

The Role of the Ombudsman in Modern Parliamentary Democracies - Keynote introduction

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18th November 2015 Emily O'Reilly

Good afternoon,

I am delighted to be opening this seminar on a most important issue and in a week when Ombudsmen and other defenders of universal human values are called upon to play our role in dealing with the multiple challenges that face Europe today.

I want to begin by extending my condolences to the victims and families of those who died in the Paris attacks and to express my profound wish that all of our leaders will find the courage, the wisdom and the humanity to find a way through these crises and assist not just those of us in Europe, but the many people outside of our borders whose lives are being destroyed by violence, by poverty, and by terror.

I am very grateful to the European Parliament, and particularly its pre-accession actions unit, for organising today's important meeting in co-operation with my office. The Ombudsmen of the accession countries are member of the Network of European Ombudsmen and it is a particular pleasure for me to be meeting with you, Ombudsmen and Members of Parliament, on this occasion and to welcome you.

I am also conscious of the challenges that many of you have faced in very recent times with the ongoing migrant crisis. You have rightfully recognised that the solution does not lie within the borders of any one particular country, but you have also courageously played your role in attempting to ensure that the human rights of those either attempting to enter your countries and stay, or pass through en route to another, are respected. It is not an easy task, and I acknowledge the particular challenges you have faced. This crisis has shown up cracks in all of our democracies and if we are wise we can use these experiences to learn lessons for our future practices.

So what is the role of an ombudsman in a parliamentary democracy? There are many answers but for me the simplest is that an Ombudsman plays a role similar to that once played by a little singing bird, a canary, in coal mines long ago. The canary was sent into the mine to check that



it was safe, to see that the air that the miners would breathe was healthy air.

And that's what Ombudsmen do. They check the health of a democracy by checking the air of the administration. They check to see, that the laws are being followed, but also that the people are being treated fairly, that the administration is just, ethical, and accountable. And since the idea of an Ombudsman was first developed in Sweden over 200 years ago, it has become such a vital indicator of a well functioning democracy that the European Union makes the existence of an Ombudsman type institution as one of the criteria for membership.

Under the Copenhagen criteria, and under EU enlargement support programmes, the Ombudsman is considered as an essential institution, guaranteeing democracy, the rule of law, and the protection of human rights. That in itself is a profound acknowledgement of its value in a modern democracy.

A democracy, as you well know, is not a static thing and can never be taken for granted. It needs constantly to be nurtured and to be protected and this is true whether we are talking at European or national level, about EU member states or those countries yet to become member states.

Healthy democracies have a system of checks and balances, at executive, legislative and judicial level and each of these plays its own unique and vital role in this democratic balance.

And alongside this system is the Ombudsman, an additional, but non-competitive accountability layer that checks to see if the system is working to the benefit of citizens. The role of an Ombudsman is to let those who make the laws, and those who administer the laws know how those laws actually feel in practice to the people.

Through our complaints, we can spot any flaws and injustices and by highlighting them and making recommendations as to how they might be fixed, we are essentially improving the quality of the democratic life of the state.

Our key and indispensable strength lies in the fact that we are independent and separate to the other branches of the state. But it is not enough that our independence is laid down in statute or in the constitution. The people must themselves feel that we are independent, that the decisions we make are not influenced by pressure from the administration, and that they can trust us to be fair and impartial even if others have not been.

An Ombudsman is worthless if it is not a truly independent Ombudsman. And that means, that not alone must Ombudsmen make impartial decisions, but they must also be given the resources to run an efficient and effective office, and must not fear reprisals or dismissal if a decision or a series of decisions displeases those in power.

In well functioning democracies, the Ombudsman, the people, the parliament, and the administration must form an essential circle of trust. The people must trust the Ombudsman and the administration must trust the Ombudsman. In turn the Ombudsman must trust the



administration to accept its recommendations in most cases and if not, must trust parliament for support. If that trust is damaged in any part of that circle, the Ombudsman cannot function as it should.

And a well functioning Ombudsman also lets the people know what they should expect from a democratic state. They should know that they have the right to an open and fair public administration, to know how policy decisions are made and why. They have the right to know who is seeking to influence decision-making. And they have the right to redress. A public administration that is not built on these principles is not a good public administration.

But while we as Ombudsman might have a very strong sense of what it means to be fair, what it means to be open, what it means to be truly accountable, it can be a very difficult job to make sure that the administration shares this understanding. The translation of those fine words into actual administrative acts does not always run smoothly yet it is precisely the task of the Ombudsman to help to develop that shared consciousness and to enable an administration to do things not because it is told to do so by the courts or the Ombudsman but because it instinctively, unhesitatingly, knows that it is the right thing to do. And that is why the development by Ombudsmen of Codes of good practice is so important to the success of our work.

But that cannot happen overnight. It can take many, many years to change a culture and to change a mind-set and many of you here in this room will appreciate the truth of that. Yes, we can get individual recommendations accepted, but unless we bring about cultural change, we will never succeed in creating a truly citizen focused and accountable administration.

Every day, as EU Ombudsman, I face this challenge. I am thankful that the EU public administration is generally of a very high standard but that does not mean that across the institutions, or across the member states there is a shared understanding around issues such as transparency, ethics, openness, data protection, accountability.

