

CONCLUSIONS IOI INTERNATIONAL WORKSHOP GOOD ENVIRONMENTAL GOVERNANCE: THE ROLE OF OMBUDS INSTITUTIONS IN PROTECTING ENVIRONMENTAL RIGHTS

Vitoria-Gasteiz, 16-17 May 2018

KEYNOTE SPEECH: The right to a healthy environment as a fundamental human right in the light of the case-law of the European Court of Human Rights

1. The ECtHR's important work in consolidating environmental protection linked to rights enshrined in the ECHR, such as the right to life (article 2), the right not to be subjected to inhuman or degrading treatment (article 3) and also rights linked to the private sphere, such as the right to family life mentioned in article 8 of the ECHR must be highlighted. Notwithstanding the lack of explicit recognition of the right to an adequate environment in the ECHR, it can be observed that the ECtHR has done extraordinarily valuable work to defend the environment against all sorts of damage within the framework of the ECHR.

WORKING SESSION 1: The role of Ombuds institutions in enforcing the principle of good environmental governance

2. Unlike the Courts' function involving reparation, the work that Ombuds institutions can do as they exercise oversight of good governance provides an opportunity for prevention vis-à-vis poor public environmental-related decisions.
3. In face of the risk of denaturalisation of Aarhus rights, it is important for Ombuds institutions, in their role as monitoring agents of public decision making, to require public administrations provide due environmental information that is clear and not misleading and that allows for effective citizens' participation able to actually impact final decisions. To this end, Ombuds institutions should potentially demand technical support from the public administration so that the environmental information is properly understood.
4. In line with the principle of good environmental governance, technical decisions cannot be left out of the scope of Ombuds institutions. Oversight could be defined by establishing standards or criteria in order to insure that public decisions are properly grounded and to encourage all stakeholders to

participate in the phases both prior and subsequent to the decision. Indeed, as Ombuds institutions are close to citizens, they have effective mechanisms to obtain civil society's view and convey it to public administrations.

5. Given the problem of a lack of scientific evidence and inconclusive technical reports, and given the difficulties this entails in Ombuds institutions' performing their oversight, it would be advisable to promote the operativity of the precautionary principle as a criterion for enacting environmental regulation and decision-making addressing environmental or human health hazards.
6. Many participants mentioned the possibility of the IOI and the Aarhus Convention Compliance Committee forging relations as proof of the Ombuds institutions' willingness to implement the three Aarhus pillars.

WORKING SESSION 2: The role of Ombuds institutions in facing current environmental challenges: pollution control, climate change and transition towards a new energy model

7. While differences were expressed in terms of the legal scope that the various Ombuds institutions have in order to be proactive, attention was drawn to the need for each one to use its own instruments (ex officio action, extraordinary reports, fora, etc.) when doing so in order to generate debate in both society and in institutions with a view to stepping up progress towards combatting climate change and a transition to sustainable energy.
8. This energy transition must be inclusive, focus on citizens, and protect those most vulnerable by empowering them and encouraging their active participation in energy management. (Shift from consumer to prosumer).
9. The energy transition should take into account social acceptance, meaning that debate on environmental taxation in Europe must be begun urgently.
10. In order for environmental oversight to become more effective, the possibility of cooperation between the general prosecution and Ombuds institutions was raised given that both defend the common cause of upholding the law and the public interest.
11. Cross-border environmental oversight is an essential task for Ombuds institutions, given that environmental advocacy is always guided by the protection of global public goods.

WORKING SESSION 3: The role of Ombuds institutions in enforcing measures to preserve natural resources and biodiversity

12. While biodiversity protection requires the correct application of legislation, governance is more than mere enforcement of legislation. Furthermore, the fact that conflict is inherent to environmental policy must be taken into account. This therefore requires measures including oversight, insurance, and compensation and establishing specific protection measures against the backdrop of the entire economy and its impact on all aspects of human and wildlife.
13. Management plans for natural spaces and wildlife stand as an opportunity to generate all of the stakeholders' participation. To the extent they are clear, predictable, reasonable (not just driven by business and ambition, but by an understanding of the owners' legitimate interests), and effective in the long term, people are ready to accept restrictions in order to protect wildlife. Poor governance involves examining only one side of potential conflicts of interest and not explaining measures. Adequate participation in natural resource and biodiversity management insures good governance.
14. The role of Ombuds institutions in this area could be:
 - To put forward tailor-made restrictions for specific cases that manage to reconcile different interests at stake. The Ombuds institutions deem it of interest for public powers to foster active listening both to the owners and the stakeholders, as well as other nature protection associations.
 - As whistle-blowers, to trigger mechanisms to address the problem from a multilateral and transnational perspective (European Parliament, Council of Europe). Mechanisms to comply with the protection regime include procedures before international bodies pursuing the adequate safeguarding of wildlife conservation. Ombuds institutions could accede to these mechanisms to evaluate the degree of compliance with these international standards.

