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The office of Ombudsman and local and regional authorities

Governance Committee

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Summary

Despite great advances in Ombudsman services in recent years, there remain significant gaps in Ombudsman protection at local and regional level.

The report underlines the need to further develop Ombudsman services, ensuring that they are properly staffed and resourced. Local and regional authorities can help strengthen Ombudsman services and ensure that proper follow-up is given to their recommendations. Public awareness of these services is inadequate and measures should be taken to give them a higher profile.

The Ombudsman is an essential institution of good governance, safeguarding the individual against administrative abuses and fostering public confidence in local and regional services. The current economic crisis is increasing the workload of Ombudsman services at a time when many of these services themselves risk being cut.

¹ L: Chamber of Local Authorities/ R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: Group of the European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress
NR: Member not belonging to a political group of the Congress



DRAFT RESOLUTION²

[\[see Resolution 327 \(2011\) adopted on 18 October 2011\]](#)

1. The institution of Ombudsman is an essential element of good governance. It is a valuable safeguard for protecting the individual against administrative abuses and an important instrument for supervising public authorities and fostering public confidence in local and regional administrations.
2. Since the Congress produced its first report on local and regional Ombudsmen in 1999, the institution has rapidly gained ground, and is becoming widely accepted as an essential element of local and regional public life.
3. In the current difficult economic climate, which is putting increasing pressure on local and regional public services, Ombudsman services are needed more than ever before. The Congress recalls its 1999 "Principles governing the institution of the Ombudsman/ Ombudsperson at local and regional level", which remain a valid summary of the value and purpose of the institution.
4. The 2009 Congress survey, described in the explanatory memorandum to this resolution, shows that, in a short space of time, the Ombudsman has become a respected and established institution in most member states. It also identifies areas where further improvements can be made, such as where Ombudsman services require greater control of their budgets and freedom to select their own staff.
5. The primary aim, for the purposes of local and regional democracy, is to provide efficient and effective Ombudsman services which can handle complaints not only against local and regional authorities, but against all authorities which provide public services at the local and regional level.
6. It is recognised that there is no single blueprint for the structure of the Ombudsman services in a member State. Each country should adopt the most appropriate structure according to its particular situation. In some countries this will result in the creation of specific local and regional Ombudsman services, in other countries complaints concerning local and regional services can be more effectively handled centrally.
7. The survey shows that certain principles deserve to be highlighted and further developed. Ombudsman services should be properly staffed and resourced, to enable them to function effectively and with complete independence, which should directly benefit the quality of local and regional services.
8. Now that Ombudsman services that handle complaints concerning local and regional public services exist in most member States, the challenge is to raise their public profile, to make them more widely known, valued and used by the general public. For this purpose they would benefit from being promoted in the media, local and regional press, television and the internet.

² Preliminary draft resolution and preliminary draft recommendation approved by the Governance Committee on 26 September 2011.

Members of the Committee :

K.-H. Lambertz (Chair), *B.-M. Lövgren* (1st Vice-Chair), *E. Özkarsli* (2nd Vice-Chair), *V. Rogov* (3rd Vice-Chair), *A. Alite*, *R. Aliyev*, *M. Aygun*, *D. Barisic*, *N. Berlu* (alternate: *C. Tascon-Mennetrier*), *B. Biscoe*, *S. Borgwardt*, *W. Borsus*, *S. Bush*, *M. Chernishev* (alternate: *V. Novikov*), *L. Ciriani*, *M. Cohen*, *G. Dalleres Codina*, *B. Degani*, *C. Martins Do Vala Cesar*, *K. Dubin*, *A. Ü. Erzen*, *H. Feral*, *P. Filippou*, *A. Fusco Perrella*, *M. Gattei*, *G. Gerega*, *G. Berit Gjerde*, *V. Golenko*, *O. Goncharenko*, *A. Gravells*, *M. Haak-Griffioen*, *M. Hegarty*, *I. Henttonen*, *K. Hilber*, *L. Iliescu*, *V. Kadokhov*, *P. Karleskind*, *I. Khalilov*, *O. Kidik* (alternate: *S. Tunali*), *V. Kress*, *A. Langner*, *S. Lazic*, *E. Lindal*, *O. Luk'ianchenko*, *C. Mayar*, *M. Mahmutovic*, *J. Manninger*, *C. Marini*, *C. Mauch*, *J. McCabe*, *A. Mediratta*, *J. Mend*, *B. Mennel*, *M.-M. Mialot-Müller*, *A. Mimenov*, *E. Mohr*, *S. Neeson*, *G. Neff*, *A. Nemcikova*, *V. Nersisyan* (alternate: *E. Yeritzyan*), *C. Nicolescu*, *R. Nwelati*, *F. Pellegrini*, *J. Pulido Valente*, *G. Roger*, *S. Röhl*, *B. Rope*, *R. Roperio Mancera*, *M. Sabban*, *I. Sanchez Amor*, *C.-L. Schroeter*, *P. Sedlacek*, *A. Sokolov* (alternate), *A. Stark*, *N. Stepanovs*, *A. Stoilov*, *D. Suica*, *R. Tirle*, *S. Tobreluts*, *S. Ugrekheldize*, *P. Van der Velden*, *E. Verrengia*, *P. Wies*, *M. Yurevich*

N.B.: The names of members who took part in the vote are in italics.

Secretariat of the Committee : T. Lisney and N. Howson.

9. For Ombudsman services to maintain public confidence, their recommendations to public authorities need to be systematically addressed, in a transparent manner and within an acceptable timeframe.

10. The Congress therefore calls on local and regional authorities:

a. to encourage the development of Ombudsman services that handle complaints concerning local and regional public services, drawing attention to the Congress "Principles governing the institution of the Ombudsman/Ombudsperson at local and regional level";

b. to support and facilitate the work of such Ombudsman services, and ensure that they have a clear mandate, which defines their field of competence, which areas of activity that they can intervene in and the time-limits for dealing with complaints;

c. to ensure that Ombudsman positions are filled punctually with people with independence, impartiality and competence, who have a good standing in the community;

d. to recognise and promote the principle that Ombudsman services should be available to all people, regardless of citizenship or nationality;

e. to ensure that access to Ombudsman services is as easy and as transparent as possible;

f. to assist Ombudsman services in developing comprehensive communication policies, with tools such as websites, social networks, press coverage, public relations and publications, to publicise and promote their activities;

g. to ensure that they give appropriate follow-up to Ombudsman recommendations concerning local and regional services, in a transparent manner and acceptable time-frame, either by giving written confirmation of their implementation or a written defence of why this is not possible;

h. to encourage networking and exchange of experience among Ombudsman services that handle complaints concerning local and regional public services.

11. The Congress calls on associations of local and regional authorities:

a. to promote the development of Ombudsman services that handle complaints concerning local and regional public services, recognising the beneficial effects that they can have on the quality of such services;

b. to urge national authorities, where there are gaps in Ombudsman provision and legislative frameworks, to ensure that a nationwide system of Ombudsman protection is put in place in every member state, giving proper protection to all people against maladministration at the local and regional level, and ensuring that all people have easy access to Ombudsman services.

DRAFT RECOMMENDATION³

[\[see Recommendation 309 \(2011 adopted on 18 October 2011\)\]](#)

1. Safeguarding the health of a democracy requires a complex system of checks and balances, of which the institution of Ombudsman is a vital component. The Ombudsman is a valuable safeguard against administrative abuses at local and regional level which serves to build trust in public authorities and improve service provision.

2. In recent years Ombudsman services have been established in most Council of Europe member States where they were previously lacking. However, the coverage of complaints concerning local and regional public services in some countries remains incomplete, while in others the Ombudsman institutions are weak and inadequately resourced.

3. The Congress recognises that ensuring proper access to an Ombudsman service in order to lodge a complaint of maladministration regarding local or regional public services does not require the establishment of a separate Ombudsman office in each local or regional authority. However, each member State needs to adapt and develop its Ombudsman institutions to ensure that such complaints can be promptly and effectively handled.

4. While some regions have succeeded in establishing strong Ombudsman structures, in other cases the treatment of complaints suffers from the lack of a proper national structure with a corresponding institution to supervise national administrations.

5. The structure of Ombudsman institutions in a member State should aim to provide a service which ensures that all people have easy and transparent access to Ombudsman offices. A complainant should not need to travel outside of a region in order to lodge a complaint concerning a public authority within that region.

6. The Congress encourages cooperation and networking among Ombudsman offices, in particular in cooperation with the European Commissioner of Human Rights, the network of European Ombudsmen and the International Ombudsman Association. It also encourages cooperation among local and regional Ombudsman in each member State and recognises the positive role that national coordinating committees can play in developing Ombudsman services.

7. The Congress therefore, referring to:

a. its "Principles governing the institution of the Ombudsman/Ombudsperson at local and regional level" (1999);

b. Congress Recommendation 61 (1999) on the role of local and regional mediators/Ombudsman in defending citizens' rights;

c. Congress Recommendation 159 (2004) on regional ombudspersons: an institution in the service of citizens' rights;

8. Recommends that the Committee of Ministers invite member States to ensure that, with regard to Ombudsman that handle complaints of maladministration concerning local and regional public services:

a. all persons, regardless of their status and nationality, have easy and transparent access to such Ombudsman services;

b. any legal obstacles to providing an effective and comprehensive Ombudsman service be removed;

c. Ombudsmen have the mandate to act *ex officio* to open enquiries into cases of possible maladministration;

³ See footnote 2.

d. Ombudsman offices are staffed by people with independence, impartiality and competence, receiving salaries commensurate with their responsibilities, with knowledge of the administrations for which they handle complaints;

e. Ombudsman offices are financially independent and adequately resourced in order to be able to conduct the enquiries necessary to follow up complaints;

f. Ombudsman recommendations are publicised and given appropriate follow-up by local and regional authorities, with periodic reports being issued which identify recurring issues and measures taken to address them;

g. there is good cooperation and networking between Ombudsmen working for the local, regional, national and European levels, with the establishment of national coordinating committees where appropriate, to ensure that complaints are referred to the appropriate Ombudsman office and that duplication is avoided;

h. there is good cooperation between Ombudsmen and courts and related institutions.

9. The Congress recognises the valuable work of the Council of Europe Commissioner for Human Rights to facilitate the development of Ombudsman services that handle complaints about local and regional services and encourages him, in cooperation with the Congress and international associations of Ombudsman, to continue to facilitate networking and exchange of good practice among these Ombudsman services, and to assist the development of existing national networks.

EXPLANATORY MEMORANDUM⁴

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I. INTRODUCTION

1. The Council of Europe wishes to encourage local and regional authorities to administer their functions for the benefit of the citizen, in a prompt, efficient, honest, accessible, open way. In a word, the Council is interested in good public administration and in arrangements that help to establish and maintain this. This is an important aspect of the broader notions of rule of law, human rights and good governance.

2. The present report examines the control and improvement of the public administration carried out by local and regional authorities, focussing on the office of the Ombudsman, as an institution which encourages good administration. Although the Ombudsman is a relatively young institution, there have been significant developments in Council of Europe member States since the Congress adopted its "Principles Governing the Institution of the Ombudsman/Ombudsperson at Local and Regional Level" in 1999. This report draws on the replies made to a questionnaire drawn up in 2009 and sent to

⁴ This report was prepared with the help of David Gwynn Morgan, Professor, Law Department, University College, Cork, Ireland.

members of the Group of Independent Experts on the European Charter of Local Self-Government, a body set up by the Congress (see Appendix).

3. For the purpose of this report, what do we mean by ‘the Ombudsman’? Undoubtedly the functions and character of the Ombudsman vary from one country to another or from one historical period to another. For the sake of this report, and the questionnaire on which it is based, the term ‘Ombudsman’ is understood as an institution having all or most of the following features:

- a. an Ombudsman investigates where an individual has suffered loss through ‘maladministration’. This is a wide term that includes, but goes beyond, illegality or breach of human rights. For example, ‘maladministration’ includes: delay; failure to give information; rudeness or insensitivity;
- b. the maladministration must have been done by some public body, including a local or regional authority;
- c. in carrying out his investigation, an Ombudsman has access to all relevant files and other evidence;
- d. an Ombudsman proceeds, as far as possible with the co-operation of the local/regional authority;
- e. the public servant responsible for the error is usually not identified personally;
- f. Ombudsman follows an informal procedure so that, for example, a complainant does not need a lawyer;
- g. Ombudsman makes recommendations, rather than legally enforceable orders.

4. As to terminology, in the different states various titles have been given to this office. For instance, *Médiateur*, *Difensore Civico*, *Defensor del Pueblo*, *Sindic de Greuges*, *Justicia Mayor*, *Arateko*, *Valedor do Pobo*. In this Report, however, we intend to use *Ombudsman*, since it is the longest established and is also the commonly used term in English.

5. With three exceptions,⁵ all of the states who responded⁶ reported that there was an Ombudsman or one type or other, with jurisdiction over local/regional authorities in their state. Overall, there is a good deal of consensus in the replies from the various states. This is not surprising, given the history of the development of the Ombudsman, in that most Ombudsmen are based, directly or indirectly, on the Danish model. In addition, almost all the national reports use the term Ombudsman, applying it both to men and women,⁷ and this is the practice which is followed here.

Role of the Ombudsman

6. Despite many differences in detail and history among our systems of public law, the states which are members of the Council of Europe share the basic notion of the rule of law, that administrative authorities are subordinate to statute law. In other words, a local/regional authority may issue rules and regulations or make individual decisions only when this is warranted by the law; and so long as the content of the rules or decision come within the limits laid down by the law. Yet, on the other hand, inevitably in a *dirigiste* state, it is necessary for the legislation to delegate wide discretionary powers to administrative authorities; and to allow them considerable discretion to act in vast and important areas

⁵ There is no Ombudsman in: Liechtenstein (because of the cost – in a small state – and because the existing institutions for complaint are adequate; or Turkey, as yet (because of a Constitutional case). Germany has no general Ombudsman but does have Ombudsmen to safeguard particular values, for example: data protection, gender equality.

⁶ No reports were received from Albania, Bosnia and Herzegovina, Czech Republic, Georgia, Moldova or Poland.

Montenegro states that Ombudsman was established ‘only as a formal answer of Montenegrin authorities to the Council of Europe request for legislative reform’.

⁷ The word Ombudsman derives from the accusative form of a particular phrase in Old Swedish. It is, in that sense, not gender-specific. However, the Belgian Federal Ombudsmen (sic) Act of 1995, Article 1 states that “when the ombudsman’s office is assumed by a woman, she is designated by the French term ‘médiatrice’ or the Dutch term ‘ombudsvrouw’ (in English: ombudswoman)”.

affecting individual interests. If an individual is confronted by an administrative decision which, it is claimed, breaks the law, or which is unfair or unreasonable, how is this claim to be settled?

7. Thus, a key element in public law centres on the mechanism by which it is determined whether an administrative action is true to the law under which it purports to have been carried out; and is fair and reasonable. Classically, the institution which determines, on behalf of a citizen who has been adversely affected by an administrative action, whether the action satisfies these requirements is the courts of law. However, the Ombudsman is becoming an important, though subsidiary (less subsidiary in the civil law than the common law jurisdictions), alternative to the Courts, as an institution for ensuring that an administrative body complies with the requirements already explained. There are significant differences, of both substance and style, between the Ombudsman and the Courts, and these will be explained at para 111. However, for present purposes, the important point which they have in common is that they are each mechanisms for checking on whether a public body has remained within its proper limits and respected the rights of the individuals affected by its actions.⁸

8. However, as noted, in most states, the office of the Ombudsman usually based on the Danish model, is itself a recent immigrant to the polity. The result of this is that there is a surprising level of uniformity, in principle and even in detail, among most of the Ombudsmen surveyed in this report.

Human rights and the Ombudsman

9. What are the sources of rules and values on which an Ombudsman draws, in deciding whether there has been maladministration? First, the strict 'legality' of the decision, in the sense of whether the decision is *intra-vires*; in other words, is the administrative action within the terms of the law which (it is claimed) authorizes it? Secondly, the 'administrative/procedural' values of: timeliness; fair procedure; certainty and precision in the articulation of the decision under investigation. But, in addition, an increasing number of Ombudsmen are prepared to go beyond good procedure and to draw on substantive human rights, such as equality and non-discrimination, free speech and association; religious freedom; or a right to primary education at state expense.

