

Role of Ombudsman Institution over the administration

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Abstract

The purpose of this article is to review the role of Ombudsman institution in increasing the accountability, efficiency, transparency in public administration and promoting a higher level on protection of human rights. The article analysis that ombudsmen have become a crucial part of the political, social and legal actuality in different countries of the world. As a dedicated institution on protecting citizens' rights, an Ombudsman can be considered as a mechanism to promote democracy, civil rights, rule of law, reforms in public administration and combat maladministration.

This paper discusses two particular issues: the concept of Ombudsman institution in general and its role in promoting good administration and governance. By doing so, it raises a multilevel argument for more transparency, effectiveness and accountability in the work of public administration.

Keywords: *Ombudsman institution, good administration, European Ombudsman, human rights, public administration.*

Introduction

The Ombudsman, by its nature, is an independent office or an individual that deals with protecting people from violation of their rights, insults, mistakes, negligence and unfair decisions of public administration. Ombudsman presents a new type of guarantee for the rights and fundamental freedoms of individuals and organizations. In the modern world, the influence of this institution is increasing every day. In general, the activities of the Ombudsman are connected between the state and civil society.

One of the key functions of the Ombudsman is to exercise control over the activity of the state authorities by considering citizens' complaints against the actions of bodies or their officials who breach human and citizens' rights and freedoms. In this aspect, Ombudsman's important function is to conduct investigations, to provide recommendations, to have the violated rights restored and submit proposals on amending legislation or revising the unlawful administrative practices of the bodies of state authorities.

The independence and neutrality of the Ombudsman, together with the broad powers of investigation granted to the office are some of the essential features of the Ombudsman required for its effective operation (Ayeni, Thomas & Reif, 2000).

Over the decades, Ombudsman is considered as an essential element of the democratic system of the state. Ombudsman institution has proved its efficiency not only as important mechanism of public oversight authorities, but also as important extrajudicial procedure for resolving the conflict and improving relations between

authorities and individuals through mediation and negotiation. More precisely, this way of conflict resolution is a characteristic value for a democratic society.

The Ombudsman's popularity has certainly not been limited to the domestic jurisdiction. Several international institutions have, in addition to supporting the adoption of Ombudsman offices at the national level, moved into the direction of establishing their own offices. The United Nations, the World Bank and the European Union are probably the best examples (Ayeni, Thomas & Reif, 2000).

This paper seeks to contribute to the better understanding of the democratization process and the institutional mechanisms that exercise control over the public administration in order to increase the level of accountability, transparency, efficiency and democracy.

The origin of Ombudsman Institution

The Term "Ombudsman" was used for the first time in Sweden in 1809, when the Swedish Parliamentary Ombudsman was instituted by the instrument of Government, to protect the rights of citizens by establishing an administrative agency, independent from the executive branch. The word "Ombud" in Swedish means representative, agent, intermediary, delegate etc. The predecessor of the Swedish Parliamentary Ombudsman was the Office of Supreme Ombudsman ("Högste Ombudsmannen"), which was established by the Swedish King, Charles XII, in 1713. The functions of the institution were to supervise the courts and other public authorities, to deal with complaints from citizens, and to prosecute officials and government ministers who behaved unlawfully. The originality of the institution lay primarily in its independence of the executive, guaranteed by the fact that the Ombudsman is elected by, and reports to, the legislature (Wieslander, 1994).

Swedish Parliament appointed the Ombudsman in order to solve some difficult problems. Sweden's constitution defined the separation of powers between the King and Parliament, King to exercise the executive power while the exercise of legislative powers belonged to Parliament.

Since then it was determined definition of the Ombudsman, which continues to be fully acceptable today. Since that time, the Ombudsman was appointed as a public official by the legislature for the purpose of receiving and investigating complaints of citizens filed against acts of administrative power. The main purpose for establishment of this institution was to ensure that all public officials exercise their duties in accordance with the law, honestly and with full responsibility

The institution of the Ombudsman, first created in Sweden aimed to provide protection of citizen's human rights. In 1919, the Swedish Ombudsman became a model for the Ombudsman institution in Finland. In truth the number of ombudsmen that are based on the Swedish or Finnish Ombudsman model is quite low (Gammeltoft-Hansen, 2009).

Today historians are divided over which social conditions influenced the establishment of this office in Sweden. It could have been the Sweden's' practice of respecting the human rights, or it was because of the efforts for power between the Swedish King and Parliament.