WORKING GROUP 1: Aarhus Convention: the role of Ombuds institutions in environmental decision making

Jointly chaired by Dr Günther Kräuter, Ombudsman of Austria and IOI Secretary General; and Mr Mahito Shindo, Assistant Professor at the School of Sciences of Waseda University (Japan).

Dr Günther Kräuter

1. Ombudsman institutions play a crucial role in environmental decision making. Ombudsman should therefore use all instruments available to monitor the situation on the ground and the often ambitious goals of politicians:
 - complaint handling
 - own initiative investigations
 - recommendations (both on a national and international level)
 - work together with NGO's and media
2. Ombudsman institutions are well placed to find systemic failures. They should use this knowledge to develop a "preventive approach in environmental issues", parallel to e.g. the work under OPCAT as National Preventive Mechanism.
3. Closer cooperation between the IOI and the Aarhus Convention Compliance Committee (ACCC):

The IOI will reach out to the ACCC to further evaluate possible cooperation among Ombudsman institutions in environmental decision making. Also, thanks to the NGO representative present at the workshop, it is planned to contact the ACCC and seek to organize a meeting in October in Brussels with the chair and vice-chairs of the ACCC.
4. Exchange of ideas and practices like this during the workshop make international meetings like this one very important and fruitful.

Mr Mahito Shindo

5. There is no border for environmental problems. This indicates the significance of sharing knowledge and promoting international cooperation.
6. The Ombudsman must carry out all actions in her/his power to guarantee the rationality of environmental decision making processes. To this end, each Ombudsman has the instruments bestowed by law.

7. When assessing environmental problems, the Ombudsman needs to address three aspects; namely, legality, procedural appropriateness and the general interest. For example, in order to ensure sound environmental decision making, the Ombudsman basically controls procedural aspects of the decision making. However, in an extreme case, in which the basis of a first instance administrative decision is obviously doubtful, the Ombudsman may step into the rationality of the substance, with the support of relevant experts. The Ombudsman may do so in order to ensure the general interest.

WORKING GROUP 2: Ombuds institutions networking for a sustainable society

Chaired by Prof Gyula Bándi, Ombudsman for Future Generations (Hungary).

1. Types of approaches used by Ombuds institutions:
Ombuds institutions adopt various approaches:
 - Confrontative tools (criticizing actions).
 - Consultational tools.
 - Reactive approach (giving recommendations after conducting investigations).
 - Proactive actions (raising awareness about new problems).
 - Anticipatory (trying to persuade the government in the phase of developing new legislation).
 - Taking ex post actions (giving advice after new legislation has been implemented).
 - Mediative role.
2. Proposed subject matter of cooperation among Ombuds institutions on environmental issues:
 - Global problems: climate change, access to adequate and complete environmental information.
 - Similar problems: wind mills.
 - Emerging problems: energy transition, energy poverty.
 - Application of EU law (80-90% of national environmental laws are based on EU law).
 - Launching cross-border cooperation, mediation.
3. Suggested ways of cooperation:
 - Mailing lists – Reaching out to others with relevant expertise regarding a specific question.
 - Thematic meetings, workshops.
 - Expert level /staff level cooperation is especially valuable.

- Developing questionnaires on thematic topics, circulating answers in a structured format (newsletter).
- File sharing system.

4. Ideas for cooperation:

An existing framework: Network of Institutions for Future Generations (NIFG).

- Founded in 2014, based on UN Secretary General's report on national, model institutions".
- National institutions working for FG interests, environmental protection.
- Informal framework for best practice sharing on a regular basis.
- No membership fee, our Office serves as Secretariat.
- NIFG welcomes new members – we would be happy to reach out to those interested or email us (Gyula Bándi at bandi.gyula@ajbh.hu / Katalin Sulyok at katalin.sulyok@ajbh.hu).
- Happy to connect with existing networks (Ljubljana's recent initiative).
- Would be happy to explore ways of cooperation with IOI.