

Speech of the European Ombudsman -Mediation: What future?

Speech

Mr Médiateur de la République !

Ladies and gentlemen !

The 25th anniversary of one of the most interesting and impressing Ombudsman institutions in the world is a good occasion to make some reflections on the future of the Ombudsman concept. This idea seems to be the most successful constitutional project in the modern world. It symbolizes the rule of law and the respect of fundamental freedoms and human rights in the modern states.

In the past decades, it has been introduced successfully in Latin America, Africa, Asia and Eastern Europe. Even two countries within the European Union, Greece and Belgium have established Ombudsmen on the national level.

As an ex-Parliamentary Ombudsman of Finland, with a long tradition of such an Ombudsman institution, I would like to start with some observations on its historical roots. In Sweden, there was a high lawyer at the King's Court dealing with the complaints addressed to the King concerning abuse of power or malpractice by his administrations. In a constitutional reform of 1809, the legislative power called "Ständerna" overtook the election of that high official and declared that this high official would now be called the Parliamentary Ombudsman and would thereby be independent from the King, his government and his administration. The Parliament also underlined that the Ombudsman should also be independent from the Parliament in exercising his functions. That was when the Parliamentary Ombudsman institution was born. When Finland gained independence, it introduced the same institution in its 1919 constitution.

In these two countries, the Parliament elects a highly respected lawyer to supervise, with a constitutional mandate, the public authorities including the judiciary, to ensure that they exercise their duties in accordance with the law. The Ombudsman also has the obligation to regularly inspect all closed public institutions such as prisons, closed mental hospitals or military barracks to make sure that the interns and the conscripts are treated according to the law and the international human rights treaties.

In this system, every citizen has the right to complain to the Ombudsman and the Ombudsman



has the right to start own initiative investigations. The Ombudsman furthermore has the right to prosecute or decide on the prosecution of a civil servant before the courts. One could call this Ombudsman concept the "classical Ombudsman".

After the establishment of the institutions in Sweden and Finland it wasn't until 1953 that Denmark and until 1962 that Norway followed the example. The Ombudsman institution established in Denmark is a lighter and more flexible model than its predecessors. Its remit is more restricted, the judiciary, for example, is excluded. There is no obligation to regularly inspect closed institutions nor is there any right to prosecute or decide on prosecution. One could say that the Danish Ombudsman has a more conciliatory role than the classical Ombudsman. He can argue recommend and report to undo instances of maladministration and raise the quality of the public administration, but nothing more. His profile is much less repressive than the classical Ombudsman institution. One could call the Danish concept the modern Ombudsman. It has been the basic model for most of the Ombudsman institutions in the world.

Today, there are many versions of the Ombudsman. Each country that creates an Ombudsman institution has the right to establish its own system and the sovereignty of each state must be respected. However, looking at the wide range of institutions lately established using the title Ombudsman, everybody should understand that an international definition of the basic requirements for a trustworthy Ombudsman institution is needed. Such a definition would prevent the watering down of this important concept or the misuse of it by authoritarian governments. This initiative could also play an important role in introducing new elements to more traditional institutions.

The French institution has brought new positive aspects to the development of the Ombudsman concept. The first one is the seeking for equity which is the very substance of the mediation. It helps soften the negative consequences related to the rigid implementation of law and allows the finding of friendly solutions. The other specificity, introduced by the institution we celebrate today, is the establishment of regional delegates who partially work on a volunteer basis. This has considerably enhanced the relationship between the administration and the citizens and has enabled to solve problems rapidly and with low costs. These two novelties have given the Ombudsman family a more human and social dimension. They could be more widely introduced in the general concept of the Ombudsman and even the classical institutions could benefit from them.

Mr Médiateur de la République,

The obligations of international conventions have progressively entered the very work of the Ombudsmen. Many countries have introduced the international conventions in their national law. This development has meant that the Ombudsmen have gradually become protectors of human rights as they have been given the responsibility to supervise the human rights set up in these conventions. This has usually been welcomed by the acting Ombudsmen as an encouraging progress in their daily work for the citizens. In Europe, the Round Tables organized by the Council of Europe every other year have helped the participating Ombudsmen familiarize



themselves with the necessary knowledge to deal with their new obligations.

In a recent decision by the Court of Human rights of Strasbourg, the Parliamentary Ombudsman was recognized as a legal remedy (Case Raninen v. Finland 152/1996/771/972). From my point of view, this will once again raise the question of defining if the Ombudsmen in their activities in the human rights' field should be given a more formal position by the Council of Europe, thus giving them an international backing for their responsible work. As I see it, this is urgently needed especially for the Ombudsman institutions in the new Member States of the European Council.

The growing impact of international law in the life of citizens and in the activities of the Ombudsmen has also led to discussions on the international level and to the creation of international Ombudsmen institutions. From time to time, deliberations have started at the Council of Europe concerning the establishment of a "Human Rights' Commissioner" whose role would be to promote the implementation of Human Rights in the Member States.

In the 90s, the Council of Europe has adopted a high number of new Member States with quite disturbing problems in the Human Rights' field which can hardly be dealt with by traditional human rights' institutions. It has therefore been envisaged to create a "Human Rights Commissioner". During the Head of States' Summit which took place in Strasbourg in October 1997, this proposal was welcomed by the Member States and the Committee of Ministers was instructed to study the arrangements. So far, no practical results were published and the outcome still seems uncertain.

Personally, I do believe that it would be an urgent need to enhance the credibility of the work of the Council of Europe in the new Member States and to create new tools to achieve results in the Human Rights' field. A European Commissioner working closely and effectively with his colleagues and the other authorities in the Member States would surely be an important step forward. I would also like to stress that as a matter of principle the independence of the national offices must be maintained also in the relations with this international counterpart. For my part, I would welcome the possibility to cooperate with this new institution.

Within the European Union, an Ombudsman institution was established by the Maastricht Treaty. This Ombudsman's remit consists in the supervision of the activities of Community institutions and bodies with the purpose of detecting and undoing maladministration. Every European citizen has a right to complain to the Ombudsman of the European Union. As the European Ombudsman has received a number of complaints about the application of Community law on the national level, a flexible cooperation on an equal basis has been established between the national Ombudsmen and the European Ombudsman to promote the supervision of Community law on the national level. The attitude in this activity has been cooperative by all parties, but it will only be possible to evaluate after some time.

The new responsibilities included in the Amsterdam Treaty, especially as regards the right to asylum and the legal status of foreigners, may give this cooperation more substance. My firm opinion is that without this kind of cooperation, European citizens will not fully enjoy their rights



under Community law. I am therefore very grateful to the national Ombudsmen offices for being open to new initiatives and for taking part in a work within a new and broader context. My special thanks go to the Médiateur de la République, Mr Jacques Pelletier, for his kind collaboration in this domain.

This cooperation is very promising for the Ombudsman institution and proves that it is ready to meet new challenges to help the citizens enjoy their rights in an ever changing and complex society.

Thank you for your attention.