.

The institution of the ombudsman

3. The institution of the ombudsman (at European, national, regional, provincial, municipal level, etc.) helps both to reinforce the system of human rights protection and to improve the relations between the public authorities and the citizens.

4. Without interfering with the activities of the judicial bodies (international courts, committees and supervisory organs, and domestic courts), the ombudsman protects the rights, interests and specific circumstances of individuals in relation to the acts and conduct of the public authorities.

5. According to the degree of administrative decentralisation in states and the autonomous powers conferred on the local authorities at various levels (states, *Länder*, cantons, regions, autonomous communities, *Départements*, provinces, municipalities, etc.), the institution of local and regional ombudsmen seeks to provide protection of citizens at the closest level possible.

6. Supervision of public authorities whose activities have a direct impact on citizens and users of services would appear to be further-reaching and more effective at local level than at wider levels (regional or national), because the latter are primarily concerned with planning, policy-making and co-ordination.

7. The proximity between ombudsmen and citizens has obvious advantages for citizens. To achieve this, the solution of appointing ombudsmen for each local or regional authority with administrative and/or legislative autonomy is preferable by far to the solution of extending the national ombudsman's sphere of competence to the acts and conduct of local or regional authorities.

8. In countries where the degree of administrative decentralisation justifies appointing an ombudsman in every municipality, in order to avoid splitting up the territory excessively it is desirable to form associations of municipalities, so as to ensure that each ombudsman's sphere of competence is not too narrow in terms of geographical area and the number of citizens covered.

The choice of the ombudsman

9. The essential qualities of an ombudsman as regards his functions are independence, impartiality and competence. To this end, the person chosen must not be influenced by (or subjected to pressure from) the organs of the local and regional authorities, their senior officials, political parties, etc.

10. It is advisable :

i. to avoid appointing a politician (ie someone who has been elected to an assembly or is a member of a political party); independence and impartiality must be seen by citizens, and in this regard appearances are also important ;

ii. to subject candidates to close scrutiny in order to exclude those who may have (or even appear to have) connections with the local authority (interests associated with their careers or functions, political or economic interests, etc.);

iii. to ensure that candidates' training and qualifications are consistent with the duties of the ombudsman, who should possess adequate knowledge of the workings and rules of administration.

11. Similarly, it would be desirable to specify the term of office, the limits on re-election and the functions and activities that are incompatible with the duties of the

ombudsman. Consideration should also be given to the need to strike a balance between the functions and limitations of the post in order to ensure that suitable candidates apply.

12. There should be provision for remuneration, depending on the system of recruitment (full-time, part-time, etc.) and comparable to the remuneration paid to senior officials of the administration. Where ombudsmen receive no remuneration, there are insufficient guarantees of independence and impartiality.

13. The appointment of the ombudsman, once the appropriate procedures have been completed (proposal, consideration of candidatures, opinions, etc.) should be entrusted to the elected assembly of the local authority.

14. Practical experience in European countries suggests that ombudsmen should be appointed as individuals. However, there do not appear to be any fundamental objections to the choice of a collegiate body.

15. The appointment of ombudsmen whose competence is limited to a specific field (health, telecommunications, etc.) or to a specific group of persons requiring protection (persons with disabilities, immigrants, minorities, etc.) is no alternative to the ombudsman with general competence. There is no objection in principle to the appointment of these specialised ombudsmen in addition to other ombudsmen. However, there is a need to avoid excessive proliferation which might interfere with the functioning of a general system for the protection of human rights.

The office and services of the ombudsman

16. The need to adopt solutions which are appropriate to each particular case, according to the different factors of organisation, size of the local or regional authority, budget, etc. make it impossible to lay down guidelines. However, it is useful to set out the essential aims to be pursued:

- i. the ombudsman should be provided with a level of staff, in terms of numbers and qualifications, appropriate to the extent of his territorial competence and the number of individuals who might call on his services;
- ii. staff may be placed at the ombudsman's disposal by the local authorities or recruited directly by the ombudsman. The latter solution is preferable, in view of the need for independence which also applies to the ombudsman's officials;
- iii. the ombudsman must have the premises, technical services and other services necessary for him to perform his duties effectively.

