European Ombudsman

'The role of the Ombudsman in strengthening accountability and the rule of law', Speech by the European Ombudsman, Professor P. Nikiforos Diamandouros, at the Constitution Unit, University College London, London, 29 November 2005

Speech

1. Introduction

It is a great pleasure and an honour for me to address you here today, as part of my information visit to the United Kingdom. Since becoming European Ombudsman in April 2003, I have embarked on an ambitious programme of visits to the 25 Member States of the European Union and the candidate countries for EU membership, in order to inform citizens about the institution of the European Ombudsman and the service it can deliver to EU citizens, thus helping to ensure that all citizens who might need to avail of my institution's services know to whom they should turn. During each such visit, I have made sure to reach out to the academic community (Law, Political Science, Public Administration, Policy), which can have an important multiplier effect in helping to make the European Ombudsman in particular, and ombudsmanship more generally, better known and understood.

It is a particular pleasure for me to be delivering this lecture at the invitation of the Constitution Unit of UCL's School of Public Policy. For most of my professional career I have worked in the academic milieu, specialising in the field of comparative politics and, specifically, in issues relating to democratisation, state and nation-building, and the relationship between culture and politics with emphasis on Europe. I'm sure that none of you will be at all surprised when I confess that constitutional issues have, for several decades, held a particular fascination for me.

I would therefore like to thank Professor Hazell for affording me the opportunity to wear my academic hat, at least figuratively, and to share with you some reflections concerning "The role of the Ombudsman in strengthening accountability and the rule of law".

My thoughts on this topic stem from my experience as an academic, as someone who has worked extensively in administration, and as an ombudsman - initially as the founding National Ombudsman of Greece and, since April 2003, as European Ombudsman.

2. A brief history of ombudsmanship

Before proceeding to the core theme of my lecture, it could be useful to outline the function, characteristics and evolution of ombudsmanship. I am conscious that, in the United Kingdom, the term 'ombudsman' is widely used to describe any form of complaint-handler. In this sense, there is a wide array of ombudsman schemes existing in this country, in both the public and private sectors, so that most of you will already have come across the concept of ombudsmanship in both your private and your academic lives. From the financial sector to local government and from the removals industry to the prisons and probation service, ombudsman-type institutions have sprung up in a great many spheres in this country. For the purposes of today's presentation, however, I will limit my analysis to public sector ombudsman schemes.

The basic function of an ombudsman is to investigate and report on complaints against public authorities. Unlike a court, an ombudsman normally has no power to make legally binding decisions. Where the rule of law and democracy are strong, the absence of binding decisions is not a problem because the public authorities have an incentive voluntarily to follow an ombudsman's recommendations. To introduce a theme that I will develop in detail later, it is not as evident as people often assume that democracy and the rule of law always co-exist. But where they do, the non-binding nature of decisions is, paradoxically, a strength rather than a weakness, as it allows an ombudsman's procedures to be more flexible than court proceedings. Ombudsmen can also act relatively quickly and cheaply, and there is normally no cost to the complainant.

Flexibility of procedures is well illustrated by a case from the UK concerning access to documents (*3381/2004/TN*) which was decided this year. An association called RATS ("Residents Against Toxic Site"), made an unsuccessful "Article 226" complaint to the Commission concerning a landfill site near their homes.

(Let me make a brief excursus to explain for the benefit of those who are not versed in euro-jargon that Article 226 is the provision of the European Community Treaty which gives the European Commission power to enforce Community law against Member States. In this role, the Commission is sometimes known as the "guardian of the Treaty", another piece of euro-jargon, which I shall use again later in the lecture).

Now, to return to our RATS, they asked the Commission for access to the documents in their case. Since their confirmatory application for access received no answer, they complained to me. As well as following the normal inquiry procedure by asking the Commission for an opinion on the complaint, I also wrote to the UK Permanent Representation to the EU to inquire whether the UK authorities would object to the release of the documents. The outcome was that the Commission released to the complainants, in full, both its own letters to the UK and the UK's replies.