Establishment of Ombudsman Institution in the World

The next country to introduce the office of Ombudsman after Sweden in 1919 was Finland whose legal system was very close to Sweden's. Consequently, the model introduced in Finland was very much similar to the Swedish one. The powers of the Finnish Ombudsman were more extensive including: the right to initiate criminal proceedings against chairmen of the supreme and highest administrative courts of Finland, and by authority of parliament to be a public prosecutor of other highest officials of the state, in particular members of the State Council and the Chancellor of Justice. After the Second World War, the idea of the Ombudsman institution began to spread rapidly throughout Europe. In 1952, the Ombudsman institution was established in Norway. At the beginning, its function was limited to supervise the armed forces, and only in 1962, a body was set up to exercise control over the administration.

In Denmark the institution of Ombudsman was established in 1953. The idea of the Ombudsman institution was extended rapidly from Scandinavia to the other countries of Europe, the America, Asia and Africa.

In Great Britain, the Ombudsman institution with constricted capacity of powers was established in 1967 as consequence of dissatisfaction of citizens with efficiency and effectiveness of administration.

In the same year in 1967 Canada, introduced ombudsmen in a number of provinces, and in 1979 Australia did the same.

Spain established the Ombudsman institution in 1981 by choosing the Sweden's model. Based on the country's federative system, regional ombudsmen were established in the provinces.

In the France the Mediator of France, was introduced on 1973, appointed by the Council of Ministers, which is a characteristic exception in the concept of parliamentary Ombudsman.

Poland in 1988 was the first country in Eastern Europe to establish the Ombudsman office (Commissioner for Civil Rights Protection) vested with authority to request initiation of disciplinary or administrative proceedings, while his powers in criminal and civil matters are similar with those of a state prosecutor. The Poland's experience was copied later by other countries of Eastern Europe.

These days only few countries have not yet established the Ombudsman institution and its importance is widely acknowledged.

In 1978, the International Ombudsman Institute (IOI) was established. It promotes Ombudsman ship through studies, education programs, publications and exchange of information, as well as through regional and international conferences. The International Ombudsman Institute (IOI) deals with complaints from the public regarding decisions, actions or breaches of public administration. The role of the Ombudsman is to protect the people against violation of human rights, abuse of public authority, negligence, unfair decisions and maladministration in order to improve public administration and make the government more transparent, more accountable and efficient to the members of public. IOI has five categories of members: institutional members, associate members, honorary life members, and individual and library

members.

The Maastricht's Treaty, which entered into force in 1993, established the European Ombudsman in order to enhance relations between citizens and European Union level government (Diamandouros, 2005).

The first European Ombudsman was *Jacob-Magnus (Jacob) Söderman* from Finland elected by European Parliament in 1995. In 2003, he was replaced by Greek European Ombudsman *Nikiforos Diamandouros*.

The office of European Ombudsman was established as part of the citizenship project of EU in order to enable linking the breach between EU citizens and EU institutions and to alleviate the serious shortages of European governance.

The term of office for European Ombudsman is five years that runs parallel to the term in parliament and they must be impartial and independent.

The Maastricht Treaty, expanded by the Amsterdam Treaty allows the citizen's right to complain against maladministration as follows:

"Article 21 provides for citizens to have the right to petition the European Parliament and to complain to the Ombudsman, in accordance with Articles 194 and 195 of the Treaty respectively, The Amsterdam Treaty added a new paragraph to Article 21. This provides that every citizen of the Union may write to a Community institution in any official language and have an answer in the same language. The same provision applies when a citizen writes to the Ombudsman".

The role of Ombudsman Institution over the administration

The establishment and development of the Ombudsman institution over the past years, has influenced on the Ombudsman institutions established in older democracies. The International Ombudsman Institute has played a key role in this regard. In a democratic country governed by the rule of law, the Ombudsman's role of defender and supervisor are integrated, however substantial differences are evident from one country to the next. Generally, the administrative branch is the ombudsmen's main object of control.

The constitutional concept of independent, easily accessible and „soft control of public administration through highly reputable persons is now days indistinguishably connected to the principle of the democracy and the rule of law, as it is an essential contribution to the efficiency of those principles. Its increasing significance for the protection of human rights and liability of administration is accepted worldwide (Reif, 2004).

The Ombudsman as an institution presents a dedication to the consolidation of the democracy and an instrument of control, transparency and accountability, to protect citizens' rights and freedoms and to fight maladministration. The Ombudsman is an instrument of state control in parliamentary systems, where the representative bodies have created additional instruments to limit and control the work of the administration. Secondly, the Ombudsman is vested with the authority of citizen's support in the case of violation of their rights. In this regard, Ombudsman is presented as the institution of external control over the public administration.