10. The sources of human rights may be: national (or regional) constitutions; international covenants; *ius cogens*. At the present state of development, such differences are unimportant: indeed, there is often an overlap of sources. In some states⁹, the use of human rights is required by the law constituting the Ombudsman: there may indeed be an express reference to human rights in the title of the office. In other states¹⁰, this development seems to have come about as a matter of practice, over the past decade or so, because of the growing international influence of the human rights movement. To explain and appraise this trend in detail would take us too far into the realm of constitutional fundamentals. What can be said is that the rising tide of human rights has, not unexpectedly, had an effect on the theory and practice of many Ombudsmen.

Constitutional problems? Turkey, Germany and Portugal

11. Where an Ombudsman is not provided for in a Constitution, there may be a danger that, in as much as the Ombudsman modifies the existing framework of government, the Office may be unconstitutional. This was held to be the position when a Law on the Ombudsman was passed by the Turkish Parliament in 2006 (Law No: 5548); but was then annulled by the Constitutional Court. On September 12, 2010, the Constitution was amended, in order to authorise the establishment of an Ombudsman. However, at the general, comparative level, there is a significant problem, which is illustrated by the Turkish authority. The question is whether there may be something in an existing

⁸ In the case of the older Scandinavian Ombudsmen – in Sweden and Finland – their powers include the power to prosecute or otherwise personally sanction the public servant who was responsible for the error. These distinctive features have deep roots in the constitutional history of the states, going back before the development of the modern *dirigiste* state. But the important point is that even these Ombudsmen also have the power of securing a remedy for the victim of maladministration and these powers are by far the most commonly used and are emphasized in this report.

⁹In Lithuania, the Ombudsman protects human rights and freedoms, including forming and securing a human rights policy, on an independent basis, and ensuring that the politicians keep up to the standard. The Constitution of Montenegro of 2007, Article 81, states that: the Protector of Human Rights and Freedoms is "to perform his duties on the basis of the Constitution, laws and international agreements, as well as in accordance with the principles of justice". In Estonia, the Chancellor of Justice Act 1999 provides that the Chancellor of Justice monitors whether state agencies "comply with people's fundamental rights and freedoms and with the principles of good governance".

¹⁰ For example Armenia, Azerbaijan, Ireland, Ukraine and Romania.

constitutional framework in a state which (probably implicitly) bars the establishment of an Ombudsman. If so, then an Ombudsman could be established, only following an appropriate amendment to the Constitution.

12. In relation to this type of problem, it is worth noting the reasons for the Turkish decision. As a preliminary, one should emphasise that, in line with practice elsewhere, the proposed Ombudsman would have had only power to make recommendations to the Administration. Despite this, the Turkish Constitutional Court ruled that the institution of Ombudsman' was unconstitutional. This decision was based on three grounds:

- a.. Article 6 of the Constitution which provides: "... the Turkish Nation shall exercise its sovereignty through the authorised bodies as prescribed by the principles laid down in the Constitution... No person or agency shall exercise any State authority which does not emanate from the Constitution."
- b. Article 87 enumerates the powers and competence of the Grand National Assembly, as follows: "... the enactment, amendment and repeal of laws, the supervision of the Council of Ministers and the Ministers, authorisation of the Council of Ministers to issue governmental decrees having force of law on certain matters..." The essential point is that it was assumed that this enumeration of the legislature's power was exhaustive. Yet, there was no mention of the setting up of an office of Ombudsman in this provision. In short, the Court ruled that the establishment of an Ombudsman was beyond the powers of the legislature.
- c. Article 123 of the Constitution stipulates that "...the Administration forms a whole with regard to its structure and functions and shall be regulated by law." The argument which succeeded here was that "the Administration", as set down in the Constitution, was not to be extended.

13. These provisions were held to bar the establishment of an Ombudsman. The Constitution of other states may have equivalent provisions to those in the Turkish Constitution, which led to this invalidity; and in such states the Turkish precedent would be significant.

14. The German experience is also instructive. Whilst there is no general Ombudsman at any level, in many *Länder* the legislation provides for gender equality and requires the establishment of municipal commissioners, to ensure that this law is being observed. Obviously this legislation restricts a local authority's autonomy and its decision on the use of local finances. Nevertheless, it may be regarded as authorised in the Constitution, by virtue of the power which the legislature is also given to determine the internal structures of local authorities (article 2, 4.1 of the German Constitution against article 6.1 European Charter, see the report concerning this question).

15. In fact, a judgment of the German constitutional court of 26-10-1994 (BVerfGE 91,228) has confirmed the compatibility of such regulations with the constitutional guarantee of local self-government; while, at the same time, reserving a right of judicial control of the proportionality of rulings in that kind. This jurisprudence (a) accepts the duty to employ commissioners for certain purposes and in certain measures; but (b) suggests that the establishment of a generalised ombudsman rather than one with a narrow function (such as the equalisation of women), on a local level by legislation of the *Länder*, would be constitutionally problematic.

16. What might be regarded as the reverse problem came up for examination in 2009, when the new Political Charter of the Azores Autonomous Region provided for the establishment of a regional Ombudsman. The (central) Portuguese Ombudsman asked the Constitutional Court to rule whether this was constitutional. The Constitutional Court (judgment no. 403/2009 of 30 July 2009) took into consideration the fact that the (central) Ombudsman is a constitutional organ whose powers derive from a constitutional provision, and the Ombudsman's powers cannot be divided up among other Ombudsmen. The Court adopted a unitary and multi-functional view of the institution of the Ombudsman and ruled that the creation of regional Ombudsmen was unconstitutional. This case may have implications for other jurisdictions, where the establishment of a separate local/regional Ombudsman is under consideration.

II. DEVELOPMENT OF THE CENTRAL AND LOCAL/REGIONAL OMBUDSMAN

17. A particular feature of this report is that it is dealing with an institution which is usually common to both central and local/regional government, in the sense that the same Ombudsman will frequently – but by no means in all areas – have jurisdiction over both central and local/regional authorities. In relation to this feature, varying arrangements exist from one state to another and are set out in this Part. To assist the reader in following the material, it may be summarised in advance as follows:

- a. in most countries the initial step was the establishment of an Ombudsman at the centre, in respect of administrative authorities. In some states¹¹, the central Ombudsman's competence included, from the very beginning, local and regional authorities; but, in other instances¹², these were added as later developments. In the case of either group, the central Ombudsman is the only Ombudsman and so has jurisdiction over local and regional authorities. It remains to outline, in (ii), states in which jurisdiction over local/regional authorities is split between the central Ombudsman and a special local/regional Ombudsman.
- b. there are only eight main¹³ states covered in this Report, in which there are separate Ombudsmen at central and local/regional level: Austria, Belgium, Bulgaria, Greece, Netherlands, the Russian Federation, Spain and the United Kingdom. However, in each of these states, with the exception of Belgium, there is a split, in the sense that only certain of the local/regional authorities have their own Ombudsman, with the others remaining under the central Ombudsman. In two states – Italy and Switzerland – there is no central Ombudsman, only local/regional Ombudsmen, although not all regions have Ombudsman. In Italy a region may choose whether or not to appoint an Ombudsman: Friuli Venezia Giulia abolished the Ombudsman office in 2009; Sicily has no law on Ombudsman; Calabria and Puglia have never appointed an Ombudsman; the position has been vacant in Umbria since 1995 and in Sardinia since 2008. Under Italian national law Regional Ombudsman, where appointed, also have competence also towards central administration offices within the territory of the Region¹⁴. Regional Ombudsmen sit on a Coordination Committee which represents them and is recognized by Congress of Italian Regions. The Coordinator represents Italy in the European Network of Ombudsman. The Coordination Committee seeks to maintain contacts with local institutions and local Ombudsman. Despite the networking efforts of Italian regional and local Ombudsman, the presence of Ombudsman only in certain towns or certain Regions, weakens the non-judicial protection of rights that Ombudsman bring to people, since their rights vary according to where they live or have to deal with a Public Administration.

18. It is sensible to commence this account by outlining, as a reference point, the establishment of the central Ombudsman. In doing this, we shall note whether this Ombudsman also has competence over regional or local authorities. We include, in the roughly chronological survey in (i), the central Ombudsman, even of states which also have a local/regional Ombudsman. Then in (ii), we describe in greater detail the local/regional Ombudsman of the eight states in which they exist. (We are not however covering Ombudsmen who are confined to: particular functions¹⁵; or particular categories of defect¹⁶).

¹¹ Armenia; Azerbaijan; Bulgaria; Croatia (Ombudsman established by the Constitution [1994]); Cyprus; Estonia (it is likely that there will soon be an Ombudsman for Tallinn City Council); Finland; France; Hungary (there are four Ombudsmen each with a particular competence, for example, civil rights, data protection and freedom of information) which may however operate at any level); Luxembourg; Malta; Montenegro; Portugal; Slovakia; Sweden; "the former Yugoslav Republic of Macedonia"; Ukraine

¹² Denmark, 1955 (1994); Iceland, 1987/8 (1997); Ireland, 1980/4 (1985); Norway, 1963 (1980)

¹³ Note that, in addition to the states outlined in the text: in France, about 50 local authorities have each set up their own local 'Mediateur', though without specific legal basis. In Denmark, with a population of six million persons, there are a small number – five out of about 100 – local authorities, whose populations total some 185,000, who have a Citizen's Adviser, who is responsible to the local government council. In Spain, too, certain local authorities have established an Office which is given the name 'defensor del pueblo'. But these arrangements are not based on any legal authority. Each of these entities might be classified as 'internal grievance systems'.

¹⁴ Italian National Law no. 127 (1997) article 16.

¹⁵ In Finland, while the Parliamentary Ombudsman and the Chancellor of Justice each have jurisdiction over public bodies at all levels, there are also the specialised Ombudsmen, the Patient Ombudsman and the Social Service Ombudsman which have jurisdiction in their own specialised areas over functions which in Finland are administered by local authorities. These special

19. In the following account, we give the dates of the laws establishing and one should note that, in some states, an Ombudsman would have actually been appointed and become operational a little later than these dates.¹⁷

Central Ombudsman with local/regional competence

20. As is well known, the Ombudsman was originally a Nordic institution. Sweden has had an Ombudsman Institution since 1809. At that time, Sweden was ruled by the King. Therefore, the Riksdag (Parliament), considered that some institution that was independent of the King was needed in order to ensure that laws and statutes were obeyed. For this reason it elected a Parliamentary Ombudsman and still continues to do so.

21. Next, in Finland, the Parliamentary Ombudsman (whose roots go back to 1809) and the Chancellor of Justice (with its origins in the 18th century) were each established in 1919. These have a general jurisdiction over all public bodies, including local authorities. Much more recently, two other Ombudsmen were established who handle most cases in the local authority field: the Patient Ombudsman (1993) and the Social Service Ombudsman (2001).

22. Thirdly, the Parliamentary Ombudsman in Denmark was created in 1955. It is important to emphasise that the earlier (Swedish and the Finnish) Ombudsmen come from their own older tradition, developed before the era of 'Big Government', of holding public servants personally responsible for errors of administration. The Danish Ombudsman was the first of its kind created in a modern welfare state. Significantly, it was largely the Danish model which was copied in the rest of Europe. As has been remarked by a British writer: "... it was as established in Denmark that it certainly captured the attention of other countries, largely as a result of the missionary spirit of the first Danish Ombudsman."¹⁸ In 1994, amongst other reforms, the Ombudsman's jurisdiction was extended to fully encompass the local authorities.

23. The Norwegian Ombudsman and Icelandic Ombudsmen were established by statute in 1963 and 1987; with local government competence added in 1980 and 1987 respectively.

24. In 1967, the Ombudsman migrated to the UK, which established its Parliamentary Commissioner for Administration, whose institution was criticised at the time of its establishment for having no local authority competence; but separate institutions for local government were established in 1974. In France, the Médiateur de la République was set up (including local government competence) by an Act of 3 January 1973 (as amended in 1976, 1989, 1992, 2000 and 2004), based on the Swedish model of the Ombudsman.

25. The office of the Ombudsman came to the Iberian Peninsula in the mid-1970s. Following Portugal's transition to democracy, the Ombudsman was established by Decree-Law No 212/75 of 21 April 1975 and soon afterwards enshrined in the Constitution of 1976. Similarly, the Spanish Ombudsman ("Defensor del Pueblo") is provided for in the Spanish Constitution of 1978, Art 54 and was established by Act 3/1981.

Ombudsmen are located within the service institution run by municipalities or joint-municipality bodies. Since these institutions are predominantly run by municipalities, it is appropriate to characterise these Ombudsmen as municipal.

¹⁶For instance, in Germany gender equality or data protection. In Hungary, there are four Parliamentary Ombudsmen, of which the Parliamentary Commissioner for civil rights is responsible for civil rights in general; whereas the others have a special subject area, for example data protection.

¹⁷ Equally, in a number of states, attempts to establish an Ombudsman go back some decades before this came to pass. In the case of Belgium, although the Federal Mediator was only established in 1995, the first legislative proposals date back to the 1960s. The particular impetus in the 1990s came from the assassination of a socialist politician, triggering a series of events which damaged the reputation of the whole Belgian administrative system; and also the breakthrough in the 1991 election of the extreme right-wing Vlaams Blok. Cyprus (Ombudsman commenced operations in 1991 following the Law for the Ombudsman 3/1991, although the first attempt was in 1972, when a law was passed but not applied).

¹⁸ Wade and Forsyth, *Administrative Law* (Oxford University Press, Tenth Ed., 2009), 76. The Ombudsman in question was Professor Hurwitz, whose visits to Britain aroused great interest and to whom a number of complaints were sent by hopeful Britons.

26. In Benelux, the Netherlands and Belgium¹⁹ each established a national Ombudsman, in 1982 and 1997 respectively. The complex arrangements regarding local and regional Ombudsmen in these states are described below at paras 33 and 38. In Luxembourg [2004], the impetus for the establishment of a central Ombudsman (with local competence) was said to be “the government’s concern to provide citizens with the services of an Ombudsman and the international environment in neighbouring and other European countries, where the office of Ombudsman had already been created.” We include this quotation because there are enough similar statements in other responses to sustain the generalization that the Ombudsman has a good international reputation and, with growing concern about the rights of the individual vis-à-vis the organs of their administration, it has become a general principle that a state subject to the rule of law ought to have an Ombudsman.

27. During the decade commencing in the early 1990s, several of the former member states of the USSR became independent;²⁰ and a number of “Eastern Bloc” states²¹ or former Yugoslav Republics²² established new forms of government. In all cases, the new polities were subject to the Rule of Law. At this time, in the states within these two groups, new constitutional settlements were established and, as indicated in the footnotes, and in line with the principle mentioned in the previous paragraph, the office of the Ombudsman with competence over local/regional authorities was part of this new constitutional settlement. In the same decade, Cyprus (1991) and Malta (1995) established Ombudsmen.

28. In summary: (a) In a number of states, the central government Ombudsman had, from the date of its establishment, competence over both central and/or local/regional authorities; (b) In another group of states, the central government Ombudsman acquired jurisdiction over local/regional authorities; (c) But in the remaining states there is a split-level regime.

Ombudsmen at local/regional level

29. As noted at para. 17, a major distinction exists between states in which the Ombudsman exercising jurisdiction in respect of regional and/or local authorities is part of the central tier of state apparatus; and those in which such an Ombudsman is located at the regional and/or local level. But even in states where there is a local/regional Ombudsman, there is usually a split, in the sense that only some of the local/regional authorities have their own local or regional Ombudsman, with the remainder coming under the central Ombudsman. The exceptions to this are Italy and Switzerland, where there is no central Ombudsman so that the only Ombudsmen are those at local or regional level.

30. The Federal Constitution of Austria (the Amendment regarding the Ombudsman was added in 1977) expressly empowers the Constitution of each *Länder* to determine either to have a Land (Regional) Ombudsman or to empower the Federal Ombudsman to be responsible for the regional and local authorities of that Land (or to have no Ombudsman). The Constitutions of two *Länder* (Vorarlberg and Tyrol) have established a Land Ombudsman (whose responsibility for local authorities only extends to situations in which they are carrying out regional administration), while the other seven *Länder* give jurisdiction to the Federal Ombudsman.