The advantages of a no-cost service are illustrated by another case that I closed this year (*2111/2002/(BB)MF*) in which I was able to obtain the final payment due to an academic under a

“Marie Curie” fellowship, as well as compensation of about 600 euros for the delay by the European Commission in dealing with the matter. Given that the amounts involved were relatively small, court proceedings would not have made economic sense for the complainant. The Commission paid up rapidly once the complaint to the Ombudsman had been made and it also agreed to my suggestion of compensation in order to achieve a friendly solution. This satisfied the complainant, who had felt powerless in dealing with the Commission alone. The result was thus not only financial redress, but also a useful contribution to improving relations between citizens and the European institutions.

These cases not only illustrate the kind of work that an Ombudsman can do, but also hint at its complementary nature vis-à-vis the role of the courts; a subject to which I shall return in more depth later in my lecture.

The first ombudsman was established in Sweden in 1809 to check the legality of public officials' behaviour. During the next century and a half, just two more countries established ombudsmen with general competence: Finland in 1919 and Denmark in 1955. In the 1960s and early 70s, there was a first wave of global expansion to older democracies such as Norway, New Zealand, the UK and France. These countries adopted the ombudsman in order to tackle citizens' problems with public administration, which expanded and took on new roles in the 20th Century, especially after the Second World War, as the social role of the State grew exponentially.

The UK's Parliamentary Commissioner for Administration, with whom I co-operate very closely, has been in existence for almost 40 years, with the first Ombudsman, Sir Edmund Compton, having taken office in 1967. The current Ombudsman, Ann Abraham, is the eighth incumbent, and has held the post since 2002.

One of the reasons for my close co-operation, through the European Network of Ombudsmen, with national, regional and local ombudsmen is that almost 75% of all complaints submitted to me fall outside my remit, which is the European Community Institutions and bodies. By working closely with my ombudsman colleagues and knowing their respective mandates, I am able to ensure that citizens can, in most cases, be directed to the body best able to help them with their grievances. Since the start of last year, I have advised almost 50 complainants to turn to the UK's Parliamentary Ombudsman and many others to contact the Scottish, Welsh, Northern Irish and Local Government Ombudsmen.

A few moments ago, I mentioned the first wave of global expansion of the ombudsman institution. In two subsequent waves, ombudsmen were established in many newer democracies as part of a commitment to respect human rights and the principle of democracy: Between 1974 and 1989, this occurred in post-authoritarian states, such as Greece, Spain and Portugal in Europe and in many countries of Latin America. After 1989, many post-communist states set up ombudsmen.

The situation in the European Union is that we have the world’s oldest national ombudsman office (Sweden) and one of the youngest (Luxembourg).

My own institution is a relative latecomer, the first European Ombudsman having taken office only in September 1995. This autumn has therefore seen the European Ombudsman reach the important milestone of its tenth anniversary, which has been marked by a series of events involving all our key interlocutors. Over the past ten years, the European Ombudsman has handled over 20,000 complaints and helped countless more citizens by answering their requests for information. Although the proportion of complaints received from the United Kingdom is relatively low compared to population (about 5% of overall complaints compared to 13% of the EU population), the quality of complaints received from the UK is generally high, indicating that UK citizens are both well informed of their rights and how to exercise them and understand the role of ombudsmen - surely thanks to the rich diversity of such non-judicial means of redress available in this country.

Through the European Network of Ombudsmen, I co-operate closely with ombudsmen in all the Member States, at either national or regional level, and in some countries, such as the UK, at both levels. As I have already mentioned, the Network helps ensure that complaints are rapidly directed to the competent ombudsman. It also facilitates mutual learning, benchmarking as regards best practice and exchange of information about developments in European law.

To give an example of fruitful co-operation the possibility to exchange information between members of the Network was used to great benefit this year in dealing with a series of complaints from Spain against the Commission regarding a supposed threat from an EC Directive to the free lending of books by public libraries. Thanks to the Network's electronic discussion forum, which my office hosts for use by ombudsmen throughout Europe, I was able to ascertain how this Directive had been implemented in many of the 25 Member States. This information proved to be of great value in clarifying the range of possibilities for implementation of the Directive and was thus useful both for my own inquiry and for a parallel inquiry carried out by the Spanish national Ombudsman on the basis of complaints against the Spanish authorities about the same issue.