There are different sensitivities – often due to historical reasons - among the member states on the virtues of transparency and open law-making and this means that achieving a high and shared standard can be challenging. But not impossible.

Things evolve as time passes and the level of transparency within the big EU institutions currently, would have been inconceivable 20 years ago, or even ten years ago. The most recent EU trade policy paper, for example, now has transparency as a core value, while the last one barely made reference to it.

I was reminded last week of the significant opposition there was two decades ago even to the creation of the Office of the European Ombudsman yet now it is seen as just a normal, standard part of a well functioning administration and while we experience disagreements at times with the institutions, I believe that the circle of trust I spoke of earlier is there and the European Parliament has played an enormous role in ensuring that.



So those of you who might struggle with your own administrations, may even despair sometimes, or question the value of the work that you do, please take a positive message from what I have just said. Focused, ethical and diligent work, will make the difference, maybe not today, or tomorrow, but over time you will see the great contribution that an office of the Ombudsman can make and the power that you have, as individual Ombudsmen, to effect great and positive change in your countries.

I imagine that in recent months, as you have attempted to check certain behaviour on the part of some agencies under your remit in relation to the treatment of refugees and migrants, some of you may have felt that your intervention was limited or small. But trust me when I say, that what you have done matters, because it will build on other interventions and other changes over time until eventually, hopefully, you will no longer have to make certain recommendations because the good behaviour will be automatic.

And in times of difficulty, it is always useful to look to your Ombudsman colleagues in the Network or elsewhere for advice or simply to listen. As Irish Ombudsman I received great support and helpful advice from my Ombudsman colleagues across Europe and I would encourage you to reach out and connect.

We have been doing that together in the Network for a long time but I am now attempting to make our shared work even more useful and more dynamic and to support each other in even more concrete ways.

The scope of the work of the European Ombudsman and the national ombudsman differs but the underlying principles of serving the citizens remain the same.

That means where we can work together we should. There are plenty of broad issues that concern both the EU and national administrations and that require Ombudsman scrutiny at both levels.

My office and the European Network of Ombudsman have already worked together to conduct a parallel investigation into the conditions under which migrants, not accepted for EU asylum, are returned to their home countries.

The Network looked at whether these peoples' fundamental rights are being upheld on the national level. My office examined how Frontex, the EU border agency, was upholding these rights in its every-day work and several colleagues examined the situation in their own countries.

The success of this first collaborative effort has encouraged me to seek out other areas in which we might work together at the EU level and is so doing give even greater weight to our individual work for the sake of all the citizens that we serve.

We want people to say: "*Well they operate to these high standards in this country, why is this not the case in my country?*".



This is also a good time to observe that the work of an ombudsman is never over.

There is never a point at which we can sit back and relax and say that we have reached the pinnacle of what we can achieve. Not only because democracy is fragile, but also because the administrative backdrop against which we work is constantly changing.

To give an example: I am currently looking into informal negotiations on EU laws. These go by the name of "trilogues". They are, essentially, negotiations between the European Commission, the European Parliament and the member states to fast-track law-making so that legislation is agreed early, for example after one parliamentary reading.

This means the legislative machine is quicker and more efficient. We need only to look at the great volume of laws coming out of the EU during the height of the financial crisis to see this and see this as a positive.

But this speed has raised questions about whether the process is sufficiently transparent and is this exactly this question that I am looking into. But this is a recent issue. The fast tracking has only happened in recent years and for my predecessors this was simply either not an issue at all or, at best, only beginning to attract the real attention of civil society.

My investigation into the transparency of negotiations on the proposed EU-US trade agreement, TTIP, was naturally also a product of current political and economic circumstances. There was a groundswell of concern about how the negotiations between Washington and Brussels were being conducted. This, along with what my office had already been hearing from several stakeholders, prompted me to open the inquiry.

Following this inquiry, and much work of the European Parliament and civil society, the result is that the European Commission has become much more proactive about publishing TTIP-related documents. I believe there could be still more openness about lobbying surrounding TTIP but it is worth pointing out that real progress has been made. Last month, for example, as I said earlier, the Commission's new trade paper, listed transparency as one of the three pillars of the strategy. That was a first.

Before I finish I want to make some observations based on my 12 years now as an Ombudsman, in Ireland and in the EU. The principal one is that to be effective, as Ombudsman must never believe that he or she has limited powers simply because their recommendations, in general, are non binding by definition.

An Ombudsman, rather, has great powers potentially at their disposal. The power of their own personality, the power of the quality of the staff in their institution, the power of their investigative tools, the power of the moral authority of the role itself, the power of its alliances with parliament and with civil society, the power of public opinion and the power of the media.

A successful Ombudsman, as I have said on many occasions, is like the conductor of an



orchestra. They know what instruments to play and when to play them. They know when to roll out the drums, or just the soft little flute. And occasionally, they know, when to pause and reflect.

As Ombudsman we continually test the health of our democracies. It is a vital and important role and one recognised as such by the European Union. A democracy and its citizens are best served when those holding power to account are continuously asking: Why is something being done like this? Who benefits? Could it be done better?

A good ombudsman is always asking such questions. A 'good' democracy allows them to do so. Without fear. Without favour.

Thank you for your time. I am looking forward to a very successful conference.