¹⁹ The Law of 22 March 1995 setting up Federal Mediators (amended by the Law of 11 February 2004, Moniteur Belge of 29 March 2004, and the Law of 23 May 2007, Moniteur Belge of 20 June 2007).

²⁰ Armenia (Ombudsman Law adopted in 2003, [2004], no mention in Constitution); Azerbaijan [2002]; Estonia (in the Constitution of 1992 [1993]); Lithuania (Law on the Seimas Ombudsman, 1994; and “Law Regarding the Approval of the Statute of the Seimas Office of the Republic of Lithuania”, 1995, replaced in 1998 as amended in 2004 and 2010); Ukraine (Constitution, 1996; Law of Ukraine on the Ukrainian Parliament Commissioner for Human Rights of 1997). In Lithuania, the Ombudsman was established in 1994 but, as of 2010, there are two Seimas (central Parliamentary) Ombudsmen, reporting to the Seimas, one for the centre and one for local authorities.

²¹ Bulgaria (Constitution, Art 91; Law of the Ombudsman, 2004 (as amended in 2006, 2006 and 2009); Hungary (Constitutional Revision of 1989); Romania (1991 Constitution, with the Ombudsman being known as “People’s Advocate”; Organic Law No. 35/1997); Slovakia (Law 564/2001, [2002]). In Estonia, the institution of the Chancellor of Justice in Estonia was created in the 1938 Constitution but was uprooted following the occupation of Estonia in 1940.

²² Croatia [1994]; “the former Yugoslav Republic of Macedonia” (Constitution, 1991; Law on Ombudsman, 1997 [1998]); Montenegro [2003].

31. In Bulgaria, whilst there is a central Ombudsman, a separate municipal mediator may be established under the Local Government Act, section 21(a): but, because of financial constraints, only 26 out of 264 municipalities have done so (affecting three million people out of a total population of 7.5 million or 38.5%), the others having no Ombudsman.

32. As of January 2011, in Greece, municipalities with more than 10,000 inhabitants will have a local Ombudsman, elected by each municipal council. There will also be a regional Ombudsman in each of the 13 regions, nominated by each regional council.

33. The Netherlands too has a mixed system.²³ Every public authority is obliged by Parliamentary law to have a provision for the resolution of disputes by an independent Ombudsman institution. Thus municipal and provincial councils may choose either to institute their own institution – alone or together with other local authorities; or to join the National Ombudsman. As of 2009, about half of all 441 municipalities have joined in, and all 12 provinces have done so. Of the remainder, who have their own Ombudsman, some municipalities share an Ombudsman with other municipalities, the incumbents being appointed by the council or the board of mayor and aldermen, so that their independence from the local authorities is rather poor.

34. In Russia, the Constitutional Law (1993) empowers the Constituent Entities (regional authorities) of the Russian Federation to establish the Ombudsman's office at the regional level and 48 out of 83 have done so.

35. In Spain, 13 out of 17 Autonomous Communities have established their own "Defensor del Pueblo" (under this or a similar name) whose jurisdiction also extends to the local authorities in that region. This situation means that, in the remaining four Regions, the national Ombudsman assumes the supervision of: the national administration's regional offices; the regional administration; and the local authorities of the regions alike.

36. In the UK, there are separate regional ombudsmen for Northern Ireland, Scotland and Wales, which deal with complaints about all local and regional matters. In these regions, complaints about matters which are still within the jurisdiction of the UK Parliament are dealt with by the (central/state level) Parliamentary Ombudsman. In England, there are separate local ombudsmen for complaints about local authorities, with the Parliamentary Ombudsman having jurisdiction for complaints about centrally administered services, and the central level Health Service Ombudsman with jurisdiction over complaints about the health service. There are a total of seven ombudsmen offices in the UK. The Parliamentary Ombudsman (with UK wide jurisdiction); Health Service Ombudsman (jurisdiction in England only); local government ombudsman in England; two separate ombudsmen in Northern Ireland, one for local and one for regional matters, although the same person holds both offices (and always has); a regional ombudsman for Scotland, and a regional ombudsman for Wales. Regional ombudsmen were established in Scotland in 2002 and in Wales in 2005. All the offices of the local ombudsmen in the UK were originally established by national legislation.

37. The current legislation dealing with the local government functions of the Scottish Ombudsman was established by legislative authority of the Scottish Parliament. The current legislation dealing with the four local ombudsmen in the UK is: The Local Government Act 1974 (England); The Scottish Public Services Ombudsman Act 2002 (Scotland); The Public Services Ombudsman (Wales) Act 2005 (Wales); The Commissioner for Complaints (Northern Ireland) Order 1996, Statutory Instrument 1996 No 1297 (N.I.7) (Northern Ireland). As indicated above, in England the local ombudsman has jurisdiction over local authorities - it is therefore located as part of local government. In Wales there is a public sector ombudsman which deals with all aspects of local and regional services in Wales - this is located as part of regional government. In Scotland there is an ombudsman that deals with central and local services - this is part of regional government. In Northern Ireland there are two separate ombudsmen, one for centrally administered services, and one for local services, although these two roles are held by the same person - this too is part of regional government. Generally, these ombudsmen have jurisdiction over other locally organised services, for example, fire services and police authorities (but not the police service itself). The ombudsmen in Wales, Scotland and Northern

²³As of 1 January 2006 (Wet extern klachtrecht Stb. 2005, 71 and 116, Chapter 9.2 Algemene wet bestuursrecht and Gemeente/Provinciewet).

Ireland also have jurisdiction in relation to the health service (as well as their regional service functions), but this is not the case in England, where there is a separate health services ombudsman.

38. In Belgium the federal Ombudsman has jurisdiction only over the central authorities. Each regional legislature has jurisdiction in respect of the establishment of municipal institutions. It is only the Flemish Parliament which has taken any clear action in this field, with the Municipal Decree of 2005, revised in 2009, requiring municipalities to organise an independent administrative system for complaints. However the Flemish legislature has left it to each municipality to decide on the organisation of these systems, although it restricts the choice to four possible arrangements. There is also a provision that municipalities can call on the regional mediation service.²⁴

39. In Belgium there has been no serious proposal to set up an Ombudsman for local authorities. In fact, the local authorities already have fairly extensive freedom and, in the context of managing their own specific interests, some of them have taken the initiative of setting up Ombudsmen. However, there is no uniform model established by federal or regional legislation.

40. Two states were singled out in para. 17: in Italy and Switzerland, there is no central Ombudsman. In Italy, virtually all the regions have provided for *difensore civici* which have jurisdiction only at regional level. Initially, some *difensore civici* were appointed by each municipality at local level. But there is an increasing tendency to do away with local Ombudsmen, for budgetary reasons. Accordingly, as from 2011, the powers of local Ombudsmen can be transferred to provincial (a level below the regions) Ombudsmen, who will exercise jurisdiction over local authorities in their area, if the local authority agrees to do so. With rare exceptions, such as the Provinces of Bozen and Trento, and a few other areas in Italy (e.g. several towns in Tuscany and Veneto), the practical result of this law has been that local ombudsman have disappeared and their functions have not been replaced by Provincial Ombudsman, leaving people in Italy less protected than before. Towns are unwilling to delegate ombudsman powers to Ombudsman who they have not appointed: furthermore there is no guarantee that Provincial Ombudsman or their representatives will circulate within their territory. A number of local ombudsman (including large towns such as Milan and Rome) have disappeared without being replaced. Because of the autonomy of the Swiss cantons and municipalities, the establishment of an Ombudsman is left to each individual canton or municipality. In the result only five out of the 26 cantons and about four of the municipalities have an Ombudsman.

Legal framework establishing the position of the Ombudsman

41. Here, again, we need to distinguish according to whether the Ombudsman with which we are concerned is a central level Ombudsman whose jurisdiction includes local or regional authorities; or whether the Ombudsman's remit is exclusively in the local or regional field.

42. Where it is the central Ombudsman who has jurisdiction in respect of local or regional authorities, the legal framework frequently consists of: establishment or at any rate recognition of the Ombudsman in the Constitution; followed by organic legislation to supply further details; and sometimes also accompanied by regulations to provide finer detail.²⁵ As regards the first, there is fairly general recognition that the Ombudsman is a sufficiently important element of government to warrant establishment in the Constitution and the great majority of states' Constitutions do at least mention the Ombudsman. In the case of States with more recent Constitutions, the Ombudsman tends to be mentioned in the original Constitutional.²⁶ Other States have considered the matter important enough to make an amendment to the Constitution to establish the Ombudsman.²⁷ In other states, the legal

²⁴ The third regional legislature, the Brussels-Capital Parliament, has taken no action in this field.

²⁵ For example, the legal basis of the Swedish Ombudsmen follows from the Constitution: Chapter 12, Articles 6 and 8 of the Instrument of Government; Chapter 8, Article 11, and Chapter 9, Article 8 of the Riksdag Act; Chapter 42, Articles 1–4. The Offices of the Parliamentary Ombudsmen and the Chancellor of Justice, the Swedish Commission on Security and Integrity Protection (Public Access to Information and Secrecy Act [2009:400]); and The Act with Instructions for the Parliamentary Ombudsmen (Lag [1986:765] med instruktion för Riksdagens ombudsmän - "JO-instruktionen").

²⁶ Croatia, established by the Constitution of the Republic of Croatia (1990); Denmark, Constitution, section 55; Estonia, Constitution, Art 139 and 143; Finland, Parliamentary Ombudsman and Chancellor of Justice (Constitution); Hungary (1989); Lithuania, Constitution of the Republic of Lithuania, Art 73; "the former Yugoslav Republic of Macedonia"; Montenegro, Constitution of Montenegro, 2007, Art 81; Portugal, Constitution; Romania, Constitution, Arts 58-60, 65 para. 2, 146(a) and (d); Slovakia, Constitution, Art 151; Sweden, Constitution, Chapter 12, Arts 6 and 8; Ukraine, Constitution, Arts 55, 85, 101 and 150.

framework is provided exclusively by organic legislation.²⁸ In any case, much of the law is usually provided in the form of an organic law. Typically, it is here that rules are laid down regarding categories of maladministration, arrangements regarding staffing and finance.²⁹

43. The first possibility is that a federal Constitution empowers the regional authority to decide whether to establish an Ombudsman. For instance, the Austrian Federal Constitution establishes the Federal Ombudsman but merely authorises the Länd Constitutions to make a determination regarding the Ombudsman.³⁰ Similarly, in another federal state, Belgium, the federal Constitution leaves it to the Flemish, Walloon and the Brussels-Capital Parliaments to decide in relation to any regional Ombudsman.

44. Another way of establishing a local or regional Ombudsman is that, where there is a general constitutional instrument for the federal unit, the Ombudsman may be mentioned in this general instrument. For instance, in Spain, the legal authority for the regional Ombudsmen (“Defensor del Pueblo”, or similar name), which several Autonomous Communities (13 out of 17 in total) have established, is the regional statute of autonomy (Estatuto de Autonomía); coupled with an Act passed by the regional Parliament. In the case of “local ombudsmen” the legal framework is a decision of the local council.

45. In the UK (with the exception of England where there is no regional legislature or authority), all the local and regional Ombudsmen (in Scotland, Wales and Northern Ireland) are grounded in laws enacted by the regional legislatures.

46. We have explained at para. 17 the diversity of arrangements, which mean that, in many states, all or most of the supervision of local or regional authorities is in fact made by the central Ombudsman. However, in a significant number of states, there is a split level, in the sense that, in some areas, a separate local or regional Ombudsman has jurisdiction; whereas, in other areas of the same state, the central Ombudsman exercises jurisdiction. The result of these considerations is that, within the limitations of a report of reasonable length, it is difficult to dissect out either the varying legal arrangements or the separate success rates which apply particularly to complaints against local or regional authorities. We have met these difficulties by emphasising both the features which are particular to complaints against local/regional authorities and those which are common to complaints against either central or local/regional authorities.

III. INDEPENDENCE AND ACCOUNTABILITY

47. There are various constitutional rules which, over many centuries, have been developed as a way of protecting the independence of judges and, in many states, this has been regarded as a useful model on which to draw, in a modified form, as a source of safeguards. Yet, one should emphasise that this is in a significantly modified form in particular, an Ombudsman seldom has security for his working life but only for much shorter periods. Nevertheless in most states, the following areas, where the Ombudsman’s independence may be vulnerable, have been addressed in the law establishing the

²⁷ Armenia, constitutional amendments were adopted in 2005; Azerbaijan, Constitutional Law “On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan”, adopted in 2001; Netherlands, Constitution for the Kingdom of the Netherlands, Art 78, adopted in 1999; Norway, Constitution, Art 75, Litra 1, adopted in 1995.

In France in 2008 a reform was adopted, which has not yet entered into force, by which the Ombudsman, known as the Médiateur de la République is to be transformed into the Défenseur des Droits who can be granted extended rights and a constitutional status. It has been recommended that Ireland should amend its Constitution to establish the Ombudsman: *Report on the Constitution* (1995); but this has not been done yet. The UK has no written Constitution.

²⁸ Cyprus; France; Greece (Nr. 3852/2010); Iceland; Ireland; Luxembourg; Malta.

²⁹ Contemplating this organic law, the Slovakian Constitution, Art 151, which establishes the Public Defender of Rights states: “...details on election and recalling of the Public Protector of Rights, his competence, conditions of execution of his office, manner of legal protection, and enforcement of the rights of natural persons and juridical persons shall be stipulated by law.”

³⁰ The Constitution for the Kingdom of the Netherlands, Art 78(a), states: “for decentralised public bodies, the obligation to have an Ombudsman or Ombudsccommittee...is laid down in the Municipality or the Province Act, respectively...If decentralised bodies do not choose one of these options, the independent national Ombudsman *de jure* has jurisdiction...”

Ombudsman Office. Significantly, most of the responses stated that, in practice, the Ombudsman was independent of political or other pressure.

Appointment or election

48. For central Ombudsmen, irrespective of whether they have local or regional jurisdiction, almost invariably the principal element is election by the central Parliament. On this theme, there may be certain variations. The most common of these are the requirements of: an especially high majority,³¹ in order to attempt to find an Ombudsman who has cross-party support; consultation with outside bodies; or of a secret ballot (Ukraine). In other states,³² there is no modification of the general process. In France,³³ the Ombudsman is appointed by Cabinet Decree, though in practice by the President.

49. As to Ombudsmen at local or regional level, there are equivalent requirements regarding the votes cast by the local/regional authority.³⁴

Qualifications

50. In most states, the law does not specify any definite qualification, either giving no formal qualification or offering a rather inexact requirement which many persons could satisfy.³⁵ In one case, there is a minimum age qualification.³⁶ In Denmark, the appointee must be party politically neutral. A substantial minority of states require a legal qualification.³⁷ More important, in practice, even many States which have no formal law on the point have usually appointed persons with a legal qualification.³⁸ Among the very few non-lawyer appointments: France has appointed a former politician; Ireland has appointed former political journalists; and the UK has appointed former local government employees or academics.

Term of Office

51. The most common term of office is six years,³⁹ though, in some states, the period is four,⁴⁰ five,⁴¹ seven⁴² or eight years.⁴³ In other cases, the Ombudsman is elected for the parliamentary term.⁴⁴ In

³¹ Azerbaijan (majority of two-thirds required). In addition, there must be at least three nominees for the post); Armenia (three-fifth of total number of deputies and nomination by one-fifth of total number); Hungary (two-thirds of majority vote, following interview of candidate, by Parliamentary Committee and experts and scientific Committee); Luxembourg (secret ballot); "the former Yugoslav Republic of Macedonia" (majority of total number of deputies, including majority of deputies who belong to non-majority communities); Malta (two-thirds majority of House); Montenegro (majority of total number of deputies and Parliament must consult institutions of representatives of the civil sector, dealing with human rights); Portugal (majority of total number of deputies, which is also two-thirds of deputies present); Romania; Slovakia (nomination by at least 15 deputies); Ukraine (secret ballot).

³² Croatia; Denmark; Estonia (Riigikogu); Iceland; Ireland; Norway; Sweden; UK. (A special majority would anyway, for general Constitutional reasons, be difficult or impossible in the case of Ireland).

