

The European Ombudsman, The Principle of Good Administration and The Code of Good Administrative Behaviour – key tools for the vision of EU Integration and defending citizens’ rights

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INTRODUCTION

In general, the institution of an “Ombuds”, whether on a European level, national level or pertinent to a specific service domain of public interest, stands for an independent authority figure with increased prestige, wide acceptance and high qualifications, who mediates between citizens and public administration in order protect the rights of the former, thereby exercising external and neutral, ethical advocacy control to public institutions¹.

The broader notion of an Ombuds or of a neutral mediator or arbitrator of authority at large whose role is to ensure impartial justice by interceding between authority and lowly citizens on behalf of the latter, can be found in numerous nations and cities the world over perhaps from time immemorial. For example, one of the first attempts to control those who run the state was already deep-rooted in Athenian democracy (5th BC), where ten responsible (*Εὐθῦνοι*, Euthunoi) were elected by random ballot among authorities and were positioned in different parts of the ancient market and accepted written and signed complaints of citizens for illegal behaviour and abuse of power by those who ruled². In this general and historically broad sense, given that

¹ For the modern forms of Ombudsman, see. G. Demetropoulos, “Global Administrative Law and Global Justice”, Sakkoula Publications, 2009, pp. 122

² S. Adam, “Control and Accountability of Public Officials in Athenian Democracy”, Antonios Sakkoulas Press, 2004, pp. 149

an Ombuds may have various specialties in numerous domains of human activity, an Ombuds is an independent and impartial public commissioner or procurator, as well as petitioner or monitor of public administration, who acts as an intermediary liaison in order to prevent maladministration and defend the rights of the public and who ensures that fairness is provided and justice is served.

However, the modern institution of Ombuds(wo)man³ has specifically been influenced by the respective institutions that operated until its introduction within EU member-states, and was particularly inspired by Sweden, where it first appears to be well established akin to its present form in the 19th century and has also operated there since⁴. Subsequently, the introduction of the national Ombudsman likewise inspired by Sweden also became the cause for establishing other such independent authorities in numerous service domains of public interest, including, later, that of the European Ombudsman. In this sense, the institution of an “Ombuds” today stands for a widely accepted independent figure of high-qualifications and prestige who mediates in order to protect citizens’ rights by exercising external control on public administration.

Based on this tradition, although today the notion “Ombudsman” is at times expressed using different terms in a few countries, in the vast majority of states’ international and legislative terminology the term is found selfsame or at least by translation, something which is indicative of how the term and “Ombudsman” has come to stand for the specific process of appointment or election of such an independent authority and suggestive of what the Ombudsman’s object of investigation and duties are⁵.

Particularly with regard to the institution of “European Ombudsman”, it was officially inaugurated in September 1995 in line with this long tradition whencefrom it was inspired. The primary purpose of such an intermediary institution within the EU was to give European citizens the capacity to turn to an independent authority whose role is to look into cases of bad administration by European institutions and to ensure that the principles that uphold the European Union are safeguarded within the application of the

³ n.b.: Even though the term “Ombudsman” carries gender-specific connotation in English, it pertains to both females and males, and is thusly used herein onwards.

⁴ E. Besila-Makrides, “Controlling Administration”, Vol. ‘A’, Sakkoula Publications, 2010, pp. 115

⁵ D. Kontogiorga-Theocharopoulou, “The Ombudsman in Comparative Law”, Proceedings of the Conference of the Panteion University Department of Public Administration entitled “The [Greek] Citizen’s Advocate (National Ombudsman) and the European Ombudsman, Activities and Prospects”, 14 June, 2013, p.2

Law by administrative authority.

More specifically, the adoption of the institution of European Ombudsman turned out to be imperative due to the understanding that the rights of European citizens ought to be fortified from the likelihood of absence of democratic procedures within European institution administrative action and decision making⁶.

Therefore, just as the notion and institution of Ombudsman at large, the introduction of the institution of the European Ombudsman was also part of an effort to set obstacles to and prevent corruption, specifically with regard to: a) bad administration; b) violating the Principles, rules and procedures of EU legislation and lawfulness; as well as c) any chance of persons, bodies and institutions of public administration not complying with the law whenever these bodies and institutions exercise their duties⁷, in effect thwarting authoritarianism, nepotism and abuse of power. Predominantly lest absolute power should result to corruption, the introduction of the European Ombudsman was deemed quintessential in forbidding the abuse of power and maladministration in public administration whether by thwarting or by forestalling any incidence of arbitrary utilization of authority and power in EU institutions or bodies by their employees and officers, thus pivotal for the vision of European integration.

It follows that an Ombudsman's mission, and the role of the European Ombudsman in particular, is seminal for improving the quality of offered services to European citizens, as it helps reinforce and maintain transparency across all levels of EU administrative operation, as well as promotes the rule of Law and the Principles of Good Administration.

On the same grounds, in tandem with the establishment of the institution of European Ombudsman it also was deemed necessary to implement the general Principles of Administrative Law that govern the operation of public administration. These Principles of administrative Law on the one hand comprise a fundamental source for the formation and configuration of the notion and institution of the European Ombudsman itself, and on the other hand comprise but also uphold the Ombudsman's mission on par with these Principles. By extension, the adoption of the European Code of Good

⁶ G. Papademetriou, "European Integration and Democratic Deficiency", 'The Constitution' [To Syntagma] Bi-monthly Review Vol.3, 1992, p. 243

⁷ A. Makrudemetre – M. H. Pravita, "Public Administration", Sakkoula Publications, 2012, pp. 602

Administrative Behaviour in 2001 proposed by the European Ombudsman himself⁸ has also proven to be a very important tool for fostering the highest standards of behaviour in EU institutions and for creating a set of standards for the mission of Ombuds(wo)men, while at the same time helping EU citizens better understand and exercise their rights. This is because, together, the Principles of Administrative Law and the European Code of Good Administrative behaviour can be viewed as the summation and essence of the legislative vision.

