

## EUROPEAN OMBUDSMAN AND HIS ROLE IN THE EUROPEAN UNION

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**ABSTRACT:** This article presents the general aspects of the european ombudsman institution, entity for protection of rights of european citizens through non-adversarial means, guarantee the democratic development of society and thus the consolidation state of law.

**KEY WORDS:** European Union, european ombudsman, mediation, european ombudsmans network.

### *I. INTRODUCTION*

The term ombudsman appoints an independent person, respectable, empowered by Parliament or the Government to protect human rights and fundamental freedoms. At the same time, the modern sense of the concept of ombudsman highlights the independent and objective person which is investigating the complaints of people against government agencies or other public and private organizations.

According to importance, specificity, influence and geographical extension of this institution in many countries in Europe and beyond, the name of ombudsman has experienced a tortuous and unpredictable trajectory, moving from the language in which it enshrined, the legal and the political, to other areas of social life, in which there is a need to eliminate the abuse and mediation.[1]

The necessity to create the ombudsman institution is correlated with its role to protect the rights and freedoms of citizens, especially in their relations with public officials [2], ascertaining the abuses committed by them and the impossibility of victim to fight against bureaucratic from public administration.[3]

European Ombudsman institution was created by the Treaty on European Union signed by the European Council on 7 February 1992, is a guarantee of the individual rights, under the administrative system mix, fulfilling a function of mediation, parallel with the education of citizens in its relations with the bureaucracy, protecting him.

In the framework established by the Treaties and the conditions laid down therein, the Ombudsman supports the discovery of maladministration in the institutions and bodies of the Union [4], except the Court of Justice of the European Union when it is acting as legal, and makes recommendations to stop them.

So, European Ombudsman institution was conceived as an institution complementary to national ombudsman institution. Conditions for exercising the action at the EU level are: there is a maximum period of two years that can be introduced notification and proof that the applicant has previous addressed the body or institution concerned.[5]

Important is that, the Ombudsman cannot investigate: complaints against national, regional or local authorities from EU member states, not even in cases where complaints are about EU matters, activities of national courts or ombudsmen and complaints against businesses or individuals.[6]

The doctrine appreciated that only in appearance there is a conflict of jurisdiction between the Parliamentary Committee and the Ombudsman, first resolve petitions which denounced irregularities are noticed in the Member States, while the Ombudsman covers only petitions regarding abuses committed by the institutions, bodies, offices and Union agencies. [7]

If an Ombudsman found maladministration, it notifies the institution, bodies, offices or agency concerned, which has a term of three months to inform him of its views.

If the case is not resolved satisfactorily during the course of his inquiries, the Ombudsman will try, if possible, to find a friendly solution which puts right the case of maladministration and satisfies the complainant. If the attempt at conciliation fails, the Ombudsman can make recommendations to solve the case. If the institution does not accept his recommendations, he can make a special report to the European Parliament.

Regarding the outcome of these investigations is informed and the person lodging the complaint (art.228 par.1 paragraph 2 TFEU). In fact, every year the Ombudsman presents a report to Parliament on the results of its investigations.( art.228 par.1 paragraph 3 TFEU).[8]

## ***II. EUROPEAN OMBUDSMAN – GUARANTOR OF THE RIGHTS OF CITIZENS OF THE EUROPEAN UNION***

Since its establishment, the ombudsman was to put to the citizens whose rights have been refused or violated by the European institutions, by concrete means of defense. So, establishment of the institution looks the involvement of Union in the realization of forms of transparent and democratic administration at the EU level, relying in this regard on the central idea of all national systems: protecting citizens' rights.[9]

The fundamental rights that you are entitled to expect the EU institutions and bodies to respect are laid down in the EU Charter of Fundamental Rights.[10]

In this regard, Art.43 of the Charter contains the right to complain to the European Ombudsman: Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the European Union.

The Ombudsman has been active in ensuring that the Charter is taken seriously by the European Union institutions, arguing that failure to respect the Charter is maladministration. [11]

The Ombudsman applies pressure so that the institutions prove in practice that they respect the Charter in their daily work and constantly reminds them of the promises they made to European citizens. The Ombudsman carried out an inquiry to investigate what measures the

European Commission had taken to ensure that people with disabilities are not discriminated against in their relations with the institution.[12]

The Ombudsman referred to Art. 26 of the Charter which recognizes the right of people with disabilities to benefit from supportive measures guaranteeing their independence, social and occupational integration, and participation in the life of the community. The Commission abolished the age limit of 30 years as one of the selection criteria in its in-service traineeship program. This followed a complaint concerning the rules governing the program.