The Ombudsman is an independent institution with authority to observe

governmental abuses affecting the members of the public. The office of Ombudsman is formerly meant as commissioner of the public that oversees the work of public administration.

Public administration in all systems faces challenges to ensure and achieve an efficient, effective, accountable, professional and fair public service. The development of an administrative system in an inadequate and unsuccessful way represents an insurmountable obstacle for further development of the State and the society as a whole (Batalli, 2011).

In the way of studying and analyzing the development of these institutions, were noticed different varieties of types of Ombudsman in sense of organization, functions, procedures, powers and legal aspects. The first type includes ombudsmen with broad competences of investigation, recommendations and activity reports to the public, but without executive power.

Another model of Ombudsman has further measures of control aiming to balance the lack of legal protection and have the capacity to protect the legality of administrative actions in more efficient way, which may provide the citizen's right to appeal before the regular or administrative courts and the right to challenge laws and regulations before the constitutional courts (Norway, Denmark, the United Kingdom and the European Ombudsman).

A third form can be considered one in which the Ombudsman is authorized with protective powers, which give him/her the ability to advise state bodies regarding the implementation of human rights and giving reports on this field. This type of Ombudsman is popular in the relatively young democracies of Central and Eastern Europe.

Professor *Reif* notes that some Ombudsmen that are national human rights institutions "have been given stronger powers of enforcement, such as the power to make decisions, prosecute and refer or take cases to court or other tribunals for a judicial determination (Reif, 2000).

The role of Ombudsman Institution in promoting good administration and governance

The object of the office of Ombudsman is to promote good governance in order to encourage accountability, efficiency and transparency in administration. Any person who believes that his rights have been violated by an act, action or inaction of bodies of local or central administration or any other body vested with public authorities, can file a complaint with the Ombudsman.

Monitoring the implementation of good administration, for a long time has been one of the key areas of legality control through which the Ombudsman protects fundamental rights. The contentions adopted in legality control have a significant bearing when defining the substance of good administration, since the subject matter of the Ombudsman's oversight is often of the sort that it is not open to court review (Arjola-Sarja, 2010).

When "legality" is understood broadly, in terms of a concept of law that includes community law, legal principles and fundamental rights, the overlap between legality

and maladministration is quite extensive (Diamandouros, 2006).

The Ombudsman's office has a strong attention on improving public administration through identifying areas of public administration that are a frequent basis of complaints from the community, analyzing the essential causes of these problems and assisting agencies remedy them. Ombudsman institutions are considered as good opportunity for citizens into governments for offering information, arbitrating conflicts, considering unprofessional conduct, promoting good administration, etc.

One aspect of good administration on the part of public authorizes is the operation of effective internal arrangements for dealing with complaints against themselves. Given that mistakes are inevitable in even the best run organizations, dealing properly with citizens' complaints is perhaps equally important as dealing properly with citizens in the first place. Some Ombudsman offices as part of their efforts to promote good administration have therefore produced documents devoted specifically to the ethos and techniques of complaint handling (Gregory & Giddings, 2000).

The Ombudsman focuses on maladministration, in which government may fail in relation of its obligations to citizens. In this regard, the Ombudsman serves the public interest of ensuring that the government behaves properly towards promoting good administration.

A holdup makes the citizen feel that the respective authority is not treating his/her seriously, particularly if the EU administration does not provide a justification. The right of every person to have his or her affairs handled within a reasonable time by the EU institutions is a fundamental right provided for in Article 41(1) of the Charter of Fundamental Rights. The competencies of the Ombudsman are mostly extended to the control of any kind of "maladministration", in order to promote good governance in one state. The Ombudsman idea is based on the thought that the citizens are allowed to complain against actions of public official, and that their complaints should be independently reviewed. In cases when maladministration is observed, the Ombudsman can recommend but not order proper remedies to be taken for certain actions.

The method by which the ombudsmen promote good administration that most directly links to their complaint – handling function is to submit recommendations that follow and directly relate to investigation of a complaint. This is extremely common tactic in all Ombudsman schemes and flows from the nature of the investigatory process adopted by Ombudsman and wide discretionary powers to make recommendations (Kirkham, Thompson, & Buck, 2011).

Ombudsman in any case will try to find a solution for resolving various issues within his office. However, if this procedure is not possible or not appropriate, then the Ombudsman will make recommendations to the administration offices to find a solution in other areas. The Ombudsman is not an executive instrument that enjoys the right to judge or decide, but Ombudsman is a person who controls the situation on behalf of legislative body, because Parliament is elected by the people to control the executive authority.

