

**International Symposium**  
**Ankara – 3<sup>rd</sup> September 2013**

**The Greek Ombudsman:**  
**Institutional aspects and relations**  
**with the Administration and the Courts**

1. The institution

The Greek Ombudsman is a constitutionally sanctioned Independent Authority. It was founded in October 1998. It investigates individual administrative actions or omissions or material actions taken by government departments or public services that infringe upon the personal rights or violate the legal interests of individuals or legal entities.

The principal mission of the Greek Ombudsman is to mediate between the public administration and citizens, in order to help citizens exercise their rights effectively. Further missions within its jurisdiction are:

- children's rights
- equal treatment and discrimination in the public sector based on race or ethnicity, religious or other conviction, disability, age or sexual orientation
- equal treatment of men and women in matters of employment both in the public and the private sector.

As a mediator, the Greek Ombudsman makes recommendations and proposals to the public administration. The Ombudsman does not impose sanctions or annul illegal actions by the public administration. The complaints citizens submit are investigated in terms of thematic categories, which correspond to six different areas of activity in the Institution: a) Human Rights, b) Health and Social Welfare, c) Quality of Life Department, d) State-Citizen Relations Department, e) Children's Rights Department and f) Gender Equality Department.

Beyond handling individual complaints, the Ombudsman (i) has the obligation to produce annual reports submitted to Parliament; (ii) has the possibility of producing special reports that analyse larger problem areas arising from complaints and suggesting organisational or legislative measures to solve them; (iii) conducts on-site investigations as well as own-initiative investigations.

Back in 1997, during the Parliamentary debate on the bill introducing the Ombudsman institution in Greece, an MP saw the Ombudsman as a luxury, not an institutional means to solve problems and implement the rule of law, accountability and transparency of the administration. 15 years later, the Greek Ombudsman's reports are welcomed in parliamentary debates and the Ombudsman's

interventions have achieved a high level of recognition and respect from the Government, the parliamentary parties and by the public at large. Thus, the Greek case is yet another important piece of evidence within the European institutional history, that the Ombudsman, rather than a luxurious institution, is a consolidating factor of the Rule of Law in a contemporary state.

Any new institution needs to find its place in the institutional architecture, to shape its role vis-à-vis other existing institutions within the limits of its mandate. In the case of the Ombudsman, it is important to clarify this role in relation to the administration and the courts.

In order to find its place, a new Ombudsman institution, needs to have: 1) a clear view of its mission within the system of balance of powers, 2) true independence from the Executive as the *sine qua non* prerequisite to achieve this mission, 3) the necessary methods and legal tools to serve the mission.

## 2. The Ombudsman in the constitutional system of balance of powers.

A democratic and liberal system of government contains, by definition, an inherent element of separation of powers, having as minimum features free elections of the legislature, an accountable government and an independent judicial system.

Where does the Ombudsman fit therein?

In the light of art.6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)<sup>1</sup>, which establishes recourse to an “impartial and independent tribunal” as a key feature of the liberal character of the states participating in the Council of Europe, Ombudsman institutions do not intend to replace fair trial, but rather, to complement it by safeguarding fair and good administration.

The rule of law in modern societies relies on a system of power checks and balances. To go back to Montesquieu, political liberty is at risk when a person or public body centralises state powers and the principle *que le pouvoir arrête le pouvoir*, in modern democracies, is implemented by establishing a workable system of cross-checked and balanced state functions.

After almost forty years of free elections, the question is whether elected democratic governments are sufficient to protect the people from different forms of maladministration, disrespect of their rights or even corruption by the public administration. The answer is no and that is where the Ombudsman comes into the picture.

The Ombudsman has a very important role to play in Greece, and perhaps in other modern democracies, where the basic problem for the Rule of Law is that the enactment of rights, legal rules and principles, is not combined with their full implementation in practice.

The Ombudsman’s role essentially complements judicial protection, as an extra-judicial, out-of-court mechanism for the settlement of disputes between the state and the citizen, aiming at increasing the

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<sup>1</sup> See also art. 47 of the Charter of Fundamental Rights of the European Union (EU).

accountability of the executive and transparency in governance. The Greek Ombudsman's statutory mission is to protect people's rights and interests, combat maladministration and safeguard legality.