The Ombudsman concluded that the Commission’s use of age limits amounted to discrimination, which is prohibited under Art. 21 of the Charter. It should be noted that, as a result of pressure from the Ombudsman, age limits do not apply in recruitment competitions organized by the European Personnel Selection Office.

The first contact many people have with the European Union administration is in the field of recruitment. The EU’s staff recruitment procedures have been a frequent source of complaints to the Ombudsman.

The fact that the European Personnel Selection Office (EPSO) ranks second among the EU institutions and bodies in terms of complaints to the European Ombudsman testifies to this. Problems include failure to provide adequate information and allegations of discrimination.

The Ombudsman’s drive to increase transparency in recruitment has helped ensure that you can have greater confidence in the procedures. As a result of his work, the reserve lists of successful candidates are now published and candidates can often see their own marked examination scripts and find out who sits on a Selection Board.[13]

Among the cases the Ombudsman has resolved are the following: After the Ombudsman intervened, the European Parliament explained to a Spanish citizen why his application for a traineeship had been rejected. With a view to promoting higher standards of administration, the Ombudsman remarked that Parliament could consider providing more specific information on the criteria by which traineeship applications are assessed.

He also suggested that Parliament consider revising its rules to make clear that the list of names of persons who accept the offer of a traineeship will be a public document.

The European Personnel Selection Office agreed to clarify the information it provides in its notices of recruitment competitions concerning pre-selection tests and eligibility.

This followed a complaint from a Hungarian citizen who had applied to take part in a competition for assistant translators. The Ombudsman felt that providing additional clarifications would help avoid misunderstandings and improve relations with candidates. [14]

### ***III. EUROPEAN OMBUDSMAN – GUARANTOR OF ADMINISTRATION***

In the presented we showed the ombudsman in protecting citizens against maladministration and how this works to put things right. But he also acts proactively in promoting good administration.

Right to good administration is stipulated in Charter of Fundamental Rights where the Art. 41 states that: Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

This right includes: the right of every person to be heard, before any individual measure which would affect him or her adversely is taken, the right of every person to have access to his

or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy, the obligation of the administration to give reasons for its decisions.

Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. Also, every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

To clearly define what good administration means in practice, the Ombudsman drafted the European Code of Good Administrative Behavior.[15]

It tells us what you have the right to expect from the EU administration and gives guidance to officials on how to behave in dealing with the public. Officials who follow the Code can be sure that they will avoid instances of maladministration.

In this regard, The European Parliament approved the European Code of Good Administrative Behavior in September 2001.[16]

Be mentioned that, the Ombudsman exercises its functions in full independence. Thus, in fulfilling his obligations he will not ask instructions nor will accept, if any union body could try this. The European Parliament has no legal possibility of influencing the conduct of the Ombudsman about the complaints it receives, so that any act or omission in the performance of the tasks entrusted under the Treaty cannot be attributed in any case Parliament, the Ombudsman shall comply only status and general conditions governing the performance of its established by the Parliament, the two institutions collaborating in organizational terms only.[17]

Practice has shown that the Ombudsman has made a significant contribution to the development of EU law and administrative practice, and supporting the development of fundamental rights and general principles of law, despite the fact that resolving cases remain soft, compared with judicial resolution, and if it is considering its response flexibility and ability to focus attention on all EU institutions and bodies, he appears to have the ability to make the change happen faster than might otherwise happen.[18]

European Union citizens expect public administration which relies to function properly. Starting with contractual obligations and failure to delays in payments, European institutions have not always shown an example of good practice.

But when the Ombudsman has raised the attention of their problem, they acted constructively to put things in order. The result was that the services offered by the European institutions have improved considerably. In present, when an European Union citizen addresses will receive a reply in their own language. It also can insist that officials explain and justify decisions.

Complaints received by the Ombudsman have helped uncover inefficient procedures, methods outdated and discriminatory practices of the Community institutions. In response, the institutions have made progress on these shortcomings, leading to a fairer and more efficient administration.