Powers and functions of the ombudsman

17. Differences in legal systems, administrative organisation and the degree of autonomy enjoyed by the local authorities play a fundamental role in determining the powers of the ombudsman. It is not desirable to propose a single model for these powers, since in each state these matters are organised in a particular way. However, it is

helpful to indicate the objectives to consider in the very delicate exercise of determining the ombudsman's powers:

- i. since a direct relationship between the autonomy of the local authorities and the ombudsman has been established, it follows that the ombudsman's field of competence should extend to all acts and conduct of the local administrative authorities;
- ii. the powers of the national ombudsman and those of the local and/or regional ombudsman should be distributed in such a way that all activities and conduct of the public authorities are covered and no gaps are left which would leave the individual unprotected;
- iii. any limitations in respect of acts and conduct relating, for example, to particular fields (national defence, public security, law enforcement, etc.) should be reduced to what is essential;
- iv. as regards the delimitation of powers between the ombudsman and the judiciary, there are still likely to be grey areas and areas of overlap. However, in the interests of the protection of individuals, the possibility of choosing between two procedures or using them in turn should not be excluded.

18. In deciding on the powers and duties of the ombudsman, provision should be made for:

- i. a function of consultation to help individuals settle their problems with the public authorities;
- ii. the essential function of supervision and mediation;
- iii. a function of promotion, which is necessary to help resolve cases of maladministration at their source and make the public authorities more efficient and observant of human rights.

Access to the ombudsman

19. Access to the ombudsman must be open to every natural or legal person who considers that he has sustained damage of any kind as a result of an act or the conduct of the local administrative authority. Any discrimination based on nationality (for example, where access is limited to citizens only), race, sex, etc. is contrary to the general principles which govern the protection of human rights.

20. In order to make access to the ombudsman easier in practice, the office should be open every day, and provision should also be made for consultation by telephone and/or electronic means. The use of the new information technologies for contact between the ombudsman and citizens is highly advisable.

21. The ombudsman's services must be provided free of charge and the procedure must be flexible and without major formalities so that delays, complications and expenses for the individual may be avoided.

22. Applicants should be kept informed of the initiatives taken by the ombudsman and, if possible, of subsequent developments and the final outcome. Where the action taken is aimed at achieving a compromise, the applicant's prior consent must be obtained.

23. The ombudsman must be empowered to act on his own initiative, at least whenever he is aware of acts, conduct

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and/or situations which may be the source of harm for individuals in general or for a category or group of individuals.

The ombudsman's means of action

24. The ombudsman must be guaranteed free access to the documents, files and archives of the administrative authority concerned which he requires in order to perform his duties. Other than in extreme cases where the principle of state secrecy is invoked for reasons relating to defence, national security, etc., no refusal is acceptable.

25. Freedom of access should also include the possibility to conduct enquiries and visit and/or inspect the relevant scene with the help of experts where the situation so requires.

26. The official responsible for the act or conduct at issue must be available to answer the ombudsman's questions and to help him carry out his tasks.

27. The administrative authority concerned should be required to take the ombudsman's recommendations, suggestions and other initiatives into consideration and in any event to state the reasons which in its view prevent it from giving effect to them. The authority's response should be received within a prescribed period.

28. In order to ensure effective freedom of access, appropriate penalties should be laid down and imposed for any refusal, obstacle, impediment or other form of obstruction on the part of a civil servant or public official.

29. The results of the ombudsman's action should be set out in special, periodic or annual reports or in other documents and made public by whatever means appropriate.

30. So that the function of promotion may be successful, the ombudsman should be able to approach the organ of the local authority responsible for adopting the relevant provisions regarding administrative action, the organisation of services, regulations, procedures, etc. in order to suggest any ways (repeal, amendment of measures in force, proposal for fresh provisions, etc.) in which the authority's effective observance of individual rights might be improved.

31. In order to make the ombudsman's intervention more effective, governments and local and regional authorities should consider the possibility of conferring on him the following powers:

i. the power to initiate disciplinary proceedings directly against a civil servant or public official of who has seriously impeded the exercise of the ombudsman's functions, or where the ombudsman's action has revealed and proved that the civil servant or official concerned is directly liable for the harm sustained by the applicant;

ii. the power to report to a higher authority the authorities' refusal to follow the ombudsman's recommendations and suggestions where the reasons given for not doing so appear unsatisfactory.