In deed, these Principles and Code arise from the combination of years of distillatory legislative interpretation and the reiterative reciprocity of the converging vision of various extant EU member-state constitutional and legislative provisions, thus crystallizing the elements of the legislator's incentive and will, ever aiming at primarily protecting the rights of citizens⁹. Important also to note is that the notion of Good Administration, as is understood today by the general public, is enlarged by the principles of private management¹⁰.

Effectively, the general Principles of administrative Law and the European Code of Good Administrative Behaviour complement another and constitute the two pillars that uphold the institution of Ombudsman. In turn, the European Ombudsman operates in line with these Principles and Code to protect citizen's rights, but ultimately also aims through such activity at safeguarding the scope and vision of European integration.

The self-evident necessity of applying these Principles and Code to control public administration through its bodies, institutions and employees is perfectly connected to the democratic ideals and form of government on which the European Union is founded, in contrast to autocratic regimes which do not prescribe and, in particular, do not apply such mechanisms in order to avoid undergoing any kind of control.

The notion of mismanagement pertains to administrative practices which

⁸ n.b.: The draft for the Code of Good Administration was prepared by the European Ombudsman, Nikeforos Diamantouros, submitted as part of his Annual Report and was subsequently ratified by the European Parliament.

⁹ M. Stasinopoulos "Courses in Administrative Law", 1957, pp. 114, and footnote references therein

¹⁰ D. Kontogiorga-Theocharopoulou, "The Ombudsman in Comparative Law", Proceedings of the Panteion University Department of Public Administration entitled "The [Greek] Citizen's Advocate (National Ombudsman) and the European Ombudsman, Activities and Prospects", 14 June, 2013, p.2; see also: D.

Kontogiorga-Theocharopoulou, "General Principles of the Institution of Ombudsman", Armenopoulos Magazine, 1969, pp. 803

violate applicable law or conflict with the general Principles of Administrative Law and, in the best case, result in misinformation or, worse, in the violation of the rights of citizens, given that in such circumstances the treatment of citizens in similar situations may be rendered inequitable, besides causing inconvenience through the misbehaviour of officials or employees towards citizens.

The intermediary role of the Ombudsman at large, and that of the European Ombudsman specifically, is not limited to merely reviewing the formal legality of administrative action taken by bodies or institutions whensoever these aim to protect the rights of citizens, nor simply in examining whether the outcome of their implementation of existing legislation in the course of such activity as part of their duties is fair or unfair, but entails grounded consideration of matters beyond inane or blind and strict legality, through the application of the fundamental Principles of Good Administration and Code, in order to ensure truly genuine and effective justice concerning citizen-administration transaction, where the formalities give way to a more just and ethical solution for the affected citizen and all citizens thereafter.

It is under such light that the role of the scope and vision of the institution of European Ombudsman, aided and guided by the Principles of Good Administration and Code of Good Administrative behaviour as well as all extant EU Law, is worth examining in depth.

THE INSTITUTIONAL AND LEGISLATIVE FRAMEWORK OF “OMBUDSMAN”

Most research on the institution and notion of “Ombudsman” underlines not only that it operates in all EU member-states in more or less the same way, but that it also is a very important factor for the alignment of EU Member-States administrative policy with the European vision and, hence, aiding in their harmonization with EU values. This is why most research also points out that there are specific common features that distinguish the institution of Ombudsman in relation to other administrative institutions or bodies, especially given that an Ombudsman operates under the rule of Law for the protection of EU citizens’ rights as well as human rights, but also for maintaining Good Administration.

In short, the institution of Ombudsman at large stands for an independent

and flexible body, personified in a sole figure, whom citizens can directly address in order to receive free and expedient aid with regard to protecting their legal rights from arbitrary public administrative activity or maladministration. Based on the Treaty of the Functioning in the European Union, an interpretive summary of the most crucial characteristics of the Ombudsman is provided below¹¹.

The key characteristics of an Ombudsman (and the European Ombudsman)

- a) The Ombudsman is a public figure with increased prestige, integrity and high qualifications who is capable to achieve the important tasks assigned to him or her independently and successfully. In addition, the Ombudsman is the recipient of widespread acceptance and, for this reason, the choice of Ombudsman is normally made by the Parliament and, in most cases depending on the state and type of Ombudsman, requires unanimity or at least increased majority.
- b) The Ombudsman's duties are governed by functional and personal independence and he or she is not subject to supervision or control by government institutions or administrative authorities. In exercising his or her duties, the Ombudsman is only bound by the Constitution and Laws of the state and the European Union and not by orders and instructions of legislative or executive powers.
- c) During the tenure of Ombudsman, any other engagement in occupation or duties in other bodies, institutions, organizations or entrepreneurial association is suspended and forbidden in order to further ensure the Ombudsman's personal independence and impartiality.

To be continued...

¹¹ Summarized as per consolidated 2008, 2011 Art. 228 et seq. of the Treaty of the Functioning of the EU Union; Official Journal of the European Union C. 115/47