3. The development of democracy and the rule of law

Having provided a little background on the global development of ombudsmanship and the practical work of an ombudsman, let me now return to the main theme of my lecture today, which will focus on linking the institution of the ombudsman to two central political-institutional parameters that directly affect its capacity to serve citizens and to contribute to their ability better to enjoy their rights: rule of law and democracy. My argument, simply put, will be that the particular temporal sequence in which rule of law and democracy are introduced in a given society and country will directly affect the political and institutional environment within which the ombudsman can operate. More specifically, I wish to argue that where rule of law precedes democracy, the resulting politico-institutional and cultural environment will be more hospitable to the fuller actualisation of the ombudsman's potential and more conducive to its serving as a mechanism contributing to the substantive empowerment of citizens. Conversely, the reverse sequence, where the introduction of democracy either precedes that of the rule of law or even coincides with it, constitutes a suboptimal option from the point of view of citizens'

empowerment through the enjoyment of their rights.

Allow me to develop my argument more systematically.

To begin with, let me emphasise what should be obvious: even though, in contemporary European legal culture, rule of law and democracy are thought of as forming an inseparable and, so to speak, natural pair, they are clearly separable and analytically distinct.

Rule of law describes a condition in which all members of society live under the law, and where no one can operate outside or above the law. Its historical origins derive from European feudalism, and, more specifically, from the tight and complex nexus of reciprocal rights and obligations which, over time, issued from the contractual relations linking lord and vassal together. Flowing directly from such a situation is the additional principle that, under the rule of law, every person is subject to ordinary law and not to extraordinary or exceptional arrangements. A crucial condition relating to the generation of the rule of law and underpinning its existence is that its general principles are necessarily the product of judicial decisions, in other words, that the courts constitute the foundation upon which the rule of law is built and on which its development and evolution depends. Finally, to confine myself to very basic attributes, rule of law by definition implies the absence of the arbitrary exercise of power, captured so elegantly by the Latin maxim "Quod principi placuit, legis habet vigorem" (what pleases the prince has the power of law), which, by assigning paramount value to the ruler's pleasure, served for a long time as the intellectual justification and underpinning for absolute government.

A further dimension associated with the rule of law is that, under conditions characterised by its acceptance, the constitution of the state is effected on the basis of what Max Weber described as "legal-rational" rules, which serve as the legal foundation of power and of the state.

Finally, the evolution of the rule of law has, over time, resulted in social and political arrangements, whose distinctive characteristic is that the relationship between rulers and ruled is not direct and immediate, but is rather mediated by structures or institutions enjoying legal recognition and authority, placing effective limits on the power exercised by the ruler. This characteristic of the rule of law and of the pattern of mediated exercise of power that it is associated with was astutely captured and extensively analysed by Montesquieu in his Spirit of the Laws , under the apt term "corps intermédiaires". (*NB: 2005 marks the 250th anniversary of his death*)

In contrast to the rule of law's more ancient pedigree, democracy, in its modern manifestation, is a much more recent phenomenon that is inextricably linked to the political and socio-economic upheavals that shook the European Continent and the American colonies in the "long century" beginning in the last quarter of the 18th century. Associated with the gradual expansion of the right of suffrage to an ever increasing number of subjects turned citizens, democracy nowadays enjoys undisputed legitimacy not only throughout Europe, but among the overwhelming majority of states around the world.

I will not trouble you with various definitions of democracy, many of which tend to be very long

and elaborate. Rather, implicitly inclining towards a minimalist conceptualisation, I will confine myself to identifying some of the basic attributes of democracy that serve as fundamental preconditions for its legitimacy and effectiveness. In my mind, these include (a) the capacity to allow for free and fair elections, (b) the existence of more than one legal party having the right freely to contest an election, and (c) the absence of what political scientists call "veto groups", capable of effectively interfering with the democratic process and of, in one way or another, subverting or voiding decisions taken by the voters. Traditional examples of such veto groups are the monarchy, the armed forces, or other parts of the state apparatus unwilling to accept the popular verdict of an election as legitimate and final.

It follows from what I have just said that democracy cannot be simply equated to parliamentary institutions or to the mere holding of elections. The existence of the former in many parts of the world today, and in many parts of Europe in the past, did not ensure that the conditions outlined above as characteristics of democracy were adequately met. At the same time, even a cursory look around the world will provide ample evidence to support the view that the conditions under which elections are held in many countries do not meet the criteria of fairness, contestation and absence of veto groups outlined above. Rather than democracies, these can, as the Stanford University political scientist Terry Karl has suggested, better be thought of as "electoral regimes", whose capacity to abide by the requisites of democracy is still quite limited.