### 3. How does the Ombudsman complement judicial protection<sup>2</sup>?

When the Greek Ombudsman was first established, many judges were reserved or sceptical. They could not understand what this institution, with no power of sanction, could do and why it was needed. Things have changed in that respect too.

It is a frequent phenomenon in modern societies that courts are over-burdened and the backlog of pending cases increases. At the same time, many people cannot afford the financial burden of a judicial procedure; the time and cost involved discourages them but also prevents them from enjoying their rights. This is a flaw of modern democratic systems that needs to be addressed.

The Ombudsman can be a remedy to this problem. It contributes to the substantial application of the Rule of Law by aiming at the respect in practice of the legal rights or interests of people by public administration. More specifically, administrative disputes that would be brought before the Court are often resolved through the Ombudsman's mediation, removing an extra burden from the Courts.

- It is worth mentioning that the rate of successful resolutions of valid complaints brought before the Ombudsman is more than 80% (81.72% in 2012).

There are also cases whereby the Ombudsman is not an alternative to the Courts' mechanism of redress, but the only option for the aggrieved persons to defend their rights. This occurs in the instance of:

- Petty cases that would never reach the Court because they consist of operational malfunctions or very small pecuniary sums.
- Cases not brought before the Court because of the time and money to be spent by the aggrieved person. The experience of the Ombudsman shows that public administration often counts on people's reluctance to go to Court for the above reasons, and takes advantage of this. One of the Ombudsman's goals is to eliminate from administrative practice the cliché phrase "if you don't like it go to Court" and its underlying disrespect for citizens' rights.
- Cases for which there exist legal precedents, therefore they are more suitable for extra-judicial settlement but the administration counts on the delay of adjudication, avoiding treating similar cases alike.

The Ombudsman's complementary role to the Courts is equally important when facilitating access to the Courts or implementation of judicial decisions.

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<sup>2</sup> Relying on a constitutional system of strict separation of state powers, the law conferring powers to the Ombudsman, as well as the practice of the Greek Ombudsman, maintain basically a hands-off approach to the whole judicial system. The Ombudsman institution still plays an important role in complementing the courts to the consolidation of Rule of Law.

- The Ombudsman facilitates recourse to the Courts, mainly by providing access to documents. Evidence needed by individuals to prepare their case for Court is often denied by the public administration, invoking official secrets, lack of a special interest or protection of personal data; claims not really justified by the law and facts.
  - For example, on environmental matters, which are a crucial factor in citizens' everyday life, citizens often meet the reluctance of authorities to disclose data on industry licensing, carbon emissions etc. The Greek Ombudsman explained to the authorities that disclosure of environmental information, as prescribed in EU law and the Aarhus UN Convention, enables people to pursue their right to be heard by the authorities and to ask for judicial protection.
- Court decisions are sometimes not enforced in Greece. This is an area where the Ombudsman had remarkable results in making the administrative system move towards compliance with the law. Otherwise, non enforced judicial decisions would annul in practice the very safeguard of judicial protection of rights and interests guaranteed by the constitution.
  - The Greek Ombudsman intervened to have the court's interpretation of the law applied also to individuals not covered by *res judicata stricto sensu* but falling under the same legal circumstances, applying the equality principle: similar cases have to be treated alike.
- Last but not least, when the Ombudsman's intervention does not bring about the desired outcome and the person turns to the court, the investigation and legal argumentation of the Ombudsman provides to the judge a sound basis to decide on the case. It is our experience that courts refer to the legal reasoning of the Ombudsman, adopting its recommendation. During the past 15 years, the attitude of judges towards the Ombudsman's mediation has changed, acknowledging its complementary role, often facilitating their task.

To render the executive accountable and safeguard the efficiency of judicial protection, is a highly challenging goal, demanding important safeguards for the Ombudsman's operational independence.

#### 4. Relations with the administration

True independence from the Executive is a *sine qua non* pre-requisite for the Ombudsman to achieve its mission. Independence is first an institutional matter. This is why the mode of designation is important.

