Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1615 (2003)[1]

The institution of Ombudsman

Parliamentary Assembly

1. The Parliamentary Assembly confirms the importance of the institution of ombudsman within national systems for the protection of human rights and the promotion of the rule of law, and of its role in ensuring the proper behaviour of public administration. Ombudsmen have a valuable role to play at all levels of public administration, and they report on their activities to the political bodies to whom they are accountable.

2. The Assembly recalls the previous work of the Council of Europe, notably its own Recommendation 757 (1975), and Committee of Ministers Recommendations No. R (85) 13, No. R (80) 2 and Rec(2000)10 and Resolution (77) 31. It fully supports the important co-ordinating and supportive role played by the Commissioner for Human Rights and expresses the desire to become regularly involved in this work. It also recalls the work of the United Nations General Assembly and the European Ombudsman.

3. The Assembly notes that the development of methods of human rights protection has influenced the role of the ombudsman in that respect for human rights is now included in the standards to be respected by a good administration, on the basis that administrative actions which do not respect human rights cannot be lawful. National constitutional and legal circumstances particular to each country, furthermore, may dictate that ombudsmen in different countries require mandates conferring various additional responsibilities with respect to human rights protection. Nevertheless, the Assembly believes that the role of intermediary between individuals and the administration lies at the heart of the ombudsman's functions.

4. A further role for ombudsmen exists with respect to officials within the administration itself. Where such officials become aware of situations of a particular gravity and where resorting to any internal procedures would be ineffective or otherwise unreasonable, there should be an exceptional mechanism for addressing such information directly to the ombudsman.

5. The neutrality of the ombudsman and the fact that he or she is universally respected by both complainants and the subjects of investigations are vital to the proper functioning of the institution of ombudsman. The Assembly considers that these attributes are best preserved by limiting enforcement powers to the moral pressure inherent in public criticism, with reports on maladministration to, and subsequent political condemnation of it by, parliament. The Assembly therefore considers that ombudsmen's access to administrative and constitutional courts should be limited to applications for interpretative judgments on legal questions relating to the mandate or particular investigations, unless representing an individual complainant with no direct access to such courts. It is preferable, however, that individuals with otherwise sufficient locus standi should be able to apply directly to such courts.

6. The Assembly believes that ombudsmen should have at most strictly limited powers of supervision over the courts. If circumstances require any such role, it should be confined to ensuring the procedural efficiency and administrative propriety of the judicial system; in consequence, the ability to represent individuals (unless there is no individual right of access to a particular court), initiate or intervene in proceedings, or reopen cases, should be excluded.

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1. (see Doc. 9878, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Nabholz-Haidegger). Text adopted by the Standing Committee, acting on behalf of the Assembly, on 8 September 2003

7. The Assembly therefore concludes that certain characteristics are essential for any institution of ombudsman to operate effectively, namely:

7.1. establishment at constitutional level in a text guaranteeing the essence of the characteristics described in this paragraph, with elaboration and protection of these characteristics in the enabling legislation and statute of office;

7.2. guaranteed independence from the subject of investigations, including in particular as regards receipt of complaints, decisions on whether or not to accept complaints as admissible or to launch own-initiative investigations, decisions on when and how to pursue investigations, consideration of evidence, drawing of conclusions, preparation and presentation of recommendations and reports, and publicity;

7.3. exclusive and transparent procedures for appointment and dismissal by parliament by a qualified majority of votes sufficiently large as to imply support from parties outside government, according to strict criteria which unquestionably establish the ombudsman as a suitably qualified and experienced individual of high moral standing and political independence, for renewable mandates at least equal in duration to the parliamentary term of office;

7.4. prohibition of the incumbent from engaging in any other remunerated activities and from any personal involvement in political activities;

7.5. personal immunity from any disciplinary, administrative or criminal proceedings or penalties relating to the discharge of official responsibilities, other than dismissal by parliament for incapacity or serious ethical misconduct;

7.6. the appointment of an identified deputy on the recommendation of the ombudsman and with parliamentary approval, capable of acting in the full capacity of ombudsman when necessary;

7.7. guaranteed sufficient resources for discharge of all responsibilities allocated to the institution, allocated independently of any possible interference by the subject of investigations, and complete autonomy over issues relating to budget and staff;

