

Gabriele Kucsko-Stadlmayer (ed.)

# European Ombudsman- Institutions



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A comparative legal analysis regarding  
the multifaceted realisation of an idea

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## Preface from the Editor

The present survey comprises the results of a research project carried out at the University of Vienna between September 2005 and October 2007 under the direction of the editor and supported by the Austrian National Bank, the *Volksanwaltschaft* of the Austrian Republic and the International Ombudsman Institute. This project aimed to comprehensively demonstrate the legal basis of parliamentary ombudsman institutions throughout Europe, analysing them in a comparative way and thereby revealing their organisational and functional diversity. It was also intended to provide an incentive for the discussion of the legal political enhancement of such institutions.

This book starts with the comparative legal analysis, followed by forty-nine reports on the ombudsmen of the different European States as well as the European Ombudsman. The reports pursue a uniform scheme of structure to ensure the comparability of information on the various institutions. They were each based on the relevant constitution or statutory act, the responses to the questionnaires which were sent out in the course of the project, as well as the information resulting from the activity reports. This research had to contend with limitations of differences in style and technique of the various legal frameworks and the extensive reliance on translations (into English or French); furthermore, not all the questionnaires were fully completed. Some problems, though by no means all, were resolved by directly contacting employees of the particular institution.

Sincere thanks are given to all persons who contributed to the success of this research project and its publication. Particular thanks are due to Dr. Peter Kostelka, Ombudsman of the Austrian Republic and European Chairman of the International Ombudsman Institute, who initiated and facilitated this project as an essential contribution to the dialogue between institutions and enriched it by his contacts. Dr. Michael Maurer, Secretary of the IOI Europe, provided useful functional and organisational assistance. Important information has also been obtained thanks to the incumbent ombudsmen, particularly the participants of the European Ombudsman conference, which took place in the Parliament in Vienna between the 11th and 13th of June 2006. Special thanks also go to the Austrian National Bank for the financing of this project and the Austrian Federal Ministry of Science and Research for the financial contribution to this publication.

In addition, I would like to thank Mag. Denise Pflug and Stefanie Kucsko BSc, who translated the comparative legal analysis into English.

*Gabriele Kucsko-Stadlmayer*

# List of Abbreviations

A	Austria
A-Tir	Austria-Tirol
A-Vor	Austria-Vorarlberg
AL	Albania
AM	Armenia
AND	Andorra
Appl	Application (of the European Convention of Human Rights) [Year/Number]
Art	Article
AZ	Azerbaijan
B	Belgium
B-Gent	Belgium-Ghent
B-Wal	Belgium-Wallonia
B-Fla	Belgium-Flanders
BIH	Bosnia and Herzegovina
BIH-Srp	Bosnia and Herzegovina Republic of Srpska
BG	Bulgaria
Cf	confer
CH	Switzerland
CH-StZ	Switzerland-City of Zurich
CH-KaZ	Switzerland-Canton of Zurich
CH-BaLa	Switzerland-Basel Landscape
CH-BaSt	Switzerland-Basel City
Const	Constitution
CY	Cyprus
CZ	Czech Republic
D	Germany
D-Rhe	Germany-Rhineland Palatinate
DK	Denmark
Doc	document
ed	editor
E	Spain
E-Kat	Spain-Catalonia
E-And	Spain-Andalusia
ECHR	European Court of Human Rights
ECHR	European Convention of Human Rights
e.g.	for example (lat.: ' <i>exempli gratia</i> ')
esp.	especially
et al.	et altera
EST	Estonia
EU	European Union
EUGRZ	Europäische Grundrechte Zeitschrift

f/ff	and the following
F	France
FIN	Finland
FL	Liechtenstein
FN	footnote
GB	United Kingdom of Great Britain and Northern Ireland
GB-Gib	United Kingdom-Gibraltar
GB-Sch	United Kingdom-Scotland
GB-W	United Kingdom-Wales
GE	Georgia
GP	Gesetzgebungsperiode/Period of Legislation of the Austrian National Assembly
GR	Greece
H	Hungary
HR	Croatia
I	Italy
I-Aos	Italy-Aosta Valley
I-Bas	Italy-Basilicata
I-Lom	Italy-Lombardy
I-Süd	Italy-South Tyrol
IBA	International Bar Association
IL	Israel
IRL	Ireland
IS	Iceland
IOI	International Ombudsman Institute
JORF	Journal Officiel de la République Française ‘Lois et Décrets’
KS	Kyrgyzstan
KZ	Kazakhstan
L	Luxembourg
LT	Lithuania
LV	Latvia
M	Malta
MD	Republic of Moldova
MK	Former Yugoslavian Republic of Macedonia (FYR Macedonia)
MNE	Montenegro
N	Norway
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institutions
NL	Netherlands
NL-Ams	Netherlands-Amsterdam
No	Number
OA	Ombudsman Act

OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE	Organisation for Security and Cooperation in Europe (until 1992 CSCE)
p.	page
P	Portugal
PL	Poland
Q I	Questionnaire 1
Q II	Questionnaire 2
Q III	Questionnaire 3
RO	Romania
RUS	Russian Federation
rc	recital
S	Sweden
Ser.	Series
SK	Slovakia
SLO	Slovenia
SRB	Serbia
SRB-Kos	Serbia-Kosovo
SRB-Voj	Serbia-Vojvodina
Tab.	Table
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
UA	Ukraine
UN	United Nations
UZ	Uzbekistan