After complaints by the European Ombudsman, the European Commission tightened internal auditing rules. This declaration due to a Danish citizen about that staff of the Commission anti-fraud made inappropriate statements about his case in the national media and tasked with the audit staff behaved inappropriately during a control. Among the measures taken

was the adoption of an internal manual of procedure, which offers concrete instructions to its staff in media relations.[19]

#### ***IV. GENERAL ASPECTS OF THE EUROPEAN NETWORK OF OMBUDSMEN***

National and regional ombudsmen from EU can make a significant contribution to the effort to ensure that citizens and residents enjoy their rights under EU law. Together with the European Ombudsman and European Parliament Committee on Petitions[20], they form the European Network of Ombudsmen.[21]

The European Network of Ombudsmen consists of over 95 offices in 36 European countries. The Network includes the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, and other European Economic Area countries, as well as the European Ombudsman and the Committee on Petitions of the European Parliament. The national ombudsmen and similar bodies in the Network have each appointed a liaison officer to act as a point of contact for other members of the Network.[22]

The Network was established in 1996 and has steadily developed into a powerful collaboration tool for ombudsmen and their staff, serving as an effective mechanism for co-operation on case handling.

It is of particular importance to the European Ombudsman to enable her to deal promptly and effectively with complaints that fall outside her mandate.

Experiences and best practice are shared via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service. Visits of the European Ombudsman organized by the ombudsmen in the Member States and accession countries have also proved highly effective in developing the Network.[23]

#### ***IV. CONCLUSION***

Ombudsman Institution appeared as a shout for citizens to increase the phenomenon of bureaucracy in modern states, but also their state of helplessness to solve problems related to the relationship with government institutions in the European Union.

Compared to insufficient judicial system guarantees relating to administrative action, it was created this institution endowed with moral authority, with a view that citizens have institutional another way to defend their interests.

Therefore, Ombudsman's role is reduced to that of being a complement to existing institutions that make up the system powers at the European Union level, is a critic of his administration, but also a panacea, because it cannot legislate malfunction services institutions, bodies, offices and Union agencies.

According to its mission statement, in perspective the European Ombudsman seeks fair outcomes to complaints against European Union institutions, encourages transparency, and promotes an administrative culture of service. He aims to build trust through dialogue between citizens and the European Union and to foster the highest standards of behavior in the Union's institutions.

## References:

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- [15]. European Code of Good Administrative Behaviour based essential rules of conduct, mandatory for all public officials, showing a behavior that has not been, so far, institutionalized or observed, such as avoiding conflict of interest and use the tool for its own interest. It represents both an information tool on professional conduct to which citizens are entitled to expect from public officials, as a means of creating a climate of trust and mutual respect between citizens and public officials, on the one hand, and between citizens and public

authorities on the other. From the perspective of public officials, It represents a clear collection of rules of conduct, which requires them to ensure a equal treatment of citizens before the public authorities and institutions, professionalism, impartiality and independence, honesty and fairness. The Code sets out in detail the rights and obligations of public officials in public office, including the prohibition on requesting or accepting gifts, services, favors, invitations or other benefits, intended personal, family, parents or people who had business relations or political, they can influence their impartiality in the exercise of public offices held, or can be a recompense in relation to these functions, and the penalties established in cases of breach of these principles, G. A. Jianu, *op.cit.*, p.27

[16] G. Bogasiu, *Justiția actului administrativ. O abordare biunivocă*, The publishing house Universul Juridic, Bucharest, 2013, p.141-142

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[20]. Any citizen of the European Union, or resident in a Member State, may, individually or in association with others, submit a petition to the European Parliament on a subject which comes within the European Union's fields of activity and which affects them directly. Any company, organization or association with its headquarters in the European Union may also exercise this right of petition, which is guaranteed by the Treaty. A petition may take the form of a complaint or a request and may relate to issues of public or private interest.

The petition may present an individual request, a complaint or observation concerning the application of EU law or an appeal to the European Parliament to adopt a position on a specific matter.

Such petitions give the European Parliament the opportunity of calling attention to any infringement of a European citizen's rights by a Member State or local authorities or other institution, [www.europarl.europa.eu/atyourservice/en/20150201PVL00037/Petitions](http://www.europarl.europa.eu/atyourservice/en/20150201PVL00037/Petitions) (visited at 28.06.2015)

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[22]. *idem*.

[23]. *idem*.