

THE SPREAD OF THE OMBUDSMAN PLAN  
IN WESTERN EUROPE

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## THE SPREAD OF THE OMBUDSMAN PLAN IN WESTERN EUROPE<sup>1</sup>

The continental European democracies, perhaps because the system of administrative courts in some of them partly meet the need, did not at first take as much interest in the ombudsman plan as did the English-speaking world. Though their interest in the idea began in the early 1960's, no plan was actually adopted until after 1970, the first by a city in Switzerland (Zurich, in 1971). However, after France established a national plan in 1973, new interest was taken in the idea, and a series of new adoptions began in Western Europe, notably national plans for Portugal (effective 1975), Austria (effective 1977), Netherlands (effective 1982), Ireland (adoption law 1980) and Spain (adoption law 1981), and an increasing number of regional plans in Italy, beginning in 1975. The states of Rhineland-Palatinate, West Germany, and Zurich, Switzerland, also established schemes, in 1974 and 1978, respectively. The purpose of this article is to review this remarkable spread of the ombudsman plan in the countries of Western Europe.<sup>2</sup>

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<sup>1</sup>This paper is an excerpt from the chapter on developed countries in Professor Rowat's book, *The Ombudsman Plan* (Toronto, McClelland and Stewart, 1973), as revised for publication in Japanese by Waseda University Press, Tokyo, in 1983.

<sup>2</sup>For a fuller discussion of the plans in Portugal, Austria, Italy and Zurich, see Rowat, "The New Ombudsman Plans in Western Europe", *International Review of Administrative Sciences* 46:2 (1980).

## I. NATIONAL PLANS

### A. FRANCE

In the 1960's a few scholars had published articles about the ombudsman in French journals, but the first serious proposal was made in 1970 by Deputy Michel Poniatowski, who introduced a bill providing for a commissioner to be chosen for a term of four years by members of the council of state and of the court of appeals. Support for the idea then rose steadily until the Aranda affair brought matters to a boil in the fall of 1972. M. Gabriel Aranda, a former public works official, claimed he had photocopied documents that implicated 48 public officials in scandals. During the ensuing controversy, President Pompidou conceded at a press conference over the affair on September 21 that something had to be done to make the administration accessible to the public. Then, early in October, Prime Minister Messmer announced that before the end of the year he would appoint an ombudsman-like commissioner to protect citizens against administrative abuse. The big Paris daily, *Le Figaro*, ran a name-finding contest for the new officer, and, with the help of members of the Academie Francaise as judges, came up with the name "Intercesseur". The government, however, adopted the name "Mediateur".

Because of the fear that the mediator might be overwhelmed with complaints, the government provided a

built-in filter system like the one in Britain: complaints would have to be forwarded to him by members of parliament, either deputies or senators. Not unexpectedly, both the method of appointing the mediator and the public's ability to make direct complaints were criticized by proponents of the ombudsman plan. In January 1973, the new scheme was approved by the French parliament and Antoine Pinay, a popular former prime minister, was appointed to the post, at the age of 81. He was replaced in June 1974 by Aime Paquet, a former mayor, deputy and minister, who in turn was replaced in 1980 by Robert Fabre, former leader of the small Radical party.

An unusual characteristic of the French plan is that all three mediators were former politicians. Symbolic of the political nature of the office is the fact that the mediator receives no pay. Mr. Paquet was so well known as a local politician in south-eastern France that during his tenure a disproportionately large number of complaints came from that region. Mr. Fabre has retained his post as mayor of a small town in southern France, and two of his three senior staff were formerly active members of his political party. Though the former political reputations of the mediators have helped to publicize the office, their partisan history has probably inhibited many potential complaints. The mediator is appointed for a definite term of six years which is not renewable, and reports to parliament as well as to the President, so he is relatively

independent of the government.

The French plan covers all levels of government, and another unusual feature is its decentralization through the use of a hundred local correspondents, one for each district (*department*) of France. Appointed by the mediator and serving without pay, they screen initial complaints and advise complainants on how to prepare and submit their complaints. However, because formal complaints must first go to members of parliament, the number received annually by the mediator has been relatively small, particularly in relation to the population of France (60 million), despite a recent increase to about 6,000. There seems little doubt that this restriction has prevented the plan from meeting a large part of the need for which it was designed.

In his annual reports the Mediateur has made a large number of proposals for administrative and legislative reform, many of which have been adopted, including a law on public access to administrative documents, which was passed in 1978.

Despite early predictions that the office could not be fitted into the French system of administrative law, it has been operating successfully for a number of years. Indeed, the term "mediateur" has become so popular that it has been used for a number of similar offices, such as the executive ombudsman for Paris, who is appointed by the mayor. Mr. Fabre fears that it will lose its unique meaning, as the word ombudsman has in the United States, and that using it

for offices of a different nature will only confuse the public.