Until recently, the prevailing view was that this institution can function properly only in favorable surroundings, where the democratic system of government is firmly

established (Andre, 2002).

The European Ombudsman's values and principles reflect a concern to promote good public administration and, in particular, a concern that EU citizens and businesses will be treated fairly, reasonably and sensitively by the EU administration (O'Reilly, 2014).

The European Ombudsman's constitutional mandate is to fight maladministration that occurs in case of fails to act in accordance to the rules or principles. In this regard, the Ombudsman's mandate is to review the lawfulness. The European Ombudsman investigates complaints regarding maladministration in EU institutions, such as the European Parliament, the European Commission and the Council of the EU.

The European Ombudsman prepared and published the European Code of Good Administrative Behavior, following an own-initiative inquiry in which all the Community institutions and bodies took part and which drew on best practice in the Member States (Ombudsman's Special Report, 2000). The Code helps to ensure that the principles of good administration are put into practice on a daily basis and that the Commission adheres to its duty of service to the European public. The principles of good administration intend to promote a shared understanding of what is meant by good administration and to help public bodies in the Ombudsman's jurisdiction provide a first class public service to their customers.

The Principles of Good Administration are those that have been laid down by the Parliamentary Ombudsman. The Principles of good administration were first published in March 2007 following consultations that took place in 2006. These principles were redrafted with minor amendments on 10 February 2009. Good administration by public bodies means: getting it right, being customer focused, being open and accountable, acting fairly and proportionately, putting right things , seeking continuous improvement.

The European Ombudsman (EO) has a special role between citizens and EU administration. Treaties give the EO the right to investigate complaints about maladministration in the EU institutions, bodies, offices and agencies. The Ombudsman can open inquiries in response to complaints or on own initiative. Moreover, the EO promotes transparency and encourages EU institutions to build and maintain the highest standards of administrative culture (European Parliamentary Research Service, 2013).

Complaints relating to lack of transparency within the EU institutions continue to top the list of complaints to the European Ombudsman. For several years now, 20% to 30% of the complaints that the Ombudsman's office investigates have concerned transparency. The most common transparency issues raised are the institutions' refusal to grant access to documents and/or information. The Charter of Fundamental Rights of the EU guarantees citizens the right to access public documents (European Ombudsman, 2014).

In 2014, the Ombudsman dealt with a substantial number of complaints relating to ethical issues, such as conflict of interest and the practice of "revolving doors" within EU institutions. The term "revolving doors" denotes a move by public sector staff to closely linked jobs in the private sector, or vice versa. The Ombudsman repeatedly stressed that the EU administration should adhere to "gold standards" when it comes

to ethical behavior (European Ombudsman, 2014).

Conclusions

The Ombudsman institution is an important mechanism to sustain the quality of constitutional order and the rule of law as fundamental principles. The Ombudsman concept has demonstrated its strength through its application in enormous variety of situations in the dimension of democracy and the rule of law and its economic development.

Today word "Ombudsman" brings to mind the reaction of safety, protection and freedom and can be considered as the autonomous judiciary trying to promote and protect the ideas of rule of law, democracy and human rights.

Having into consideration that the perception of good or maladministration are not always apparent, then it is Ombudsman the one who should give a clear overview on these concepts.

In order to endorse and protect human rights, independence and neutrality, it is essential that the status of this institution should rest on a firm legislative foundation. Ombudsman institutions do not create an entirely new normative system, but they help to increase the interest of the good administration

In the absence of a well-functioning judicial system, the capacity for the Ombudsman institution to improve the quality of democracy is weakened. Even if the Ombudsman is a person who is respected by the administration and even if there is no hesitation about his fairness and autonomy, his reports must be supported by clear and proper arguments.

Every Ombudsman should enjoy high level of public respect and at the same time, the office of Ombudsman can be a valuable institution.

It can be concluded that the development and publication of lists of appraisal standards that ombudsmen use in their performance has an important value.

Ombudsman office should ensure that public service activities and the decision-making process are carried out in appropriate manner in harmony with good administrative principles and practices. Ombudsman should identify areas of public administration that are a frequent basis of violations and complaints from the citizens, analyzing the fundamental causes of these problems and assisting agencies remedy them.

Ombudsmen must be approachable to the transformation requirements and citizens' expectations, otherwise the failure on these matters may be considered as loss of credibility and reputation of this institution.

In several countries, the establishment of the institution of Ombudsman was and still is a precondition for participation in European integration.

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