³³ But, in future, s/he is to be appointed by the President, with the agreement of the relevant Parliamentary Committee.

³⁴In the case of Austria-Vorarlberg there must be a three-quarters of the majority of the vote cast in the Land Parliament, but in Tyrol no special majority is required though the nomination must be proposed by the Presiding Officer. In Switzerland, there must be an absolute majority of the canton or municipality. In Bulgaria, the local or regional Ombudsman is elected by a two-third majority in each municipality. In Greece, a local Ombudsman will be elected by each municipal council, only if two-thirds of the councilors vote for a particular candidate. Before this election, the municipality has to publish a public call for candidature. In the Netherlands, each local or provincial council make their own rules and elect their own Ombudsmen. In Russia, a two-thirds majority of the Constituent Legislature is required. In Spain, each region makes its own rules, but usually these require a special or qualified majority.

³⁵ Armenia; Austria, France; Luxembourg; Malta; Netherlands; Portugal; Slovakia; Spain; Sweden; Switzerland.

³⁶ Cyprus (35).

³⁷ Croatia; Denmark; Estonia; Hungary("Law Professors or lawyers having at least 10 years professional practice with considerable experience in human rights."); Iceland; Lithuania; "the former Yugoslav Republic of Macedonia"; Montenegro; Norway; Romania; Russia("Central Ombudsman must have knowledge of human civil rights and freedoms and experience in defending them").

³⁸ Austria; Luxembourg; Malta; Netherlands; Portugal; Slovakia; Spain; Sweden; Swiss Cantons; Ukraine.

³⁹ Armenia; Austrian (regional – Tyrolean and Vorarlberg); Belgium (Mediateurs); France; Hungary; Iceland; Ireland; Montenegro; Netherlands (decentralised).

⁴⁰ Bulgaria; Greece; Norway; Portugal; Sweden; many of the Swiss Ombudsmen.

only two cases⁴⁵ is there a working life-time appointment, which is up to retirement age, subject to good behaviour and good capacity.

52. In a number of cases,⁴⁶ there is no limit on the number of times for which an incumbent may be re-appointed. In another group, only one re-appointment is permitted.⁴⁷ There is a slight tendency for there to be a shorter term, when unlimited periods are allowed. And, at the other extreme, there are four states⁴⁸ (in two of which there are eight year periods of office) in which only one term is permitted.

Salary and pension: how is it determined?

53. How is the amount of the Ombudsman's salary and pension determined and kept in line with inflation? The Ombudsman's salary and pension is usually linked to that of some public official. In the case of the central Ombudsman, this may be: a judge,⁴⁹ senior civil servant,⁵⁰ Minister.⁵¹ Only rarely is the salary and pension determined directly by the Ombudsman's special law.⁵²

54. So far as Ombudsmen at local and regional level are concerned, the pattern is broadly similar. For instance, there may be a link to the salary of judges.⁵³ In Switzerland, the salary is set by the Cantonal executive and is tied to other State officials. In Austria (Vorarlberg Land) and Netherlands, the matter is determined by the Ombudsman's own law. In Austria (Tyrolean Land), all Ombudsmen have so far been civil servants and are paid their civil service salary plus an additional allowance.

Removal from office

55. A number of replies stated that their Ombudsman enjoyed security of tenure during good behaviour and capacity, as determined by vote in the Parliament.⁵⁴ In Finland, there is a High Court of impeachment to deal with charges of misconduct against the Chancellor of Justice or the Parliamentary Ombudsman, for misconduct. The normal accountability of a civil servant applies to the Patient Ombudsman and the Social Service Ombudsmen.

⁴¹ Lithuania; Malta; Rumania; Spain (this is a matter for each region, but five years is the most common); Scotland; Slovenia; Ukraine. (In the Ukraine, at the end of his term(s), the Ombudsman will be provided with a job or post previously held before their appointment; or an equivalent at the same enterprise; or, if this should prove impossible, at another enterprise.)

⁴² Azerbaijan; Estonia; England; Wales.

⁴³ Croatia; Luxembourg.

⁴⁴ Denmark; Switzerland. In Greece, the term of office of the local Ombudsman follows the term of office of the municipality.

⁴⁵ Northern Ireland [note that, in the United Kingdom, the terms of office are different in the four jurisdictions]. In Finland, apart from the Parliamentary Ombudsman, the other three Ombudsmen hold office for their working life.

⁴⁶ Armenia; Bulgaria (four); Denmark; Estonia (seven); Finland (Parliamentary Ombudsman – four); Ireland (six); Netherlands (decentralised); Norway (four); Sweden (Four).

⁴⁷ Azerbaijan; Austria (Vorarlberg and, probably, Tyrolean); Belgium (regional mediateur - the term of office for the local Ombudsman is left to each municipality); Greece; "the former Yugoslav Republic of Macedonia" (eight); Malta (five); Montenegro (six); Netherlands (local authority); Portugal (four); Rumania (five); Scotland (five); Slovakia (five).

⁴⁸ Croatia (eight); Finland (six); Luxembourg (eight); England (seven); Wales (seven).

⁴⁹ Armenia; Ireland; "the former Yugoslav Republic of Macedonia"; Malta; Montenegro; Norway.

⁵⁰ Azerbaijan; Estonia; Finland (the Chancellor of Justice, the Patient Ombudsman, the Social Service Ombudsman).

⁵¹ Croatia; Hungary; Portugal; Ukraine

⁵² Finland (Parliamentary Ombudsman); Iceland (salary only; in other respects the terms and conditions are tied to those of a Supreme Court judge); Romania.

⁵³ United Kingdom.

⁵⁴ Austria (Tyrolean Ombudsman may be dismissed by the Land Parliament); Denmark; France (has security of tenure, though Parliament not necessarily involved); Greece (for removal of local Ombudsman, 'for not being able to accomplish his duties', a majority vote of two-thirds of all councillors is required); Iceland (support of two-third of deputies needed); Ireland; Portugal; Russia; Slovakia. In Bulgaria, mediators do not have the same independence as a judge. They are dependent on the Municipal Council. The Austrian response stated that, whereas at Federal level the Ombudsman has always been a member of a political party, "At Land level, political influence is less evident, since the Ombudsmen have their professional origin in the Land administration. However all Ombudsmen have a good reputation for dealing with cases independently."

Control over budget

56. It may be useful to explain the background to 'budgets', in respect of public bodies. The rules and procedures are broadly similar, at both central government and local/regional level. The normal arrangement is that the executive organ of government, usually through the Department of Finance, collects the various items of expenditure, from each Department of State or other relevant public body. Usually at this stage, there is fierce bargaining between the Department of Finance and each particular Department or public body. The outcomes from each of these negotiations are then collected together to form 'the budget', with the part relevant to each unit (in this case, the Ombudsman) being variously known as 'heads', 'votes' or 'lines'. These are then presented to the legislature, with the backing of the executive organ of government. If the Executive controls a majority of support in the legislature, the budget is usually adopted by the legislature, as proposed. If there is no majority, the budget will then have to be negotiated with the various parties represented in the legislature, until a compromise is reached which will command a majority. The annual expenditure of each Department or public body is governed by the figure set out in the appropriate head or vote, which has been authorised by the legislature.

57. Two points emerge from this brief analysis. First, undoubtedly, a good deal of authority in respect of how much each Department or other unit has to spend is, in practice, vested in the Department of Finance and, to a lesser extent, the Parliament. But, secondly, where a unit has its own vote, then this gives it some autonomy at two stages. The initial one is the stage of bargaining with the Department of Finance. The subsequent stage is when the Head of the unit decides how to spend the money, since the terms of a vote will allow some latitude. Thus, in terms of the independence of an Ombudsman, it is valuable for it to be in control, at each stage, of its own vote or line.

58. Against this background, we can say, first, that almost all the central Ombudsmen have their own vote or line. In many states⁵⁵, the national reports state that the Ombudsman presents his own estimate to the Parliament directly, that is without going by way of the Department of Finance.

59. At the local/regional level, the general system for the control of public finances is, in general, parallel to that of the centre. As regards the Ombudsman, there are some states in which a regional or local Ombudsman has control over his own Estimate, to the same extent as the central Ombudsman; whereas in others even this control is lacking. In the case of Austria, in the Vorarlberg, the *Land* Constitution states that estimates may be presented to Parliament by the *Land* Ombudsman, whereas the Tyrol Ombudsman's budget is determined directly by the *Land* Constitution. In Spain and Russia, at regional level, the Ombudsman presents his own estimate to the Parliament. In Switzerland, the Canton of Zug and the City of St. Gallen, both draw up their draft budget and forward it to the State Council and City Parliament, respectively. But elsewhere, budgetary planning for the Ombudsman is not the job of the Ombudsman but is left to the executive. The Ombudsman is required merely to present an annual activity report. In Bulgaria, the budget for the municipal mediator is part of the municipal budget, approved by the municipal council. In Italy, the budget is determined by the local/regional authorities, with different levels of grant depending on local and regional constitutions and laws. In the Netherlands, the respective councils decide on each local Ombudsman's budget.⁵⁶

General independence

60. There are a number of other legal devices to fortify this. First, there is often a declaration of independence in the law or the Constitution.⁵⁷ A typical example is the Luxembourg law which states: "(T)he [Ombudsman] shall in the exercise of his/her office receive no instructions from any authority.

⁵⁵ Azerbaijan; Cyprus; Denmark; Lithuania. Latvia states that: "The budget request of the ombudsman's office until the submission of a draft budget law to the cabinet shall not be amended without the consent of the ombudsman's office. It means that only Parliament by approving the State Budget Law can influence the ombudsman's office budget."

⁵⁶ However, the Union of Dutch Municipalities has suggested, in its model regulation, that the budget should be referred to the local accounting chamber.

⁵⁷ For example, Armenia, Estonia, France, Ireland, Lithuania, Luxembourg, "the former Yugoslav Republic of Macedonia", Montenegro, Romania. The Finnish report remarks that whereas the Parliamentary Ombudsman and the Chancellor of Justice have an independent position comparable to that of a judge "...the Patient Ombudsman and the Social Services Ombudsman function as ordinary municipal officials without any formal guarantees of independence". The Azerbaijan Constitution states that, even where there has been a declaration of a State of Emergency, the activities of the Ombudsman may not be terminated.

The Ombudsman shall be accountable only to the Chamber of Deputies, to which he/she shall send his/her reports.” In addition, in some states, the Ombudsman’s special position is safeguarded by bestowing the same immunity as regards criminal prosecution, liability for insulting or defamatory words etc. as is granted to a deputy of the Parliament.⁵⁸

Other positions?

61. A large majority of responses⁵⁹ stated firmly that the Ombudsman is forbidden from holding other posts. This restriction is presumably based on the view that the duty of the Ombudsman is incompatible with the performance of other public offices, professions or membership in political parties.⁶⁰ However, in a minority of states, in order to capitalise on the Ombudsman’s reputation for independence, he has been bestowed with other functions.

The title ‘Ombudsman’

62. By now, decades of good reputation mean that the Ombudsman is a very reputable ‘brand’. Accordingly, the Ombudsman’s independence, more particularly reputation for independence, is usefully protected by requirements in some states⁶¹ that the term ‘Ombudsman’ may be used only in respect of an institution with specified conditions. The objective of such a requirement is to ensure that the currency of the Ombudsman ‘brand’ is not devalued by being used by entities which are not independent. In summary, it is designed to maintain public confidence in genuine Ombudsmen.

Accountability

63. One should emphasise that there may be a tension between independence and accountability: in a way, one may be the obverse of the other. In Cyprus, for instance, the Ombudsman is not accountable to any authority. In most States, however, the Ombudsman is made accountable, in a number of different ways.⁶²

64. The relationship between the Ombudsman and the Parliament varies. In Austria, for instance, Vorarlberg Ombudsman is said to be an auxiliary organ of the Federal Parliament. Other States do not go this far but, nevertheless, the Ombudsman may, as noted, be removed from office by the Parliament, though only in the case of misconduct or incapacity. In the Netherlands, the local or provincial Ombudsmen are accountable to their respective assemblies or councils.

65. All Ombudsmen produce an annual report and, frequently, this is published by being laid formally before the central Parliament; or, in the case of the local or regional Ombudsman, the municipal or regional legislature. In Denmark, Estonia, Hungary and Lithuania, the presentation of this report takes place at an open session of the Parliament. In Luxembourg, the Ombudsman can be heard, by the Chamber of Deputies, at his/her own or the Chamber’s request.⁶³

⁵⁸ Armenia; Hungary; Ukraine; Switzerland.

⁵⁹ Azerbaijan; Belgium; Bulgaria; Cyprus; Hungary; Iceland; Lithuania; Luxembourg; “the former Yugoslav Republic of Macedonia”; Malta; Norway; Portugal; Slovakia; Spain; Switzerland (with the exception of the City of Winterthur, where the Ombudsman chairs the appeals board for the Zurich College of Further Education); Ukraine; UK (except that the Ombudsman in Wales deals with complaints about elected members’ failure to comply with the Code of Conduct).

⁶⁰ In Estonia, the Chancellor of Justice (Ombudsman) is nominated as the state authority, under the Optional Protocol of the Convention against Torture. In Denmark, the current Ombudsman holds several other positions. In Ireland, the Ombudsman has been bestowed with about eight other functions, including Freedom of Information Commissioner. The Ombudsman in Wales does deal with complaints about elected members’ failure to comply with the code of conduct.

⁶¹ In Denmark, because of the Ombudsman Act, section 30, the Term ‘Ombudsman’ cannot be used, and thus the designation ‘Citizen’s Adviser’ was introduced as the title for the mediator at local government level. In Ireland, the Ombudsman (Amendment) Bill, s.15, confines the title ‘Ombudsman’ to positions which satisfy the essential requirement of being independent of the administrative bodies whose operation they monitor.

⁶² In Greece, the local Ombudsman is subject to the control of the central Ombudsman, just like any other administrative authority.

⁶³ In the United Kingdom, the (central) Parliamentary Ombudsman appears before a Parliamentary Committee. But, otherwise, there is not a formal accountability mechanism for the Ombudsmen; though ‘every three years [the Ombudsmen] are required to review the operation of the scheme’. In Northern Ireland, Scotland and Wales, the Ombudsmen lay their annual reports before the regional Parliament.

66. In addition, almost all Ombudsmen, where appropriate (on significant cases or groups of cases illustrating a common theme), publish special reports, press releases, conduct media interviews, participate in lectures and seminars and publish information on websites.

The Ombudsman's staff

67. The Ombudsman's staff are usually part of the general civil/public service at the level of Government at which the Ombudsman is located.⁶⁴ In other countries,⁶⁵ staff have the same status as Parliamentary staff. In other states,⁶⁶ staff have a particular status of their own (though similar to that of other public servants). In the Netherlands, the staff of the central Ombudsmen is selected by the Municipalities. In France, at local offices full-time paid staff are supplemented by voluntary part-time workers.

68. Significantly, in most states the Ombudsman selects his own staff.

69. As to the previous experience, and future career, of the Ombudsman staff, before and after their work for the Ombudsman, a substantial number of the investigators were public service lawyers, including judges (as opposed to lawyers in private practice). Another large group came from the public service, including Universities. There were isolated examples of social scientists (Bulgaria); other dispute resolution organisations, for instance, private sector Ombudsmen (United Kingdom); political careers (Germany).

Concluding comment

70. Almost all the national reports stated that, in practice, the Ombudsman was independent of pressure from government or any other quarter. The Norwegian response⁶⁷ remarks realistically: "The real independence may very well be compared with that of a judge whereas the formal status is quite different (election by Parliament for a limited time with possibility of re-election ...)". Three of the responses⁶⁸ mentioned episodes which may have tested the Ombudsman's independence of political pressures. In each of these, the Ombudsman resisted the pressure.

IV. THE OMBUDSMAN'S JURISDICTION

Fields of public administration in which complaints occur

71. The number of complaints in a given field obviously depends on which fields of public administration have been vested in the local/regional authorities in each state; and on how much activity there is within each field. In addition, most of the figures given failed to distinguish complaints regarding local/regional authorities from those against public authorities. While it is therefore not possible to give a comprehensive summary of the number of complaints in each field, the following

⁶⁴ Austria; Bulgaria; Croatia; Cyprus; Estonia; Finland (but the Patient Ombudsman and the Social Services Ombudsman are part of municipal staff); France (though some are contract workers, recruited directly); Greece; Hungary; Lithuania; Luxembourg; « the former Yugoslav Republic of Macedonia»; Montenegro; Norway; Portugal; Russia (regional Ombudsman); Switzerland; Ukraine.