7.8. internal procedures guaranteeing the highest administrative standards in the institution's own work, in particular fairness, efficiency, transparency and courtesy;

7.9. public accessibility (in terms of both availability and comprehensibility) of information on the existence, identity, purpose, procedures and powers of the ombudsman, along with wide and effective publication of information on the institution's activities, findings, opinions, proposals, recommendations and reports;

7.10. application procedures which are easily and widely accessible, simple and free of charge, and which convincingly establish their confidentiality in all cases;

7.11. guaranteed confidentiality and, when publicised, anonymity of investigations;

7.12. the authority to give opinions on proposed legislative or regulatory reforms and proprio motu to make such proposals with a view to improving administrative standards and, where consistent with the overall mandate, respect for human rights;

7.13. the requirement that the administration furnish within a reasonable time full replies describing the implementation of findings, opinions, proposals and recommendations or giving reasons why they cannot be implemented;

7.14. presentation by the ombudsman of an annual report to parliament, as well as of specific reports on matters of particular concern, or where the administration has failed to implement recommendations.

8. The Assembly notes with approval Committee of Ministers Recommendation No. R (2000) 10 on codes of conduct for public officials. The Assembly observes, however, that this text is not analogous to the European Ombudsman's European Code of Good Administrative Behaviour and lacks most of the latter's provisions, but finds that many of these are set out in other Committee of Ministers texts, notably the appendices to Recommendation No. R (80) 2 and Resolution (77) 31. The Assembly considers that these instruments could usefully be consolidated into a single text providing guidance, instruction and information to both administrative officials and members of the public in their mutual relations.

9. The Assembly notes that the European Ombudsman benefits from the inclusion in Article 41 of the Charter of Fundamental Rights of the European Union of a right to good administration. The Assembly believes that incorporation of such a right into national legislation could also be of great value, for similar reasons to those for the adoption of a code of good administrative behaviour: indeed such a code would elaborate, for practical implementation, the detailed standards implicit in the basic right.

10. Accordingly, the Assembly recommends that the governments of Council of Europe member states:

10.1. create at national level (and at regional and local level as appropriate), where it does not already exist, an institution bearing a title similar to that of "parliamentary (/regional/ local government) ombudsman", preferably by incorporation into the constitution;

10.2. ensure that the institution of parliamentary ombudsman exhibits the characteristics described in paragraph 7 above, and that these characteristics are sufficiently protected and appropriately elaborated in the enabling legislation and statute;

10.3. give this institution a mandate which clearly encompasses human rights as being fundamental to the concept of good administration, and which includes a wider role in human rights protection where, in the absence of specific complementary alternative mechanisms, national circumstances so require;

10.4. exclude from the mandate of this institution the power to enter into litigation against either the administration or individual officials, whether before criminal or administrative courts, but to consider allowing the ombudsman to apply to the constitutional court for interpretative judgments;

10.5. engage fully with the Commissioner for Human Rights in his work of co-ordinating the activities of member states' ombudsmen;

10.6. following the drafting of a model text by the Committee of Ministers, adopt at constitutional level an individual right to good administration;

10.7. following the drafting of a model text by the Committee of Ministers, adopt and implement fully a code of good administration, to be effectively publicised so as to inform the public of their rights and legitimate expectations.

11. The Assembly further recommends that the Committee of Ministers:

11.1. encourage member states to implement Recommendation No. R (85) 13, whilst also giving effect to the more detailed provisions of the present recommendation;

11.2. draft a model text for a basic individual right to good administration;

11.3. draft a single, comprehensive, consolidated model code of good administration, deriving in particular from Committee of Ministers Recommendation No. R (80) 2 and Resolution (77) 31 and the European Code of Good Administrative Behaviour, with the involvement of the appropriate organs of the Council of Europe – in particular the Commissioner for Human Rights and the European Commission for Democracy through Law, as well as the Assembly – and in consultation with the European Ombudsman, thus providing elaboration of the basic right to good administration so as to facilitate its effective implementation in practice;

11.4. encourage and provide technical assistance to governments of Council of Europe member states in adopting and implementing the above-mentioned right and code;

11.5. support the Commissioner for Human Rights in his work of co-ordinating the activities of member states' ombudsmen.