Let me, finally, make an additional and, in certain ways, more complicated point, which has to do with the relationship between democracy and the legitimacy of the state. To put it simply, acceptance of the legitimacy of the state in the eyes of its citizens constitutes a prior condition for the smooth operation of democracy. In fact, I would take this proposition one step further and argue that if the state is not perceived as legitimate, then the democratic process cannot rectify this problem. This observation serves to clarify an important point of high salience for our discussion. It highlights an essential distinction between rule of law and democracy, by pointing to the fact that the majoritarian logic driving the democratic process cannot, a priori , be used as an instrument for settling issues pertaining to the primacy of the rule of law. To give but one example to which I will come back later and which has direct relevance to political problems facing a number of more recent European democracies: the democratic process, in other words the majoritarian principle, cannot be made use of to resolve issues relating to the defence of human rights, including the rights of minorities.

As I have already indicated, democracy has, in its short modern existence, assumed many forms and varieties. Much depends on which principle or attribute one chooses to use as a criterion for classification. As a result, we can variably speak of parliamentary, presidential, or semi-presidential democracies, the latter being used in reference to the type installed in France under the Fifth Republic; alternatively, we can think of democracies as majoritarian or consensual; or as republics as opposed to constitutional monarchies.

If we were to move our examination to the level of abstract principles informing democracy, I would argue that equality and liberty, two of the most powerful intellectual legacies of the Enlightenment and of the political revolutions these gave rise to, serve as a solid foundation upon which all modern democracies have been constructed. The relative balance between

these two principles built into constitutional formulae and resulting institutional arrangements allows us to distinguish between two variants of modern democracy which have a particular bearing on contemporary political and intellectual debates concerning both democracy and, especially, the quality of democracy in the European Union and beyond.

The first variant, which derives its roots from the Jacobin legacy of the French Revolution, privileges equality as the fundamental organisational principle of democracy. Its attractiveness lies in the elegance issuing from its simplicity. According to this conceptualisation of democracy, shorn to its essentials, the sovereign people constitute the sole source of power, whose sole institutional expression is (a mostly unicameral) parliament. In majoritarian systems capable of producing single party cabinets, the majority party constitutes the natural and logical sole expression of popular sovereignty and, as such, exercises power on behalf of the sovereign people.

Notwithstanding the obvious advantages of such an egalitarian conceptualisation of democracy, its major drawback, deriving directly from its preoccupation with equality as its major, if not sole, organisational principle, is that it is driven by what I would describe as a "unidimensional" logic geared to privileging homogeneity over diversity. Pushed to its logical extremes, such an emphasis on homogeneity so intimately linked to equality risks generating a flattening dynamic capable of imparting a dimension of "levelling egalitarianism" to the democracy associated with such a unidimensional logic. In turn, such a conceptualisation of democracy raises serious concerns relating to the observance of the rule of law and the respect for the enjoyment of rights and obligations linked to it.

The alternative variant, which, I hasten to add, seems to be drawing growing attention in recent decades as an increasingly attractive paradigm to emulate, is characterised by the systematic search for the construction of institutional arrangements capable of embodying various combinations of the principles of equality and liberty. Driving this conceptualisation of democracy is a pluralist logic, whose overriding preoccupation is the search for an optimal balance between institutions alternatively expressive of egalitarian and libertarian principles. Such an overarching balance, which, for its crystallisation, consolidation and entrenchment over time, relies on the generation of a dense network of institutional checks and balances or counterweights, provides better conditions for the observance of the rule of law and for the quality of democracy.

4. The ombudsman as a key player in democracies governed by the rule of law

It is therefore not accidental that it is in democracies that most approximate this variant that the role of the judiciary as the fountainhead of the rule of law is most developed and respected and acceptance of the ombudsman as a quintessential example of such a counterweight enjoys greatest legitimacy. I note that the institution of the ombudsman, whose global history I touched on earlier in my presentation, now exists at the national level in 23 of the 25 Members States in the European Union and is intimately identified with norms and practices geared to the

promotion of the quality of democracy and respect of the rule of law. In the two EU Member States where there is no national ombudsman - Germany and Italy - the ombudsman exists at the regional and local levels and indeed we can say that the Committee on Petitions of the *Bundestag* fulfils a similar role to that of a national ombudsman and, indeed, is a member of the International Ombudsman Institute.