⁶⁵ Romania; Spain; Sweden (where, however, some of the senior staff are young career judges).

⁶⁶ Denmark; Iceland; Ireland (same status as that of other politically neutral zones, such as the Director of Public Prosecutions and Comptroller and Auditor General); Latvia; Malta; United Kingdom.

⁶⁷ See, similarly, Greece; Ireland; United Kingdom.

⁶⁸ In Ireland in 1987, the Government made extreme cuts in the financing of the Ombudsman's Office, in order to try to reduce his efficiency and reputation. Following an effective media campaign by the Ombudsman, the cuts were substantially ameliorated and the number of investigators restored to the previous level. Two years later, the same Government offered, as the reason for its hesitancy in appointing the incumbent Ombudsman, Mr Mills, for a second term, the fact that the same Ombudsman would be 67 in 1994, part of the way through his second term. Following pressure from the junior partner in the then Coalition Government, the larger Government party withdrew from this position. In 2007, the Spanish national Ombudsman who was proposed by the Socialist Party "... filed an appeal of unconstitutionality against the modified Statute of Autonomy for Catalonia, despite the fact that the said Statute was favoured and advanced by that party." In 2009, the Netherlands national Ombudsman and central Government "... had some discussion on the Ombudsman's opinion on police operations during riots on the beach near Rotterdam. Rumours say that a predecessor national Ombudsman had difficulties with central Government because of his opinions on immigration policies."

fields usually loomed large: public housing, land use planning, social welfare, health and local taxes. It bears emphasis that, in many states, a good deal of the welfare state is administered through local or regional authorities, not at the centre.

72. There are special circumstances which mean that particular subject areas attract a high case load in particular states. For instance, land ownership rights (Croatia, Cyprus); war casualties (Croatia); rehabilitation services for children with addictions (Estonia).

Privatisation?

73. Where a local/regional authority function is privatised, it is an important question as to whether the Ombudsman retains the jurisdiction in respect of that function. The reports show that the states in which the Ombudsman retained jurisdiction⁶⁹ slightly outnumbered those in which he did not.⁷⁰

74. On this topic, Norway gives the following balanced response: “Generally speaking, certain forms of “privatisation” (in the form of “outsourcing” of certain activities to municipally owned and/or run companies) does not take the Ombudsman’s jurisdiction away. On the other hand, genuine “privatisation”, for instance by simply abandoning the activity at stake thus leaving the private sector free to exploit the market potential or selling the relevant company to private shareholders, would most likely entail a farewell to the Ombudsman. Between the two extremes, a nuanced answer too lengthy to be provided here, would be required.”

Common defects

75. The questionnaire identified the following defects and enquired approximately how often each defect occurred in practice:

- delay;
- failure to give information to the citizen affected;
- decision based on inaccurate or incomplete information;
- improper discrimination;
- negligence or carelessness;
- deliberate abuse;
- unfair procedure;
- personal rudeness or insensitivity.

76. Almost all responses reported that each of the types of maladministration identified in the question were part of the Ombudsman’s jurisdiction and did arise in practice. Of the few responses which gave figures for particular defects ‘Delay’ was usually the most common, with ‘Negligence’ and ‘Failure to give information’ or the fact that the ‘Decision was based on inaccurate information’ also being mentioned in several replies. Not many responses added further categories to those on the list.⁷¹

Complaints excluded from jurisdiction

77. There are a number of categories of complaint, which are excluded from the Ombudsman’s jurisdiction, in most states.⁷² In the first place, almost all states have a time limit and this was almost always one year from the time when the complaint arose or was notified⁷³. In most states, too, a

⁶⁹ Bulgaria; Croatia; Estonia; Finland; France; Iceland; “the former Yugoslav Republic of Macedonia”; Malta; Montenegro; Netherlands; Portugal; Sweden; Switzerland, Ukraine; answering ‘Yes’, the United Kingdom states that: “... [t]he complaint would be made to the local authority, not the privatised service, and it would be for the local authority to provide the remedy.”

⁷⁰ Armenia; Austria; Azerbaijan; Cyprus; Denmark; Greece; Hungary (save that the Ombudsman may act in respect of public utilities); Ireland; Lithuania; Luxembourg; Romania; Spain.

⁷¹ However, Estonia mentioned ‘Unjustifiable discrimination’.

⁷² Unusually, France states that, with the exception of a case which is before a Court or one involving public employees’ grievances, none of the reasons mentioned would prevent the Ombudsman from taking action.

⁷³ In the case of Finland, the time period is five years. More important, the paragraph in the text is intended to indicate that, in some states, the law regarding ‘limitation’ is formulated on the basis of time running from the date of the administrative action; whereas, in other states, time ran from the date when the complainant became (or should have become) aware of the ground of complaint. However, by virtue of the Ombudsman’s informal approach, it can be assumed that an Ombudsman would probably

complainant is expected to attempt to utilise local remedies before going to the Ombudsman. Trivial complaints are also excluded.⁷⁴ Several states also expressly exclude: security issues and public service personnel issues.⁷⁵

78. In only a few states is a policy decision, which is not cast as principal law, excluded from the Ombudsman's appraisal. However, more states preclude principal laws from being scrutinised.

79. The distinct question might be raised as to whether, where a decision involves a contested point of legal interpretation, the matter would have to be settled by a Court. This is a complicated question. But in very few states is it a ground for exclusion that a legal point is involved in the decision, in other words the Ombudsman is free to go ahead and make a ruling on the point, so far as is necessary for the decision (though it would be open to anyone to challenge the decision by taking the legal point to a Court). In most states the Ombudsman is also excluded from complaints arising from internal activities or deliberations of bodies such as (central regional) parliaments or municipalities.

80. In most states, the limits of the Ombudsman's jurisdiction are settled by the law establishing the Ombudsman. However, in Denmark and Norway, while limits are set by the law, the Ombudsman has some discretion whether authority to decide which cases he will deal with himself. Nevertheless, responses from these States indicated that the Ombudsman publicises his grounds for not pursuing a case and these are broadly similar to those stipulated by statute, in the other states. At the same time, Norway indicates that the Ombudsman has a wide discretion and thus, for instance, may take a case even though local remedies have not been exhausted or that the usual time limit of one year has expired. It also states that decisions of a Municipal Council itself will be considered only if the Ombudsman finds this is required because of the interest of the 'rule of law' (*rettssikkerhet*) or any other 'particular reason'.

V. ACCESS AND PROCEDURE

81. It is a strength of the Ombudsman, in most states, that the Office is 'user friendly'. The Office is easy to access, in terms of its location, lack of protocol or costs. The response is timely, sympathetic and reasoned, with, where the complaint is upheld, well-designed remedies.

Source of complaint

82. In most⁷⁶ cases, the complaints come directly from the complainants. There were a few exceptions, including professional counsellors or advisors; family relations. Only in France must a complaint be sent via a Member of Parliament, though, in practice, it often happens that the Ombudsman's local representative puts a complainant in touch with a Member of Parliament.

83. Almost⁷⁷ all Ombudsmen have the power to initiate their own investigation. However, the power is exercised rarely. Of those replies⁷⁸ which gave figures, the proportion was 1% or 2%, or even less. However, when the Ombudsman does initiate an investigation, it is usually very significant because it is usually an investigation into some general administrative practice. As regards the Ombudsman's

exercise his discretion in favour of accepting a complaint, where the complainant was not responsible for the delay. In the case of Cyprus and Ireland it is also spelt out where the delay is attributable to the authority, the time limit may not be relied upon.

⁷⁴ The Swiss response adds to this the gloss that "This ground for exclusion is founded on the principle of the proportional return on the resources expended. ... The Ombudsman is however free to exercise his or her right not to take up a specific case." And adds that the Ombudsman may decline to take up a case which is "... ill considered or formalistic".

⁷⁵ However, in the case of Switzerland, "[Public] servants can appeal to the Ombudsman if they are in dispute with their employer (Canton or Municipality). This jurisdiction, long established in practice, is effectively an unwritten rule."

⁷⁶ Greece, almost 100%; Hungary 89%; Portugal 93%.

⁷⁷ The United Kingdom (regional and local government) and French Ombudsmen are exceptions.

⁷⁸ For instance, the following are annual figures for recent years. Austrian (Federal) 71 out of 15,000; Vorarlberg – 13; Denmark 142 out of 4,000; Finland Parliamentary Ombudsman 50 out of 3,870; Chancellor of Justice 50; Hungary 2%; Iceland six in one year, 15 in the next, out of 350 of in each case; Lithuania 11 out of 750; Montenegro 1%; Norway 23; Romania 42 out of 7,000. However, exceptionally, the Cypriot reply stated 'quite often' and "the former Yugoslav Republic of Macedonia" 'very often'

source of information for such initiatives, the most frequent source mentioned was the news media, with a complaint outside jurisdiction being mentioned in one case.

Location of Ombudsman

84. Most central Ombudsmen are prepared to go outside their office in the capital. In some cases, this is done in order to facilitate the communication of complaints. This may be achieved either by having a permanent office in the provinces, or by making regular visits. A second consideration is that, in exceptional cases, despite the prevalence of records, the majority of Ombudsmen find it necessary sometimes (though usually rarely) to pay a visit to the public body against which the complaint was made, in order to make a thorough investigation. To meet these needs, a number of states maintain a branch office in the provinces.⁷⁹ In other states, the Ombudsman's staff make regular visits to provincial centres, in order to receive complaints.⁸⁰ In addition, in some states⁸¹ the actual investigation of complaints may be held in the office of the public body being investigated.

How are complaints registered?

85. In about half of the states, oral communication (whether by way of phone call or personal communication in the Office) is acceptable. However, the other States require a permanent record. In these (and other) states, e-mail is sufficient, though (in some cases) only if it is electronically signed. Several states said that a complainant may not be anonymous. In only one State, France, a complaint must be submitted by way of a Member of Parliament. Often an Ombudsman has a website, with a section for citizen's questions and the Ombudsman's reply which explains whom to contact if a particular question is outside the Ombudsman's jurisdiction. There is often a free telephone line.

Costs

86. The facts that: the Ombudsman is so accessible; generally no professional costs have to be paid by complainants; and that no fee is charged by the Ombudsman himself in any state – are obviously of huge significance, especially in the case of poorer complainants.

Far-reaching access to information

87. In almost all states, the Ombudsman has virtually full access⁸² to whatever documents, records or other information are necessary. Considering the extent to which most public authorities record information, this is a most potent weapon. There are only the same sorts of qualifications on the Ombudsman's power of access which customarily apply to a Court, for example, State security, professional or family confidence, or the right of non self-incrimination.

88. Professor Bradley has written about the British Ombudsman:⁸³ "I am in no doubt that the Ombudsman's methods enable him to get closer to reconstructing the administrative history of a citizen's case than does High Court procedure". The reasons for this assessment include the facts that the Ombudsman follows an inquisitorial, flexible and private process of inquiry with unrestricted access to departmental files and that this usually occurs in a non-confrontational milieu.

89. It is striking, when one recalls that the Ombudsman's substantive rulings only have the force of a recommendation, to find that, in characterising the obligations imposed on the public bodies, in the

⁷⁹ Azerbaijan (4); Finland; France; Luxembourg (outpost manned twice a month); "the former Yugoslav Republic of Macedonia" (6 regional offices); Norway; Portugal; Romania (14 regional offices); Sweden. In Austria, both the federal Ombudsman and the two *Land* Ombudsmen have an official (in Vienna and the two *Land* capitals respectively), but each of them go regularly on official visits, for instance, the Federal Ombudsman visits the seven *Länder* where there is no *Land* Ombudsman. In the United Kingdom: England (3 'local' branches); none in Scotland, Wales or Northern Ireland.

⁸⁰ Croatia; Cyprus; Montenegro (in some Municipalities, there are officers who accept complaints for the Ombudsman).

⁸¹ For example, Armenia; Austria (Federal); Bulgaria; Estonia; Finland; France; Greece; Latvia; Lithuania; Luxembourg (specific mention of visits to prisons); Malta; Netherlands (Municipal); Portugal; Spain (Regional).

⁸² The Irish Ombudsman may be forgiven a triumphalist tone, when he remarks: "The issue of my access to medical records has long been clarified and I regularly obtain files with clinical details from the Health Boards.": 1997 Annual Report, p. 19.

⁸³ "Role of Ombudsman in Relation to Citizens' Rights" (1980) C.L.J. 304, 322. See 1989 Report, p.30.

present context, the replies use words like: 'obligation'; 'demand'; 'unlawful'; or 'public authorities ... must facilitate the Ombudsman's task'.

Procedure

90. Usually,⁸⁴ two broad possibilities are made available in the law. The first of these is a full, formal, hearing, which may be oral and certainly takes longer than the second alternative. The second possibility, which is more frequently used, is more informal and inquisitorial. In either case, the public authority under investigation is permitted an opportunity to make its comments. This may be regarded as an expression of the *audi alteram partem* rule. In addition, it is necessary, as part of the mediation process. In most states, the source of procedural rules is primary and secondary legislation, which is particular to the Ombudsman.⁸⁵

91. On procedure, a representative reply is that of Estonia, which states:

“... the Chancellor of Justice shall establish the facts relevant to the matter and, if necessary, collect evidence on his or her own initiative. Unless the form and other details of a procedural act are provided by law, the form and details of procedural acts shall be determined by the Chancellor of Justice based on the principles of purposeful, efficient, straightforward performance without undue delay, avoiding superfluous costs and inconveniences to persons. The law regulates only the most important aspects, e.g.

- how the petition can be submitted: orally, in writing and electronically through webpage or just sending an e-mail,

- what data should it contain: the name and contact address of the petitioner; the name of the agency or person who allegedly violated the rights of the petitioner; a sufficiently clear description of the activity specified in the petition;

In practice the procedure is the following:

After receiving a petition the Chancellor or Justice answers to the petitioner in writing in one month whether he/she will start reviewing the case or not. If not, reasons for that are given. If yes, procedural steps ... are described above. Sometimes additional information is asked for, from the petitioner. At the same time the Chancellor of Justice asks for information from relevant public authorities ... Sometimes meetings or oral hearings are held. After receiving answers from public authorities the Chancellor formulates his/her position, assessing whether the activities of the agency under supervision are legal and in compliance with the principles of sound administration. The Chancellor of Justice may provide criticism, suggestions and express his or her opinion in other ways or make proposals for the elimination of the violation. The position of the Chancellor of Justice shall be communicated in writing to the petitioner and to the agency under supervision which participated in the proceedings.”

92. This reply brings out the flexible process, which is part of the essential Ombudsman 'personality'.

93. In most states, there is no designated official, in each public body, to communicate with the Ombudsman. It seems that, usually, there is no rule on the present point, so that the Ombudsman is left free to liaise with any relevant official in the field in which the complaint arises. None of the replies reported that this arrangement gave rise to any difficulty. However, in a minority⁸⁶ of states, each public authority has appointed an official to act as interlocutor. In a few other states,⁸⁷ the chief executive of the Municipality is identified as the correspondent.

⁸⁴ However, the Netherlands response notes that there is 'normally' a full oral hearing and Portugal states that there is always a full hearing.

⁸⁵ However, in Austria (Vorarlberg, and probably Tyrol) the general Administrative Procedure Act applies to the Ombudsman; though formal procedure is seldom used. But in Finland the Ombudsman is expressly excluded from the APA.

⁸⁶ In Ireland, United Kingdom and The Netherlands, some authorities do have a designated official

⁸⁷ Cyprus; Hungary; Russia.

Time taken to disclose of complaints

94. A substantial minority⁸⁸ reported that all, or most, of complaints were disposed of within a three to six month period. Even more impressively, another group of states⁸⁹ reported resolution in most cases in less than 30 days. Whilst other replies⁹⁰ gave longer periods, almost all of these were twelve months or less.