## B. PORTUGAL

The office of ombudsman in Portugal, called Provedor de Justica, was provided for in Portugal's new democratic constitution which came into effect in April 1976, and a law governing the office was approved in November 1977. However, the First Provisional Government had already approved the establishment of the office by a decree, No. 212-75 in April 1975. This decree provided for the appointment of the Provedor de Justica by the President of the Republic from three names submitted by the Prime Minister and the Minister of Justice. Colonel Costa Bras was appointed and took office as Portugal's first ombudsman in March 1976. Since the new constitution provides that future ombudsmen are to be elected by the legislature (for a four-year term renewable for a second term), when Colonel Costa Bras was appointed to the cabinet, Dr. Jose de Magalhaes Godinho, an eminent politician, was elected in October 1976 to replace him. Dr. Godinho was succeeded in 1981 by Eudora Pamplona Corte-Real, a former justice of the Supreme Administrative Court, and president of the Study Commission for the Code of Administrative Procedure.

Portugal's plan was heavily influenced by the Scandinavian model and, unlike that of France, provides for complaints to be made directly to the Provedor de Justica.

But, in addition to investigating administrative complaints, the Provedor de Justica has been given two other functions. He is a member of the Supreme Council of the Judiciary, which is concerned with the appointment, transfer and discipline of judges, and which is headed by the President of the Republic. He also makes recommendations on the constitutionality of laws, decrees and regulations. Those that were passed before the adoption of the new constitution are often called into question because they conflict with it. Hence this function is particularly important and time-consuming.

Partly because of these two additional functions he has a total staff of about 50, and still there is some danger of the office becoming overloaded. By the end of the first year there was a big backlog of cases, which has been difficult to reduce because the number of cases has been growing each year. The Provedor now handles about 4,500 cases a year, of which about 100 arise from his own initiative.

In comparison with ombudsman plans elsewhere, 4,500 cases per year is not a large number for a country of ten million people. This may be partly because the Provedor has had little time to publicize his services throughout the country. His annual reports reveal that a very large proportion of the complaints come from the Lisbon district. Hence there may be a need for the Provedor to make periodic tours or to open regional offices in order to receive



complaints from other areas.

The scope of the Provedor's jurisdiction is broad, extending to the action of ministers, public corporations and local governments. He also has the function of protecting human rights under the new Constitution, which has a long list of human rights, including procedural rights, with a separate section on economic, social and cultural rights. For instance, he might consider a complaint against an industry that makes too much noise or causes a health hazard, or a complaint from a locality that it has not been provided with adequate medical or school facilities. These cases are difficult for the Provedor because they involve matters of policy.

Regarding the independence of the office, the Provedor's own salary and rights of employment are prescribed to be the same as those of a minister. He chooses his own staff and has an independent budget. He is also free to hire and supervise his office staff within the terms of the general law governing public employees. In view of the intense rivalry among the political parties in Portugal's new democratic state, it is of course essential that the ombudsman should be regarded as independent. Since the first ombudsman had been nominated by the government, it was fortunate that the second one could be elected so soon by the legislative assembly.

Unfortunately, the name of the office, Protector of Justice, is somewhat misleading. If it leads the public to

expect accomplishments of which the Provedor is incapable, it may result in some disillusionment with the institution in Portugal. Since the word ombudsman indicates more clearly the unique and specialized nature of the office, it is a pity that it has not yet come into popular usage in Portugal. Perhaps the Provedor could himself promote the use of the word ombudsman for his office, as the Parliamentary Commissioner did successfully in New Zealand.

### C. AUSTRIA

Discussion of the ombudsman idea appears to have begun in Austria with the publication of an article on the subject as early as 1961, about the same time that the idea began to be discussed in many other countries. It was given a further boost when the Danish ombudsman was invited to make a speech in Vienna in 1963. The Austrian government accepted the idea in 1971, and in that year issued proposals for a constitutional amendment creating an office of three members nominated by the three largest political parties and elected by parliament. Six years later the Austrian Parliament passed a constitutional law, which went into operation in July 1977, providing for a *Volksanwaltschaft*, which may be translated as the office of the People's Advocate. This office is based on the classical ombudsman model, except that it followed the earlier proposal that the office should have three ombudsmen, one named by each major party. Dr. Franz Bauer was nominated by the Christian

Democrats, Robert Weisz by the Socialist party and Gustav Zeillinger by the Liberals, and all three were then elected by the legislature. Thus, like Sweden, Austria has a system of multiple ombudsmen. Unlike in Sweden, however, the ombudsmen act jointly as a collegial board or commission on important cases.