I would like at this point to refer to a recent Special Report of the European Ombudsman that is directly relevant to the Ombudsman's role in promoting the quality of democracy. The issuing of a Special Report is the European Ombudsman's ultimate weapon, which is used with discretion when there is a serious, and potentially systemic, case of maladministration and the Ombudsman's attempt to persuade the Institution or body concerned to remedy the situation is unsuccessful. The Special Report in question followed my inquiry into a complaint received from a German MEP and the youth group of a German political party. The complaint was against the Council of the European Union and concerned the Council's failure to meet in public whenever it acts in a legislative capacity . At the end of my inquiry, I took the view that Article 1 (2) of the Treaty on European Union establishes a general principle that the Council and the other Community institutions and bodies must take decisions "as openly as possible" and that the Council's own past actions showed that steps to increase the transparency of its legislative activity had to be taken, and could be taken, under the existing Treaties and Community law as it presently stands. My inquiry gave the Council the opportunity to submit reasons as to why it would be unable to amend its Rules of Procedure with a view to opening up the relevant meetings to the public, but it failed to do so.

Having submitted my Special Report to the European Parliament on 4 October, I remain hopeful that the British Government will take the initiative during the final weeks of its Presidency to increase the transparency of the Council's legislative activity.

This case, like others that I have mentioned earlier, illustrates the distinct but complementary roles played by the courts and the ombudsman. Let me briefly elaborate this point before returning to the relationship between democracy and the rule of law. To begin with, it is important to emphasise that, the defence and promotion of the rule of law constitute a common ground on which the roles of courts and ombudsmen overlap. Furthermore, both institutions stand outside the machinery of public administration and act as independent mechanisms for its control and accountability. They are, nevertheless, distinct in two very clear ways.

I have already alluded earlier in this lecture to the first of these two distinctions: the courts, as the only authoritative interpreters of the law, are alone equipped with the right to issue binding decisions and, its logical concomitant, to impose sanctions. By contrast, ombudsmen, while guided by the decisions and the case law of the courts, can only issue non-binding recommendations to the institutions of the state (public administration, public utilities, etc.) falling within their remit. The second distinction is that, while for the courts the major realm of activity and concern is to ensure adherence to legality on the part of state and citizens, for the ombudsman the equivalent realm is the promotion of good administration and the avoidance of maladministration. To be sure, as the case law of virtually all countries where rule of law and democracy are well entrenched amply demonstrates, legality and maladministration overlap. On

the other hand, maladministration, defined as an open-ended concept describing a situation where a public body fails to act in accordance with a rule or principle that is binding on it, extends beyond legality and also encompasses the assumption that, in their daily dealings with the public, public administrations need to observe norms and rules of behaviour designed to ensure that citizens (and, more generally, users) are properly treated and enjoy their rights fully.

Put otherwise, while illegality necessarily implies maladministration, maladministration does not automatically entail illegality, so that, for example, a finding by the Ombudsman of maladministration based on violation of the Charter of Fundamental Rights of the European Union (which is not yet legally binding as such) does not automatically imply that there is illegal behaviour that could be sanctioned by a court. One might also note that a code of good administrative behaviour may contain provisions, such as, for example, the obligation of civil servants to be courteous that may not be easily enforceable through judicial proceedings.

Viewed from this perspective, courts and ombudsmen perform and fulfil distinct but complementary roles in modern democratic regimes, where the rule of law is respected and observed. Rather than lead to unnecessary duplication, as some would aver, they serve as institutions capable of providing citizens and users of public services with a clear choice as to how they may exercise their fundamental right to redress. The deliberate provision of choice, and hence of the opportunity to opt between alternative avenues of redress, constitutes a distinct feature of the second, pluralist, variant of democracy that I discussed earlier in this lecture. In turn, the capacity to provide citizens with choice serves to enrich the range of "products" such a democracy can offer its citizens and, thus, enhances its quality.