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# Part One: The Legal Structures of Ombudsman-Institutions in Europe – Legal Comparative Analysis

*Gabriele Kucsko-Stadlmayer*

## Chapter 1: Introduction

### 1. The Significance of the “Ombudsman” Concept

The notion of “ombudsman” spread continuously throughout the world in the course of the 20th century.<sup>1</sup> The constitutional concept of independent, easily accessible and “soft” control of public administration through highly reputable persons is nowadays inextricably linked to the principles of democracy and the rule of law, as it is an essential contribution to the efficiency of those principles.<sup>2</sup> Its increasing significance for the protection of human rights and the liability of administration is recognised worldwide.<sup>3</sup> Ombudsman-institutions are nowadays inherent in all kinds of legal orders.<sup>4</sup>

In Europe, the concept developed with immense dynamism within the last century. The first independent ombudsman-institution was established in Sweden in 1809.<sup>5</sup> It was to remain the only one for a long time. In 1919, Finland adopted the ombudsman idea in a republican constitution for the first time. Nevertheless it was Denmark which initiated its increasing popularity and, by creating a new legal structure, became a role model for its further development. In 1963, this legal structure was adopted by Norway and in 1967 by the United Kingdom.<sup>6</sup> Soon the idea spread rapidly throughout

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<sup>1</sup> The International Ombudsman Institute of the University of Alberta, Edmonton, Canada, today represents ombudsmen in 125 different national legal systems. In 1976 there were only 38.

<sup>2</sup> Cf *Mauerner*, Die parlamentarischen Ombudsmann-Einrichtungen in den Mitgliedstaaten des Europarates, in Matscher (Hrsg), Ombudsmann in Europa. Institutioneller Vergleich, 1994, 123.

<sup>3</sup> Cf *Reif*, The Ombudsman, Good Governance and the International Human Rights System, 2004, 55, 81; *Robertson*, National Government and the Ombudsman, in Reif (ed), The Ombudsman Concept, 1995, 105.

<sup>4</sup> Cf the comprehensive illustration of *Hossain/Besselink* (ed), Human Rights Commissions and Ombudsman Offices. National Experiences throughout the World, 2000.

<sup>5</sup> Cf with respect to the appointment of an “ombudsman” by the Swedish King Karl XII in 1713 *Gellborn*, Ombudsmen and Others. Citizens’ Protectors in Nine Countries, 1966, 194 ff. This institution later on was renamed to Chancellor of Justice.

<sup>6</sup> The first state of the British Commonwealth to appoint an ombudsman was New Zealand in 1962.



Europe. The collapse of totalitarianism in Portugal, Spain, Greece, as well as Central and Eastern Europe and the resulting process of democratisation provided new incentives for the idea of the ombudsman. By combining the basic concepts of both the rule of law and human rights the figure of the ombudsman was lifted up to a new level. As a reaction to the entry of new states into the Council of Europe many new institutions were brought to life. Three major climaxes concerning the dispersion of this concept can be documented throughout the process (Tab. 3).<sup>7</sup>

Currently, 25 out of the 27 EU member states have established national ombudsman-institutions.<sup>8</sup> The remaining two states<sup>9</sup> have such institutions in the regional domain. Even the European Union has established such an institution: the European Ombudsman.<sup>10</sup> At the level of the Council of Europe, 45 out of a total of 47 member states have installed national or at least regional ombudsmen.<sup>11</sup> Even on an international scale this represents a high percentage: 40.62% of the states represented in the International Ombudsman Institute are members of the Council of Europe.

This impressive dispersion throughout Europe has prompted great eagerness to compare the different legal structures across countries. Throughout its development the idea of the ombudsman has not only shown a large distribution, but also a significant typological diversity: Swedish and Finnish ombudsman-institutions aim to control the entire executive branch, even the jurisdiction, and they are empowered to impeach judges and public servants. Danish and Norwegian institutions have limited authority and can therefore only control administration through “soft” sanctions such as recommendations and reports. These so-called “soft sanctions” aim primarily to provide quick, flexible and economical action, in order to minimise the individual’s feeling of “paralysation” vis-à-vis overpowering bureaucratic organisations within the state.<sup>12</sup> Thus there is no autonomous “Scandinavian system” as such. In Southern, Central and Eastern European states, however, the ombudsmen have been empowered with new authority, as they were installed for the purpose of promoting democratisation and the effective implementation of the European Convention of Human Rights (ECHR). According to their authorisation, these ombudsmen were officially designated as “human

<sup>7</sup> In a worldwide context *Gregory/Giddings*, *Righting Wrongs*, refer to two cycles which they set in relation to the older and the newer democracies.

<sup>8</sup> Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, Spain, Czech Republic, Hungary, United Kingdom, Cyprus. In half of these states ombudsman-institutions were only established after the European Ombudsman in 1992.

<sup>9</sup> Germany and Italy.

<sup>10</sup> This happened in 1993 by introduction of Art 195 TEC; to its origins of The European Ombudsman. Origins, Establishment, Evolution, Office for Official Publications of the European Communities, 2005.

<sup>11</sup> No such institutions are inherent in Monaco and San Marino.

<sup>12</sup> Cf *Oosting*, *Essential Elements of Ombudsmanship*, in Reif (ed), *Ombudsmen Concept*, 14.