95. The precise figure is not what is significant. What is important is that the longest period of delay was usually several months rather than years. When one compares this: either with the background from which a complainant is coming, which may have involved a public authority, which had been in delay for several years; or with the Courts which may also take several years to finally decide a case, this is a most impressive achievement.

Reasons

96. In general, reasons are given to both the complainant and the local or regional authority, whether for a positive or negative decision. Most states, however, accept that there will be rare cases in which particular, justifiable, concerns (such as State security, or personal relations) exclude an obligation to give reasons.

VI. REDRESS AND ENFORCEMENT*Types of remedy*

97. The following remedies are typical: to provide or reinstate access to social services, for instance, a place in a Kindergarten, or the payment of a welfare benefit; to perform an administrative act that satisfies the complainant's interest (promotion of an official, or demolition of an unsanitary building); or to reimburse a tax which should not have been levied.

98. An apology from the public body is another possibility. However a number of jurisdictions⁹¹ stated that 'compensation' is either unusual or not permitted. Presumably, this is because 'compensation' was used in the wide sense in which it would be understood in a Court of law, namely: a capital sum which recompenses the complainant for a wide range of loss or damage, which includes non-material and subjective loss, such as harm to reputation or lost opportunity. As many of the Reports noted, it is typically seen as a function of the Court to impose compensation and determine the amount.

99. Most of the responses stated that the Ombudsman followed a consultative process with the local/regional authority, making a proposal as to the form of redress and the Ombudsman having the last word. Some replies⁹² used the expression 'mediate', whereas other replies emphasised that a public body 'is obliged by law to fully cooperate'. It is only in a minority of states⁹³ that the Ombudsman does not consult a public authority, in settling the form of redress.

100. It is only a minority of states⁹⁴ in which a public official may be identified, and then only in exceptional cases, including where criminal/disciplinary proceedings are being taken against the official.

⁸⁸ Armenia; Denmark; Estonia; Greece; Iceland; Latvia; Lithuania; Luxembourg; Spain; Switzerland; UK (regional authorities).

⁸⁹ Austria (in three-quarters of the cases in Vorarlberg, with no information on other Ombudsmen); Azerbaijan; Bulgaria; Portugal (15 days); "the former Yugoslav Republic of Macedonia"; Romania; Russia. In Greece, the law requires the municipal Ombudsman to answer complaining citizens within 30 days.

⁹⁰ Finland (6-9 months); Netherlands (about 12 months, for central Ombudsman – no figures for decentralised Ombudsmen). France distinguishes complaints which can be resolved locally (these take 2 months), from those in which there is a formal application involving a central office (4-8 months).

⁹¹ Denmark; France; Greece; Hungary; Ireland.

⁹² Lithuania; Hungary; Luxembourg.

⁹³ Cyprus; Netherlands; Sweden.

⁹⁴ Belgium; Bulgaria; Cyprus; Estonia; Greece; Norway; Sweden. But not in: Austria; Croatia; Denmark; France; Hungary; Iceland; Ireland; Lithuania (rarely); Luxembourg; "the former Yugoslav Republic of Macedonia"; Malta (rarely); Montenegro; Netherlands; Portugal; Russia; Spain (rarely); Switzerland (rarely); United Kingdom.

Disobedience

101. Following the Ombudsman tradition, his power, as specified by legislation in all states, is confined to the Ombudsman power to make 'recommendations'. Finland notes that an essential part of the Ombudsman's power is to declare officially, and in a binding manner, that the law has or not been breached. Such a finding (with justifications) may be very influential, even though without any specific recommendation.

102. The important point is that almost all responses said that the public authority usually obeys⁹⁵ and that disobedience was rare. Notably, two reports – Norway and Portugal – suggest that local/regional authorities have a relatively higher rate of defiance than central authorities (though without giving reasons for this).

103. Nevertheless, the question must be asked: where an Ombudsman's recommendation is not followed, what are the consequences? Broadly speaking, there are three⁹⁶ main categories:

- a. The most common is a Special Report, published and usually laid before Parliament, and/or the President.⁹⁷
- b. In many jurisdictions,⁹⁸ there is a supervisory authority for municipal/regional authorities to which the Ombudsman may complain if his recommendations are not obeyed.
- c. In some states,⁹⁹ either the Ombudsman himself or the complainant may bring a legal action to enforce the recommendation.

In Sweden,¹⁰⁰ the most extreme course available would allow an Ombudsman or men "... to act as a special prosecutor and bring charges against an official. ... This very rarely happens, but the mere awareness of this possibility means a great deal for the Ombudsmen's authority. The Parliamentary Ombudsmen also have the right to initiate disciplinary procedures against an official for misdemeanours."

104. Whatever the sanction available, the significant point is that disobedience is unusual. There is, however, a broader point. The Netherlands report remarks:

"The fact that the National Ombudsman's decision is not legally enforceable means that the quality of his work is all the more important, since it forms the essential basis for his authority and hence for the effectiveness of his work. It is vital, therefore, not only that the investigation of the facts should be carried out conscientiously, but also that it should produce conclusions that are beyond dispute, and that the decision and any recommendation are persuasive. The persuasiveness of the decision and any recommendation will depend in particular on the quality of the reasons given for the decision."

105. This observation is well made. It means that there may be some insecurity regarding an Ombudsman's recommendation. This carries certain practical implications. First, the Ombudsman and his staff need to be able and experienced, so that the Ombudsman can be sure to 'win the intellectual argument', in informed circles, over any recommendation which is made. Secondly, the Ombudsman's

⁹⁵ The following figures (for public bodies accepting the recommendation) were given: Lithuania (87% in 2009); Estonia (90% - generally); Iceland (only 2 refusals in 2008); Ireland (only 1 since the Ombudsman's establishment in 1980); Netherlands ('nearly always'); United Kingdom ('rarely' refused).

⁹⁶ In Austria, if an authority does not follow an Ombudsman's recommendation, it must state the reasons for this.

⁹⁷ Croatia; France; "the former Yugoslav Republic of Macedonia"; Ireland; Portugal; Romania; Spain; Switzerland; United Kingdom. Luxembourg (publicity in official Gazette).

⁹⁸ Azerbaijan; Denmark (Kommunale Tilsyn); Estonia; Hungary; Romania (Peoples Advocate). In Cyprus, the matter may be referred to the council of ministers.

⁹⁹ Armenia; Italy; Norway. The Northern Ireland Ombudsman may have his decisions enforced in the County Court (which is an intermediate Court below the High Court), in the case of local, though not regional, authorities. In Iceland, the Ombudsman may recommend that the disappointed complainant be given legal aid for a lawsuit against the authority.

¹⁰⁰ In Greece, public officials who do not co-operate with the Ombudsman may be brought before a disciplinary board.

publicity skills and popular reputation need to be such that he can also 'win the argument' at a popular media level. Finally, this semi-insecurity may engender caution in the Ombudsman and the recommendation he feels he can, or cannot, make.

VII. ALTERNATIVE MODES OF DISPUTE RESOLUTION

106. We may begin by briefly summarising the comparisons drawn in the national reports, between the Ombudsman and each of the main alternatives.

107. Earlier, we referred to the very diverse national constitutional and administrative landscapes into which the Ombudsman has migrated. The consequence of the differences is that, although the Ombudsmen have a good deal in common across national boundaries, the alternative agencies to the Ombudsman for the control of public administration vary significantly. Of particular relevance here is the fact that, in the common law tradition, there tends only to be one relevant Court for the control of public administration, namely the High Court, which has a virtually unlimited jurisdiction in both public and private fields. In addition, there may, depending on the field, be an informal Court which is known as a 'Tribunal'.

108. There tend to be a number of specialised Courts for most areas of public administration, known as 'administrative Courts'. However, since our focus here is the Ombudsman rather than the alternative agencies, these differences between the alternative agencies are not of substantive significance and are merely stated here for clarity.

109. The Ombudsman has been planted in European states with very varying arrangements for the monitoring and control of state administrative power. On the one hand there are the common law states, the United Kingdom and Ireland, in which the central spine of authority is vested in a senior general court of law, the High Court. On the other hand there are states like France or Germany, which have a number of specialised administrative courts for the particular areas of public administration.

Court of law

110. In the first place, the substance and approach of an Ombudsman has a good deal in common with that of a Court. Indeed most of the complaints for which he provides a remedy could have come before a Court and a remarkably large proportion require the Ombudsman explicitly to take a view on actual legal issues, such as the interpretation of legislative or administrative schemes. In addition, there is the fact that an increasing number of Ombudsmen (expressly or implicitly) take into account human rights.

111. But, in terms of process and style, there are great differences between the Ombudsman and a court of law.¹⁰¹ The relevant characteristics of a court are that it is a formal institution which, in practice, a lay person can access only by retaining a lawyer, and also usually paying court fees. In other words, the litigant risks probably considerable expense. By contrast, the Ombudsman is free and informal. Another advantage, it was said, enjoyed by the Ombudsman, is that he usually provides a result more quickly than a court. A further advantage is that the Ombudsman often makes a more searching investigation into the complaint and its background than a court. Next, the system for devising a remedy – the inter-play of recommendation from the Ombudsman and response from the public body – is more likely to yield a result satisfactory to all parties than would the polarised concepts administered in a court. Another major difference here is that the Ombudsman may secure systemic changes, going beyond the terms of the complaint and possibly embracing many similar cases.

¹⁰¹ There is a distinction between the common law tradition (principally the UK and Ireland) and most other States, in that, in the common law tradition, the Court mainly involved would be the High Court exercising its *general* power of judicial review. The High Court is a Court which has jurisdiction in all legal fields, including private law areas such as property, commerce or family relationships. Judicial review of administrative action is, however, a specialised jurisdiction, with its own procedure and timetable. But one should emphasise that it covers all areas of public law, from immigration to education. By contrast, in the civil law tradition, there may be a more specialised administrative Court. But, as regards the comparison with the Ombudsman, which is our subject here, this fundamental difference between common and civil law tradition does not seem to be relevant.

112. Such comparisons favour the Ombudsman. But the big point at which a court scores is that, as was noted in a number of replies, a court's ruling is binding, whereas the Ombudsman may make only recommendations.

Tribunals

113. A tribunal (or commission or registrar: there are a number of different terms in use) shares a lot of the characteristics of a Court, in that, for example, their decisions are binding on the public body to which they are addressed. Tribunals may be part of a supervisory or regulatory body which – in addition to resolving individual grievances – is also responsible for licensing and disciplining practitioners and promoting good practice, in a usually specialised area of public administration. Examples include the French Committee on Access to Administrative Documents, or the Irish Freedom of Information Commissioner. The Reports made little mention of tribunals as alternatives to the Ombudsman and so the matter is not pursued further here.

Internal grievance systems

114. One feature of these is that they are convenient for the complainant and also, for similar reasons, for the administrative body being complained against. The disadvantage is lack of independence, in that one arm of an administrative body is investigating the performance of another.

Petition

115. The general way in which this operates is by way of a petition to an identified person, usually the chief of public body, for example, the Secretary General (= executive head) of the region in “the former Yugoslav Republic of Macedonia” or Bulgaria. Here, too, there may be an element of conflict of interest, as noted in connection with internal grievance mechanism. The possibility of a formal Petition is available only in a minority of states.¹⁰²

Public representatives

116. Surprisingly, perhaps, only two of the reports¹⁰³ mentioned, as an alternative to the Ombudsman, the informal influence which can be brought to bear on an administrative body by a public representative. Nevertheless, this is known to be a factor in all democratic States. Plainly, from the point of view of what ought to happen, rather than what actually happens – in order words, good practice – there is a lot to be said in favour of the Ombudsman. The reason is that the involvement of the public representative: is not always motivated on any principled basis; will often engender favouritism, if not corruption; may be random, in that, for example, only the constituents who complain, rather than all those affected by a particular fault, may benefit from the public representative intervention.

117. Summing up the Reports, one can say in the first place that there was a broad consensus as to the alternatives to the Ombudsman which existed, some or all of which are available in each state.¹⁰⁴ The essential finding is that, in almost all states, the Ombudsman is a significant (and, frequently, the most significant) agency for securing a remedy against errors of administration. Of those few reports which gave figures, Portugal estimated that 80-90% of all complaints were made to the Ombudsman.

118. Under disadvantages, some of the replies noted that there were too many Ombudsmen for various specialised areas. But the most frequently perceived weakness was that the Ombudsman's conclusions were only recommendatory, and, reasonably enough, this was regarded by many people as rendering them weaker than a Court order.

¹⁰² Greece; Romania, “the former Yugoslav Republic of Macedonia”, Bulgaria

¹⁰³ Ireland; Ukraine.

¹⁰⁴ However the Ombudsman was said to play “a marginal role” in France; and the Norwegian report remarked that while other alternatives were more important, qualitatively, the Ombudsman, “significance may be explained by the relative absence of the ordinary judiciary from the field of administrative law”

119. Precision is not essential: we do not need to rank the Ombudsman against the alternative contenders. The important point is that, in comparison with the alternatives, the Ombudsman has many advantages and also some disadvantages. In all states, the Office is plainly a useful and important weapon in the armoury by which an aggrieved citizen may call to account local and regional authorities.

VIII. GENERAL IMPROVEMENTS

Systemic faults

120. An important question arises when the Ombudsman believes (possibly because of receiving a stream of complaints on the same subject) that there is a systemic fault. In this situation what action may the Ombudsman take? In the first place, in almost all states, as a natural consequence of the constitutional framework (whether or not this is actually called the Separation of Powers), the Ombudsman is precluded from changing the law himself. However, in many States¹⁰⁵ he is given authority to initiate a change, and this goes beyond a mere recommendation. This may involve some sort of formal communication to the legislature, though not an oral presentation. Alternatively, in some States,¹⁰⁶ the Ombudsman has a right to bring a law before the constitutional court, on the basis that it does not comply with the Constitution. In a minority of states¹⁰⁷, neither of these formal powers exist. In practice, all Ombudsmen seem to be aware of the fundamental importance of dealing not only with a particular complaint before them, but also with a systemic fault. Even where they have no formal authority in this field, they often make vigorous public representations.

121. In addition, as a way of anticipating and forestalling complaints Ombudsmen in some states have encouraged public authorities to establish internal grievance remedies.¹⁰⁸ Sometimes, Ombudsmen have given practical assistance in this, including: drawing on their experience to advise as to the design of such a scheme; validating schemes which public authorities have proposed; and monitoring the performance of such schemes.

Links between the Ombudsman and other institutions for citizen-protection.

122. In general, the Ombudsman does not have formal links with other forms of citizen-protection. On the other hand, what is more important is that, of the nature of the Office, an Ombudsman is able to interact smoothly and informally with other institutions, including both the institutions being supervised and other institutions for citizen-protection. In a minority of states, there is an official relationship with the Public Prosecutor, in that the Ombudsman "In extremely rare cases, where proper legal sanctions towards the members of local authority council members are necessary, the Ombudsman can also transfer a case to Tilsynet med kommunerne [Government institution supervising the local authorities] while asking for legal sanctions."¹⁰⁹ In other states,¹¹⁰ there is a formal link with organisations in the field of human rights.

¹⁰⁵ Azerbaijan; Croatia, Denmark; Estonia; Greece; Hungary; Iceland; Lithuania; Luxembourg; "the former Yugoslav Republic of Macedonia"; Malta; Netherlands; Portugal; Romania (indirectly by way of the Peoples Advocate); Spain (local or regional Ombudsman); Switzerland. But few states go to the lengths of the power give to Swedish Parliamentary Ombudsman: if, in the exercise of his supervisory powers, it transpires that there are grounds for initiating a change in the statutes or some other official measure, the Ombudsman is empowered to represent this circumstance to the Riksdag or the government. This occurs in a few cases each year. More often an Ombudsman will submit an adjudication to the appropriate authority or parliamentary committee when it is considered to indicate legislative shortcomings that the legislature should be aware of.

¹⁰⁶ Armenia; Portugal; Spain; Ukraine.

¹⁰⁷ Bulgaria; Cyprus; Ireland; United Kingdom.

¹⁰⁸ Azerbaijan; Ireland.

¹⁰⁹ Denmark. See, similarly, Hungary; Netherlands.

¹¹⁰ Croatia;"the former Yugoslav Republic of Macedonia"; Portugal.