Moreover, as the case concerning the openness of Council meetings illustrates, the Ombudsman provides citizens not only with an alternative remedy to defend their legal rights, but also with additional opportunities to make institutions accountable, in ways that go beyond their strict, legally enforceable, entitlements to redress as individuals. Whether or not one considers the principle of openness laid down in Article 1 (2) of the Treaty on European Union to be, in an abstract sense, legally binding on the Council, it is clear that none of the complainants would have had standing to bring the matter before a court. Similarly, the European Ombudsman provides complainants with opportunities to challenge the European Commission’s actions as “guardian of the Treaty”, which are in addition to their strict legal rights.

5. Rule of law and democracy: the importance of the developmental sequence

Let me now come to the final section of my presentation and pose the question of which combination of rule of law and democracy constitutes a more hospitable environment, enabling the ombudsman better to serve as an institutional counterweight capable of defending the rights of citizens, combating maladministration and protecting human rights. For the sake of clarity, I propose to identify two scenarios. In the first, which is more typical of more mature democracies, the introduction of the rule of law historically preceded democracy. In all such cases, the prior existence of the rule of law as the fundamental underpinning upon which a state

organised along legal-rational rules was erected made it easier to confront the inevitable tensions and occasional upheavals associated with the rise in popular participation linked to the introduction of democracy in each country.

In countries where such a sequence resulting in the positive articulation of rule of law and democracy obtained, the emergence of the ombudsman as an institution distinct from, but complementary to, the courts, capable of serving as a non-judicial mechanism of accountability geared to the enhancement of the rule of law and to the protection of citizens' rights was both much easier and much more effective. In turn, this complementarity offers citizens a broader range of choice when it came to deciding how best to exercise their rights, and, as such, contributes positively to the quality of democracy.

As I have already mentioned, the United Kingdom is one of the best examples of a mature democracy offering its citizens multiple options, both judicial and non-judicial, to which they can turn if they consider that their rights have not been fully respected. During my current visit to the United Kingdom, I have already met with representatives of several such mechanisms, including the Parliamentary Ombudsman, Ann Abraham and the Chairman of the Council on Tribunals, Lord Newton of Braintree. Later today I will meet with the Chair of the Public Administration Select Committee of the House of Commons, Tony Wright, MP, whose Committee is responsible for overseeing the work of the Parliamentary Ombudsman.

In the obverse scenario, where democracy is introduced in countries where the rule of law tradition is weak, fragile, or, in the worst of cases, simply lacking, the prospects for the ombudsman to serve as an effective mechanism of accountability and to contribute to the deepening of both rule of law and democracy are less bright. Where democracy cannot count on the norms and values associated with the culture of respect for reciprocal rights and obligations generated by the rule of law, and where, as a consequence, the courts cannot effectively serve as the cornerstone for the construction of a system of institutional checks and balances and of a dense network of counterweights, the power of the executive branch of government and, more generally, of the state can remain unrestrained. Such an environment is almost by definition inhospitable for the ombudsman institution and severely circumscribes its capacity to serve as an effective mechanism of accountability, capable of protecting the rights of citizens.

In such circumstances, the ombudsman is faced with the unenviable alternative of becoming marginalised and potentially ignored or, less frequently, of becoming burdened with unrealistic expectations concerning its role as a mechanism of control responsible for holding the executive branch of government accountable. This latter alternative, which is encountered in certain of the new democracies in Southeastern Europe, is based on a misreading of the Swedish and Finnish precedent, where, for historical reasons, the ombudsman was also equipped with prosecutorial powers and power to oversee the courts. In either case, the likely end result is the gradual delegitimisation of the institution, as its incapacity to serve its avowed purpose leads to the erosion of its moral authority and robs it of its *raison d'être* .

Let me now attempt to apply this theoretical schema to concrete historical reality and to

demonstrate its utility in understanding contemporary Europe. In line with the logic of the first scenario, in which the rule of law historically precedes the introduction of democracy, I would argue that a better and more hospitable environment for the establishment and development of the ombudsman institution and for its capacity to serve as an effective mechanism of accountability and control, once democracy was introduced and a modern democratic state was constructed, obtained initially in Western and Northern Europe. A direct outcome of this combination of historical factors was the fact that, between 1809 and 1972, the institution was established exclusively in these areas and, by extension, in one of the countries (New Zealand) belonging to the British Commonwealth.