The Greek Ombudsman is elected by a 4/5 majority of the Presidium Committee of the Parliament. This 'qualified' majority invites and allows for a broad consensus upon its mandate. The institution's operational independence is provided for by the Greek Constitution in its revision in 2001. The Ombudsman is an independent authority not subject to hierarchical control or supervision over its

operation by any minister. The law states that the Ombudsman has a fixed term of office (currently 6 years) and he/she cannot be removed from office except in the case of a felony or a final court decision. He/she can neither be held liable, nor be prosecuted<sup>3</sup> or interrogated on any opinion or act falling within the exercise of his/her duties. These provisions introduce important safeguards of operational and personal independence that allow the Ombudsman to exercise his/her duties subject only to the law and his/her conscience. The necessary accountability of the institution provides for a special parliamentary hearing of its annual report as well as the possibility of hearings for special reports.

Putting aside all institutional safeguards of independence, recognition of the Ombudsman's interventions by the public in the 15 years of the Greek Ombudsman's operation, is a strong indication that the authority has established its independence in its daily practice.

#### 5. Means and legal tools to serve the mission

The key method for the Ombudsman is mediation; therefore its success is based on persuasion. This was an important challenge during the first phase of the institution. The administration often ignored the role of the Ombudsman; suspicion or even hostility was obvious. This challenge was also met. The administration listens to the recommendations of the Ombudsman, as shown by the high acceptance rates, though there is always room for improvement.

Arguments include, of course, legal provisions, general principles of law and sometimes -depending on the issue- even common sense. The Ombudsman aims at the respect in practice of the enjoyment of legal rights or interests of people by the public administration, by developing a new administrative culture, a rights-centered and user-friendly culture at all levels of the executive. In that respect, the Ombudsman is a catalyst for administrative reform.

Based on larger numbers of complaints or on own initiative investigations, the Ombudsman can indicate problems in special reports and formulate proposals on how to handle them. This aspect of the Ombudsman's mission has proved very important for good administration and administrative reform

Good governance is influenced by many aspects of the operation of the political, legal and administrative system. The recommendations of the Ombudsman contribute to administrative reform in many ways; suggestions include simplification of procedures, the codification of legal rules etc. More recently, a "Code of Good Administrative Behaviour" has been elaborated, concerning the relations of civil servants and the public.

Another example of the Ombudsman's contribution to the improvement of the service to citizens is that:

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<sup>3</sup> Except for libel, insult or breach of official secret.

- Recently, the law was changed following the Ombudsman's proposal to the Ministry of Finance, in order to solve the problem of excessive delays in granting pensions, to give the applicants an advance payment every month, following their retirement.

Often, citizens as well as civil servants encounter difficulties in identifying the legal procedure to be followed, the necessary provisions to apply or even the rights to be exercised and obligations to be satisfied. Better law-making and regulation is an important pre-requisite for good implementation.

For all these issues, the Greek Ombudsman includes legislative and organisational proposals in its annual report to Parliament.

- In 2012's annual report, 73 proposals were submitted to improve the operation of public administration, 15.28% of which have already been accepted, as well as 36% of prior year's proposals.
- Also in 2012, the Ombudsman submitted a special report containing proposals for low-budget measures to 12 competent Government ministries. The Ombudsman gathered 80 recommendations for legislative amendments, organisational or operational reforms, that would enable the public administration, at zero cost, to simplify and accelerate procedures, increase transparency in their actions and be more efficiently organized with existing means and staff.

The Ombudsman has no power of sanction. However, legal tools, such as full access to documents and the binding obligation of every public service to cooperate with the Ombudsman, are very useful. The obligation to respond in a reasoned and justified manner to the Ombudsman has of course a vital effect on the government's accountability. Greek Law includes disciplinary and even penal sanctions for public officers not complying with the Ombudsman's request to explain their actions.

- In 2012 the Ombudsman referred 14 cases of public officers to disciplinary proceedings, for failing to fulfil their obligation to cooperate.

As a conclusion, one last remark. The challenge for a new Ombudsman institution is to convince its institutional environment and the citizens of its operational independence but also its sense of cooperation, its importance for the accountability of administration but also its potential to contribute to improvements, its complementarity and not competition to the courts, for the benefit of the rule of law, democracy and the citizens.

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