IX. IMPRESSIONS OF THE OMBUDSMAN AND REFORM

How well known is the Ombudsman?

123. One of the points which emerges is that it is significant whether the Ombudsman is well known, not only to experts like lawyers, but also to ordinary people, because this influences whether his decisions, which legally-speaking, are only “recommendations”, will be respected by public bodies.

124. In fact, the Ombudsman is reported to be quite well-known in most states¹¹¹ but not in other states¹¹² (including some of the larger ones), with approximately the same numbers in each group. In most states, such statements are impressionistic but, in a few states¹¹³, there is opinion poll evidence on this question.

125. The consensus in the Reports was that the biggest single factor as to whether an Ombudsman is well known is media attention, with some Ombudsmen being better than others at generating this.¹¹⁴ Again and again, this is emphasised in the reports. Living in ‘video-democracies’, it is also significant whether the Ombudsman has a clear effective website.¹¹⁵

126. Another feature was whether the incumbent was well-known to the public before they took up the position.¹¹⁶ The fact that the institution of the Ombudsman is long established usually means that he is better known.¹¹⁷ It may also be relevant that the same person has been in the post a long period. Another relevant factor is whether there has been a high-profile incident, usually a complaint, involving the Ombudsman.¹¹⁸ Some replies suggested that the work of a central Ombudsman (having jurisdiction at all levels) is more likely to generate publicity. In other words, an Ombudsman who has jurisdiction only at local or regional level seemed likely to be less well-known.

¹¹¹ Austria (marginal); Azerbaijan; Cyprus; Denmark; Estonia; Greece; Hungary; Iceland; Ireland; Luxembourg; “the former Yugoslav Republic of Macedonia” (marginal); Malta; Montenegro; Romania (marginal).

¹¹² Armenia (at local level – better known at centre); Bulgaria; Croatia (citizens come to Ombudsman only after trying to solve their problems for several years); France; Lithuania; Spain; United Kingdom.

¹¹³ In Hungary, in 2008, of the people surveyed in an opinion poll, 32% mentioned spontaneously the Ombudsman, in reply to the question of which institutions deal with protection of civil rights (in 1998 this rate was only 15%). If people were asked in another way (Do you know the institution of Ombudsman?), 79% said yes (65% in 1998). According to the same survey, in 2008, the Ombudsman, at 52%, is the third most popular institution (the most popular being the constitutional Court with 58%; and the second being the most favoured party, at 57%; while the government parties attracted 29%). In “the former Yugoslav Republic of Macedonia”, 80% knew of Ombudsman; and, in Estonia, 60% trusted the Chancellor of Justice.

¹¹⁴ The Ukrainian response states that, while the Ombudsman fights effectively against tortures in police stations etc. “She built a very closed structure. I never heard her on TV or radio talk shows where the President or Prime Minister are frequent guests. She does nothing to popularise her office ... To get some answers to the questionnaire, I went to the Ombudsman’s office. I spent there half of the day, was sent from one office to the other and finally came to the head of the press department. This gentleman refused to answer any of my questions and proposed that I should write an official request and they would give the written answers.” On the other hand, in Ireland two of the three Ombudsmen to have held the office so far have been former political correspondents, who naturally have been successful in securing publicity for their office. And the Austrian federal Ombudsman is the basis of a reality TV show “Bürgeranwalt” (Citizens’ Ombudsman) - The Ombudsman top stories, hot topics” - which regularly attracts an audience of up to a third of the population: [2008] Public Law 1.

¹¹⁵ Though the Croatian report pointed out that less educated people tend not to use the Internet.

¹¹⁶ For example, in Azerbaijan the Ombudsman is a well-known scientist and an internationally recognised leader of the human rights movement. In other jurisdictions, he was a former constitutional court judge. By contrast, elsewhere the Ombudsman was ‘insufficiently charismatic’ (France) or ‘totally anonymous’ (Montenegro). See, too, Bulgaria and Italy.

¹¹⁷ Point made in Swedish (200 years) and Danish reports (the Ombudsman is known by everyone ‘even schoolchildren’). The Norwegian response refers to “the more prominent Danish institution [which is] the product of a mixture of strong personalities and some high-profile cases (in their turn of course “produced” by aforesaid strong personalities).”

¹¹⁸ For instance, criticism of the Minister for Justice by the Danish Ombudsman in the 1990s led to the fall of the Government. The Hungarian General Ombudsman was in the news, in unfavourable circumstances: he was heavily criticized when he proposed the unification of the specified Ombudsmen, and was accused of striving for “power concentration”. In another case, after a clumsy statement of the General Ombudsman (about the cultural peculiarities of the gypsy people), a number of civil organisations dealing with right defence and legal aid refused to cooperate with the Ombudsman.

127. Almost¹¹⁹ all the reports stated that, among those persons who had heard of the Ombudsman, he had a good reputation regarding his effectiveness and the protection of the individual's general rights.

128. Among the qualities which have commended the Ombudsman to the interested public are: independence (though this was queried in a small number of Reports) the expedition with which he deals with complaints (some of which have arisen because of delay by a public body); lack of legal (or other) costs.

Would it be better for an Ombudsman to be responsible exclusively for local/regional authorities rather than sharing this with responsibility for central authorities?

129. Among states who have a central Ombudsman who also has responsibility for local/regional authorities, there was a fairly even division of opinion as to whether it would be better to retain¹²⁰ this arrangement or to move¹²¹ to a system, in which local/regional authorities had their own Ombudsman.

130. The reasons given for the views included: no reason for change; additional cost of having two layers of Ombudsmen; possibility of different standards or demarcation disputes, as between the central and local Ombudsmen; or people taking the view that there was a surfeit of Ombudsmen.

131. Arguments in the opposite direction included: respect for the autonomy of local and regional government; enhancement of the esteem in which local or regional authorities are held.¹²² Naturally, there may be particular local factors which may tilt the advantage one way or the other. As noted already, even within the states where separate Ombudsmen at central and local/regional level are in existence, many local/regional authorities actually choose to remain with the central Ombudsman.¹²³

132. The Portuguese Report gives a useful summary of both sides of the argument:

“It could be said that it would be preferable to create an Ombudsman who is responsible for all the local and regional authorities owing to the specific nature of these levels of administration. Those who advocate this solution think it would provide greater visibility for local and regional authorities and for the verification of the legality of their activities. On the other hand, the existence of a single national Ombudsman responsible for all the administrative authorities strengthens his/her role and ensures it enjoys greater respect. The experience of the Portuguese Ombudsman is very positive, as the Constitution intends it to be”.

¹¹⁹ Though France said that the Ombudsman was regarded as “something of a gimmick” in legal circles and suffered from a poor image as the incumbents had always been chosen from “second string politicians close to the Government, nearing the end of their careers.” And the Montenegrin Report stated that the Ombudsmen were ‘both anonymous’.

¹²⁰ Denmark; Hungary; Iceland; Ireland; Malta (unnecessary duplication).

¹²¹ Armenia; Azerbaijan; Bulgaria; Croatia; Estonia; Lithuania; “the former Yugoslav Republic of Macedonia” (relatively few complaints against local authorities – 200 out of 3.632 – despite existence of six regional offices: might be more complaints with a separate local Ombudsman); Norway; Portugal; Sweden. Of relevance here is the comparison which the Danish report draws between the Ombudsman and the Det Kommunale Tilsyn (Municipal Control/Supervision Authority). Each receives approximately the same number of complaints as the Ombudsman. However, the Ombudsman’s criticisms and recommendations are taken very seriously, so that the outcome of the two different institutions has, until now, been very similar. However, Det Kommunale Tilsyn are closer to the local authorities as there are 5 of them, one in each region. This means that the Det Kommunale Tilsyn is better able than the Ombudsman to ensure the enforcements of its decisions.

¹²² “The Italian experience is marked by the practice of prescribing difensori civici solely responsible for each authority, it being left to each local or regional authority to institute this office (optionally). It is a model intended to uphold, first and foremost, the autonomy of each self-governing entity.

It should be emphasised that recent local government reform proposals have envisaged eliminating the difensore civico at the municipal level, bearing witness to the minimal experience gained hitherto with the institution.”

In a sense, this is an aspect of a question - namely the proper relationship between central and local government - which is too broad for consideration, in the scope of the present enquiry.

¹²³ Austria stated that the present system worked well with the two separate *Landen* Ombudsmen. Yet, on the other hand, seven *Landen* seemed willing to continue with a federal Ombudsman.

133. In a sense, it seems that the arguments in favour of a separate Ombudsman at local and regional level are concerned with the status and integrity of local government; as contra distinguished from the efficacy of the Ombudsman.¹²⁴

134. But, on a slightly different point, it was stated or assumed by all of those Reports which recommended a move to a distinct separate local or regional level of Ombudsman that there should be a single Ombudsman in respect of all local or all regional authorities, that is not one Ombudsman for each Municipality. The reason for this was the danger that such an Ombudsman would not be independent of the local/regional authority against which it has to consider complaints. This is a point which is borne out by various types of experience recounted in the Reports.

135. As regards states with existing split level systems, there was no suggestion among this group that they should move to a single central Ombudsman. Most of the states in this group are federations or quasi-federations so that, broad constitutional principles would necessarily dictate this result; irrespective of any question of the efficacy of the Ombudsman.

X. CONCLUSIONS

136. One can summarise what has been said in the earlier parts of this Report by the observation that, what may be regarded as good practice for an Ombudsman has already been entirely or largely adopted, in most jurisdictions. For example, a lot of arrangements, for instance salary, independence, are, similar throughout most States, and appear to operate satisfactorily. This does not exactly prove that they are essential, but perhaps that it is safest to use them. Again, it is also significant that the Ombudsman should, as most Ombudsman surveyed seem to do, offer a good example in his own practice, in the sense that he gives prompt and well-reasoned decisions, following a fair, accessible process. In this sense, he practises what he preaches. Another testimony to the Ombudsman's efficacy is the fact that it is unusual for his 'recommendations' not to be respected.

137. The following suggestions for improvement (at any rate in some states) may be proposed. One difficulty is that there are some states in which the Ombudsman could be accused of being 'a quiet success'. And there are particular features of the Ombudsman, which makes his 'quietness' a weakness. First, in most jurisdictions the Ombudsman is among the newest of the major elements of the Constitution. The office only became necessary with the coming of the *dirigiste* state, in the early to mid Nineteenth Century; and even then the Ombudsman was slow to develop and did not come to most states until the end of the Twentieth Century. Small wonder that in many states, ordinary people may not know that the Ombudsman is there. Yet, a part of the Ombudsman's virtue is that he may be accessed directly by non-specialists, those who are less well off and who cannot resort to professional advisors. In addition, the Ombudsman sits uneasily in any traditional kind of constitutional framework. In particular, there is no space for the Ombudsman in the three classic concepts laid down by the Separation of Powers doctrine. The simple reason for this is that the Separation of Powers was designed long before the *dirigiste* state was dreamed of. A related point is that (as an essential part of his personality, which we are not questioning) the Ombudsman findings must be cast in the form of 'recommendations'. In the final analysis, this means that he may be defied by public bodies, without any legal consequences. His impact depends, therefore, on moral pressure and the weight of this depends, significantly, on his having a high profile.

138. The conclusion which emerges from this criticism is that, to strengthen the Ombudsman and improve his usefulness, the Ombudsman should be a 'big' and attractive figure, with a talent for publicity.

139. This is, to some extent, tied up with three other issues. The first of these is that, even in a non-federation, there should be a separate Ombudsman at local/regional level. Clearly, in the case of a federal or *quasi*-federal system, there are good 'higher constitutional' reasons for a separate Ombudsman for local and regional authorities. The question is whether, in non-federations, it is better

¹²⁴ However, one should raise, if only to dismiss, the suggestion that Article 8 of the European Charter of Local Self-Government, which deals with the supervision of local authorities' activities by other levels of government, is violated if a central Ombudsman has jurisdiction over a local or regional authority. The European Charter of Local Self-Government and explanatory report, states reasonably enough that "Article 8 is not concerned ... with the appointment and activities of an *ombudsman* or other official body having an investigatory role. The provisions are above all relevant to the philosophy of supervision normally associated with the *contrôles de tutelle* which have long been the tradition in a number of countries."

for there to be a separate Ombudsman. It has already been emphasized that, other things being equal, public interest in, and respect for, the Ombudsman is significant. It also seems likely that an Ombudsman located in the capital, next to the main media outlets and monitoring both central and local public authorities, is likely to be better known to the average citizen than a local Ombudsman. This suggests that a central Ombudsman will be more high profile and, thus more influential in improving administration, even at local or regional level. A second factor pointing in the same direction is the need for economies of scale. This is significant because it is important for the Ombudsman to be properly staffed and resourced. Thirdly, there is the need to avoid 'agency capture', meaning that an administrative agency's own reputation and indirectly, prosperity, may become tied up with the perceived performance of the field it is supposed to be regulating and so may not bring an entirely detached assessment of the public interest to bear on its duties. In short an Ombudsman located at the centre seems more likely to be truly independent – and to appear to be independent – of a local/regional authority whose performance it is investigating. In those states for which figures were given, only a minority of the central Ombudsman's complaints were against local or regional authorities.¹²⁵ Given that, in many states, a good deal of the welfare state is administered through local or regional authorities, this absence of complaints may be a subject of concern. It may suggest that more attention should be paid to the effective functioning of the Ombudsmen at local/regional level.

140. If a central location for such Ombudsman services is retained, care should be taken that this does not limit access to Ombudsman services. Whatever national structure of Ombudsman services is put in place, all people should have easy and transparent access to such services, without the need to travel long distances. On the issue of access, attention is also drawn to the Committee of Ministers' reply to Congress Recommendation 159 (2004), which states that Ombudsman services are not only for the nationals of a country, but "all of its inhabitants, foreigners included, even when the latter are not legally residing in the country".¹²⁶ Whether Ombudsman services are centralised or decentralised, it is important that there is good cooperation between the Ombudsman at local, regional, national and European levels, to ensure that complaints are referred to the right office and that duplication is avoided. Some countries have set up national coordinating committees to facilitate such cooperation.

141. The second feature is that, apart from his role in settling individual grievances, the Ombudsman has another task, namely to act as a critic and catalyst to encourage general improvement in the performance of public bodies. Individual complaints can often serve as a springboard to encourage general reform, but it is also appropriate for the Ombudsman to have a specific mandate to act *ex officio* to open enquiries where there is a suspicion of maladministration. As with the individual cases, many of these changes will be of most benefit to the poorer sections of the community. This is appropriate since better-off, groups, for example, professional or business bodies, are often well equipped to make their own representations to the administrative machine. The influence of Separation of Powers (which has already been mentioned in the context of the Ombudsman's principal role) is relevant also to this auxiliary role of the Ombudsman. For, again, in the pre-*dirigiste* state in which the Separation of Powers was devised, the need for an Ombudsman in the role of public administration overseer and progress-chaser was not anticipated. Thus, the effect of the doctrine is to cast doubt on the legitimacy of the Ombudsman in this role too.

142. There is a related aspect that complements this, namely where a public body does go wrong, is it prepared to make amends? The most practical way to do this is to provide for an internal grievance system and, in some states the Ombudsman has encouraged public bodies to develop and publicise their own internal complaints procedure, so that, when complaints do arise, they are dealt with within the public body in which they occur; thereby honouring the traditional legal axiom, 'exhaust your local remedy first'. When the Ombudsman does make recommendations concerning local and regional services, it is important that these are followed up by the relevant authorities in good time, and that confirmation is provided that the recommendations have been implemented.

143. Thirdly, the need for the Ombudsman to be a high-profile, respected figure is intertwined with the increasing influence of the human rights movement (see above, para.10). In the beginning, human rights were essentially seen as negative, in the sense that they restrained the state, in its various forms, from violating a citizen's rights, by behaving in an authoritarian or unfair way. Now that human

¹²⁵ Thus, Armenia 5%; Azerbaijan 7%; Denmark 1,327 out of 3,655 – 36%; Greece 20-25%; Latvia 10-15%; Lithuania and Romania unclear; "the former Yugoslav Republic of Macedonia" - 5%; Norway - 15% (local) and 2% (regional); the Finland Report states that in 2007, nearly one in three of the Ombudsman's decisions dealt with the social welfare and health services, for which the Municipalities are responsible.