A similar argument can, mutatis mutandis , be made for the successor states (and even regions) of the Austria-Hungarian Empire. Here the rule of law became well entrenched from the mid-18th century on, receiving great impetus during the golden half century (1740-1790) of Maria Theresa's and Joseph II's reigns, and familiarisation with democratic practices dated to the interwar period in the 20 th century. The role which the ombudsman has, despite the legacies of the recent totalitarian experience, been able to play over the past decade or so in the construction of modern democracies in Poland, Hungary, the Czech Republic, Slovenia, and, more recently, Slovakia provides strong empirical evidence in support of this argument.

Southern Europe constitutes an interesting hybrid case. The precocious introduction of parliamentary institutions in the region in the early decades of the 19 th century, before, that is, the rule of law had had an opportunity to become entrenched, did not contribute to the emergence of conditions favourable to the development of political regimes capable of fairly balancing the logic of equality with that liberty within the context of their respective institutional arrangements. The result was political conditions inhospitable to checks and balances and to the culture of institutional counterweights associated with it. The most immediate and visible by-product of these conditions was the seemingly endless oscillation between authoritarian rule and unstable and ultimately failed democratic regimes that so profoundly marked the region well into the first half of the 20 th century.

Two developments served as the catalyst that made it possible to escape from the vicious cycle of failed democratic experiments and authoritarian interludes. The first was the political learning derived from the traumatic experiences associated with the authoritarian regimes which prevailed in the region in the interwar and post-war periods. The second development was the profound influence, by way of a demonstration effect, whichthe European Economic Community, now the European Union, was able to exercise over political elites and masses in the countries of the region from the 1960s onwards. As a result, the democratic regimes established in the mid-1970s were able to provide for a fair balance of institutional arrangements expressive of rule of law and democracy. It was in this, more hospitable setting, that the ombudsman institution emerged as part of the institutional arsenal of what, for the first time in the modern histories of the countries in the region, became consolidated modern democracies.

The successor states of the Ottoman Empire in Southeastern Europe provide a marked contrast to the historical experiences that I have analysed so far. In this region, again for historical

reasons, the state retained to the very end, in the early 20th century, its highly patrimonial character and the rule of law never acquired deep roots. Moreover, as a result of long periods of authoritarian and totalitarian rule, familiarity with democratic practices ranged from the very limited to the non-existent; and the introduction of democratic practices effectively coincided with, if it did not precede, efforts to establish, the rule of law. In these circumstances, formidable challenges face the ombudsman institution as its seeks to carve out its proper role within the institutional landscape. The experiences of ombudsmen in Southeastern Europe to date constitute telling evidence of the tortuous road the institution will have to travel on its way to becoming an effective instrument of control and accountability, capable of substantively contributing to the defence of citizens' rights and to the quality of democracy in each country in the region.

6. Conclusion

Let me conclude with two final observations. The first recalls the point made earlier in this lecture concerning the impossibility of solving issues relating to the legitimacy of the state by making use of the majoritarian principle. This observation has special relevance to all the more recent European democracies facing problems in accommodating minorities into their democratic systems, and is especially pertinent to states where minorities are particularly large. It also forcefully highlights the more general point, also made earlier, that, in certain instances, questions relating to the rule of law, such as the defence of human rights, cannot be resolved by having recourse to the majoritarian logic of democracy. Hence the need for the balanced development of both, if the interests of citizens are to be well served by a modern democratic state.

The second observation concerns the challenge of trying to promote the rule of law and democracy in the Union. I remain deeply convinced that success in this difficult task is only possible when ombudsmen at all levels of governance, European, national, regional or local, effectively collaborate and coordinate their efforts, with an eye to serving citizens better. It is for this reason that, as European Ombudsman, I work closely with my colleagues through the European Network of Ombudsmen . We are working to put in place a comprehensive, coherent and effective system of non-judicial remedies in the Member States, to help citizens enjoy their rights under Union law vis-à-vis public authorities in the Member States, including their rights as laid down in the EU Charter of Fundamental Rights.

Success in this direction would make it easier for, citizens to know their rights better and also to better enjoy their rights.

Thanks you very much for your patience and for your attention. I am at your disposal for questions and clarifications.