¹²⁶ Document CM/Cong(2005)Rec159 final

rights are beginning to move beyond this to embrace positive rights, there is developing a link between human rights and fair administration. Thus it would be difficult for an Ombudsman to investigate certain types of complaint about: social housing provision, social services, education admissions and exclusions, without addressing issues of human dignity and using a measure of proportionality for adjudicating between competing interests. In line with this¹²⁷:

“...in 2007, the Council of Europe invited its Commissioner for Human Rights, Thomas Hammarberg to see greater co-operation between his office, national Ombudsmen institutions and national Human Rights institutions, partly as a response to the backlog of 90,000 cases which currently chokes the ECHR, but partly too in recognition of the need to “repatriate human rights at national- and grass-roots level, to take human rights out of the court room and into the administrative bloodstream and popular consciousness”

144. Thus, it seems that the Ombudsman, in his concern with fair administration, is likely to draw increasingly on human rights.

145. There are both dangers and opportunities with this trend. The dangers arise from the fact that the implementation of human rights could draw the Ombudsman into appraising the substance-merits of a public body's decision; and, thus, usurping ground which should be left to public bodies which are working under the direction of elected representatives. Or, to put the point in another way, there is a danger that enthusiasm, fuelled by popular acclaim, could propel the Ombudsman beyond his lawful limits.

146. The counter-argument to this line of thought is that human rights are important and, especially at local/regional level, where what is involved are usually individual decisions, rather than laws, the Ombudsman is a very apt mechanism for enforcing them.

147. What leads us to suppose that the Ombudsman should, in most cases, be capable of seizing the opportunities, while avoiding the perils endemic in an increasing use of human rights as a source of values by which to appraise administrative actions, is a simple pragmatic point. This is the fact that most Ombudsman's offices seem to be well staffed and, particularly, that, in many jurisdictions, so many of these staff are public lawyers. Again, we should note a central complementarity: the Ombudsman needs to be well-known and well-respected, so that governments will appreciate the need for the Office to be well resourced; and *vice versa*.

¹²⁷ Abraham, [2008] 1,8 summarising 10th Round Table of European Ombudsmen and the Council of Europe Commissioner for Human Rights Athens, 2007

APPENDIX: QUESTIONNAIRE

The role of local and regional Ombudsmen

The Council of Europe is interested in local and regional authorities delivering prompt, efficient, honest, accessible, open services to the citizens in their area. In a word, we are interested in good government and in arrangements which help to establish and maintain this. This is an important aspect of the broader notions of rule of law, human rights and democracy. The Ombudsman is an example of an institution which encourages good government.

For the purpose of this questionnaire, what do we mean by 'the Ombudsman'? Undoubtedly the functions and character of the Ombudsman vary from one country to another, or from one historical period to another. The following observations are offered, in order to ensure that we are all talking about the same thing.

We are taking it that it has all or most of the following features:

- Ombudsman investigates where an individual has suffered loss
- Through 'maladministration' (which includes, but goes beyond, illegality)
- By a local/regional authority
- Ombudsman has access to all relevant files and other evidence
- Ombudsman proceeds as far as possible, with the co-operation of the local/regional authority
- Ombudsman follows an informal procedure so that, for example, a complainant does not need a lawyer
- Ombudsman makes recommendations, rather than legally enforceable orders

In contrast with the understanding just set down, two distinct types of function or institutions are frequently vested in an office, to which the title 'Ombudsman' (or one of its common variants)¹²⁸ is often given. Function (i), the *Mediator*, is in line with the concept of the Ombudsman set out above; whereas function (ii) is different.

(i) *Mediator*: This model is not focused particularly on legality, much less on the court process. Instead,

its essence is to seek friendly settlements, based on fair principles, between an individual complainant and a public body. By a natural development of this practice, this type of Ombudsman often acts as a 'progress chaser', promoting the establishment of internal grievance mechanisms.

(ii) *Human Rights Watchdog, or Ethics in Public Office Commission, or Freedom of Information Commissioner*: Most recently, there have been various other developments. The first is the establishment of human rights commissions. These champion human rights (typically, they do this by: appraising legislation; bringing test cases; sensitising public opinion). Since, where individual human rights are violated, they are often violated by some public bureaucracy, there is some overlap with function (i). Similarly, often an act of maladministration will involve a violation of the victim's human rights. However, the reaction of a human rights watchdog will be more assertive and political than that of a mediator, in that the latter would be more emollient and low profile. The second development is an Ethics (or anticorruption) commission, designed to prevent corruption among public representatives and officials and, where it occurs, to investigate and impose a sanction. Again, there is a closeness to, but a distinction from, the mediator. The focus of an ethics commission is on the culprit, whose action is likely to have been deliberate and large-scale. But, by contrast, a mediator's concern is to secure redress for the individual victim. A further distinction is that, since an unfavourable verdict would damage the alleged culprit, an ethics commission has to observe strict formal protection of the culprit's procedural rights. Thirdly, in yet other states, the function of the freedom of information commissioner has sometimes been vested in the same office as the Ombudsman.

¹²⁸ See further Lehtimaga, 'Parliamentary Ombudsman of Finland', pp 13-14, in *Making the Protection of Rights more Accessible to Citizens: the Ombudsman at Local and Regional Level* (Council of Europe Proceedings at Messina (Italy), 1997)

In particular, the sorts of defect with which an Ombudsman is concerned, although they include legal rights, go beyond the sort of rights with which a court is concerned. For example, they include: delay; failure positively to give adequate information to the citizen; rudeness or insensitivity.

A further distinction from legal or human rights is that the Ombudsman does not usually seek to establish the cause of an administrative injustice, in particular which public servant was responsible. Rather, the focus is on whether the citizen suffered injustice and what can be done to remedy this. This difference means that the procedure of the Ombudsman is more informal than that of a court, which makes it easier for the citizen to access.

In this questionnaire, we shall focus exclusively on function (i), the mediator.

As to terminology, in the different states various titles have been given to this office. For instance, *Médiateur*, *Difensore Civico*, *Defensor del Pueblo*, *Sindic de Greuges*, *Justicia Mayor*, *Arateko*, *Valedor do Pobo*. In this Questionnaire, however, we intend to use *Ombudsman*, since it is the longest established and is also the commonly used term in English; it is also more and more common in French. It is also generally regarded as carrying no implications as regards gender, though if colleagues prefer one could certainly substitute the word 'Ombuds'.

Many remedies for individual grievances.

There are many types of institution for the remedy of individual grievances against a local or regional authority and the Ombudsman is only one of the possible types. Examples include: internal (to the local/regional authority) dispute mechanism; administrative court or tribunal; complaint to public representative. From an intellectual point of view, it might be more satisfactory to consider all these arrangements in the same Questionnaire. But, from any practical point of view, this would be much too big a project. Therefore, it seems that the only practical approach is to start with one of the possible arrangements in this field, namely the Ombudsman. After the Ombudsman's report has been completed and in the light of what is learned from it, we may well feel that we wish to undertake one or all of the other grievance remedy institutions. But the point for now is that it is not practical to try to do everything at the same time.

In some countries, there is only a single 'state Ombudsman' which has jurisdiction over all public bodies, at central, regional and local levels. The question must be considered how we should approach such an institution. Given that our remit is local and regional government, the practical possibilities seem to be either to exclude such an entity altogether; or to deal with it but only to take into account those aspects which relate to local and regional government. The great disadvantage of leaving out the state Ombudsmen is that we should be omitting a number of Ombudsmen who do useful work in the field of local and regional government. Any practical difficulties in examining part only of an institution could be overcome. For example, an Ombudsman usually produces an annual report which will break down cases according to which public bodies are being complained against and thus one can see how many complaints there are against local authorities. Again, if (say) the Ombudsman is made independent and appointed by two-thirds majority of the central legislature, then this would be as relevant in the field of local government as for any other public body. It is proposed, therefore, that we should include a state Ombudsman, so far as the Ombudsman has jurisdiction over local or regional authorities.

In some cases, an Ombudsman is confined to a particular specialised area, for example child protection, the environment, or the army. Naturally, such an Ombudsman would come within the scope of our Questionnaire, only if the field over which it had jurisdiction was a local government function in the relevant country. (In the examples given, this would plainly not be the case for the army, but might possibly be for either or both of the other two examples).

Finally, there will be some states in which there is no Ombudsman with jurisdiction over local/regional authorities. Where this is the case, perhaps colleagues from those states would indicate (though with an eye on the Questionnaire) any plans or discussions there have been regarding a possible Ombudsman in the future.

1. Location of the Ombudsman

1.1 When did the first incumbent of the Ombudsman's office commence operations? Was there any 'pre-history' leading up to the establishment of the office?

1.2 What is the legal framework establishing the position of the Ombudsman? Is it

(a) Constitution; (b) national legislation; (c) local/regional regulation; (d) other (please specify)?

1.3 Is the Ombudsman located as part of the central/regional/local/other tier of government?

1.4 Has the Ombudsman jurisdiction over other public bodies, in addition to local/ regional authorities?

1.5 Has the same Ombudsman office jurisdiction over all local and all regional authorities, or is each office confined to one (or a limited number of) local/regional authorities?

2. Status and independence

2.1 What body appoints or elects the Ombudsman? Please indicate what procedure is used, for instance, whether any special majority is necessary.

2.2 How long is the term of office? May an incumbent be re-appointed? If so, how many times?

2.3 How is the amount of the Ombudsman's salary and pension determined; and kept in line with inflation. For example, is this done by reference to the salary of a judge or a public servant?

2.4 Are there any legal (or generally required) qualifications for being an Ombudsman? In practice, what has been the background of the present and the previous two incumbents?

2.5 Besides being Ombudsman, does the same person act *ex officio* in another capacity, for instance Freedom of Information commissioner or overseer of elections?

2.6 In general, how does the formal and effective independence of the Ombudsman compare with that of a judge?

3. Ombudsman's resources and staff

3.1 How is the Ombudsman's budget determined? For instance, does the Ombudsman present his own estimate to Parliament or the responsible local/regional authority?

3.2 What is the legal status of the Ombudsman's staff, for example are they part of the general public service?

3.3 Can you offer a generalisation as to the previous experience, and future career, of the Ombudsman staff, before and after their work for the Ombudsman (assuming they do not spend their entire career in the office)?

3.4 How many investigators (that is staff who investigate complaints, not secretarial or managerial staff) does the Ombudsman have?

4. Accountability and publicity

4.1 How does the Ombudsman communicate with the public in general (that is, not personally with a complainant)? For example: annual report; special report; press conference release?

4.2 Is the Ombudsman accountable to any organ of government/public administration, for instance central Parliament, local/regional authority? Please indicate how this accountability operates.

4.3 What links are there between the Ombudsman and other forms of citizen-protection, for instance a petition committee such as exists in some states at local/regional level?

5. The Ombudsman's jurisdiction

5.1 Is the Ombudsman's jurisdiction confined to a specialised subject-area? If so, please specify the subject areas.

5.2 In what field or fields do most complaints occur, for instance: public housing, education, road maintenance, land use planning, refuse collection? If possible, give some impression of what proportion of complaints are received in each field.

5.3 Where a local/regional authority function is privatised, does the Ombudsman retain the jurisdiction in respect of that function?

5.4 In respect of what types of defect can an Ombudsman give relief? Please indicate approximately how commonly each defect occurs in practice.

- (a) Delay;
- (b) Failure to give information to the citizen affected;
- (c) Decision based on inaccurate or incomplete information;
- (d) Improper discrimination;
- (e) Negligence or carelessness;
- (f) Deliberate abuse;
- (g) Unfair procedure;
- (h) Personal rudeness or insensitivity;
- (i) Others (please explain).

5.5 Which of the following categories of complaint are excluded from the Ombudsman's jurisdiction? (Please give some indication of how common each is in practice).

- (a) On the ground of subject matter, for instance: security, personnel dispute within the local/regional authority;
- (b) Where a policy decision is involved;
- (c) Where the decision involves a contested point of legal interpretation;
- (d) Where the complainant has not exhausted their 'local remedy';
- (e) Where the complainant has delayed in bringing the complaint. (Please specify any time limit);
- (f) Where the complaint is trivial;
- (g) Specific prohibition of a particular complaint by a minister, local/regional authority, or some other body;
- (h) Other (please specify).

5.6 Where the complaint arises from a local/regional authority's action and this action was dictated by a law, is the Ombudsman precluded from giving a remedy? In this situation, is there any special action which the Ombudsman may take, for instance making a recommendation for a change of law to the legislature?

6. Figures

6.1 How many people are subject to the local/regional authority(ies), which lie within the Ombudsman's jurisdiction?

6.2 How many complaints were made to the Ombudsman within the last three years for which figures were available? Please indicate how many of these were within jurisdiction; and how many were successful in the sense that the complainant was given either the assistance for which they asked or some alternative form of assistance.

7. Process and procedure

7.1 May the Ombudsman initiate his own investigation? If so, how often and in what circumstances has this power been used?

7.2 Indicate the sources of complaints to the Ombudsman: for instance, were they directly from the victim; from the victim's advisors; from a public representative (please specify). Approximately, how significant was each source?

7.3 Does the Ombudsman either have an office, or make visits to a place, within the area of the local/regional authority?

7.4 May complaints be registered informally, for instance by phone or E-mail?

7.5 Does the Ombudsman charge a fee? If so, how much (in the equivalent amount in EUROS)? Indicate whether you consider that this is large enough to act as a disincentive.

7.6 Does the Ombudsman have a far-reaching right to information, including documentation?

7.7 How does the Ombudsman investigate the complaint? Is there a formal protocol? Is there a full oral hearing of the complaint, or is the interaction informal? Does the local/regional authority and/or official against whom the complaint is made have any specific procedural protection?

7.8 Has each local/regional authority a designated official to interloquite with the Ombudsman? If so, at what level in the hierarchy is this official?

8. Redress and enforcement

8.1 What is the average time taken by the Ombudsman in settling a complaint? For instance, more or less than three/six/twelve months?

8.2 Does the Ombudsman give reasons for a (positive or negative) decision?

8.3 Is settling the form of redress, to what extent does the Ombudsman consult the local/ regional authority involved?

8.4 Does redress always or usually take the form of payment of compensation? Where a money payment is involved, can it include an element of interest for late payment by the local/regional authority? Apart from payment, what other forms of redress may be used, for instance: provision of publicly-owned accommodation or school place; or an apology?

8.5 Please give an impression of the amount of the usual payment directed by the Ombudsman. For instance, how does the amount compare with the sums awarded by the lowest level of civil law court in law state?

8.6 Does the Ombudsman publicly identify the particular public official who has dealt wrongfully with the complaint?

8.7 How common is it for a local/regional authority not to obey the Ombudsman's decision? In such a case, what, in principle, may an Ombudsman do? In practice, what usually happens?

9. General action

This question concerns the situation in which the Ombudsman believes (possibly because of receiving a stream of complaints on the same subject) that there is a systemic fault. In this situation, is there any general action (that is not confined to the individual complaint) which the Ombudsman may take and, in practice, has taken? In particular, does the Ombudsman make a recommendation that the local/regional authority adopts, in the future, a particular line of approach? Alternatively, might the Ombudsman recommend that a local/regional authority should establish its own local grievance-remedy system in order to forestall future complaints of the same type?

10. Alternative modes of dispute resolution

What, if any, are the alternative possibilities to the Ombudsman, from which a citizen may choose, if they wish to make a complaint? For instance: internal dispute mechanism; administrative court or tribunal; public representative; or other. Please indicate the approximate what use is made of each alternative, compared to the Ombudsman. What are the advantages and disadvantages of each, compared to the Ombudsman?

11. Impressions of the Ombudsman and reform

11.1 How well-known is the Ombudsman; for instance, is the office known only to professional people like lawyers; or would the person in the street have some knowledge?

11.2 What factors have contributed to the Ombudsman being well- or little-known?

11.3 What sort of a reputation has the Ombudsman among the people who do know of the office?

11.4 Do you consider that it would be better for an Ombudsman for local/regional authorities to be responsible exclusively for that level of government? If so, is it better for there to be one Ombudsman for all the authorities at the same level, or one Ombudsman for *each* authority? [This question may be answered in respect of which of the arrangements actually exists in your particular state].