Other unusual characteristics of the Austrian plan are that the ombudsmen may initiate proceedings before the Constitutional Court to examine the legality of federal decrees, and that the state legislatures may vote to have the federal plan apply to state administration. There are precedents for the states agreeing to make use of federal agencies. For instance, the states use the Federal Financial Control Authority. Two of the states, Salzburg and Vienna, which is by far the most populous state in the federation, entered the plan from the beginning. Some of the other seven states have since done so and others are likely to do so too, because the federal plan already covers state administration where it is acting as an agent of the federal government, and because some states are too small to have their own plan.

All three of the first ombudsmen were formerly members of parliament. Only one, G. Zeillinger, was a lawyer, but their senior assistants are all lawyers. Each ombudsman has appointed his own senior assistant and secretary, and a senior official is the office manager and secretary of the ombudsman board. The office has a total staff of about 20.

As in Sweden, each ombudsman is responsible for a different area of administration, and one is responsible for each of the states that have joined the plan. Thus, Weisz was assigned cases for the state administration of Vienna, and Bauer for Salzburg. Unlike the ombudsmen in Sweden, the Austrian ombudsmen often act in unison as a board. They meet about once a week and each is chairman for a year. Though each ombudsman settles minor cases on his own, proposed decisions on all important cases are reported to the other ombudsmen and either of them can ask for a case to come before the full board. An ombudsman will try to settle a case informally by making a recommendation to the department concerned, but if it refuses the recommendation, a formal recommendation is made by the whole board, and the department has eight weeks in which to give a reply. All board recommendations and departmental replies, and the board's comment on these replies, are reported in the annual report to parliament. It can be seen that, though the ombudsmen had previous party affiliations, the effect of acting collegially as a board is to ensure that their decisions on important cases will be non-partisan and to assure the public of this.

Regarding the independence of the institution, the ombudsmen are appointed for six years and can be reappointed for a second term, and have the status of minister. The ombudsman board has independent powers over its own personnel and budget, although the budget is supervised by

the Federal Financial Control Authority. Also, there is a committee of parliament, the Constitutional Committee, to which the board reports. The ombudsmen appear before this committee to explain and discuss their report, and the committee makes recommendations on their report to parliament.

The office handles about 6,000 complaints a year, but a large proportion of these are outside its jurisdiction, partly because its name, People's Advocate, implies a lawyer dispensing free legal aid of all kinds. However, in contrast with the situation in France and Portugal, the word ombudsman is well known and more widely used by the public and press than the official title, so this helps to clarify the nature of the office, as it does in other countries.

An unusual feature of the Austrian scheme is the use of an ombudsman board or commission. Much of the literature on the ombudsman lays stress on the need for a single ombudsman to "humanize" the office and give it a personal touch, and the majority of schemes throughout the world provide for a single ombudsman. However, the first plans were adopted in rather small countries where the ombudsman could deal personally with all cases, as Dr. Vontobel does in Zurich. The trend in recent years has been toward a system of multiple ombudsmen or ombudsman boards or commissions. Even Sweden, the originator of the plan, amended its system in 1976 to provide for four ombudsmen, while New Zealand added two additional ombudsmen in 1977 (one position has remained

vacant since August 1980). Other countries which have an ombudsman board or commission are Tanzania, Zambia, Nigeria and Papua New Guinea. One of the great advantages of multiple ombudsmen is that they can specialize in different aspects of administration. Another is that they can make final decisions more quickly, because in a large office with a single ombudsman, all cases must be referred to him.

There is an important difference, however, between a system of multiple ombudsmen, such as exists in Sweden, and an ombudsman board. With multiple ombudsmen there may be a problem of a lack of coordination in their work and inconsistency in the conclusions that they reach, so that they do not build up a uniform jurisprudence in administrative law. The system in Austria combines the advantages of multiple ombudsmen with those of a single ombudsman because they can specialize and make decisions individually on minor cases but meet as a group and make joint decisions on important cases. In countries where party rivalries are intense, it is difficult to reach agreement on the appointment of a single ombudsman who is acceptable to all political parties and not suspected of being partisan. Austria's system of an ombudsman board enables each of the major parties to nominate an ombudsman who is acceptable to the other parties, while the board system ensures that they will have a uniform view on important cases. In many countries with a single ombudsman, he is in effect appointed by the governing party, and may

not be prepared to take a strong stand against the government in an important case. A group of ombudsmen on a board, with one or more nominated by an opposition party, are more likely to be willing to take a strong stand and to be acceptable to all sectors of the public. For such a system to work successfully, however, the political parties must be willing to nominate eminent persons who are not too partisan in their views. The concept of an ombudsman board is particularly relevant to populous countries which may be considering the plan, because it is often argued that in such countries a single ombudsman would be overloaded with cases. This was one of the reasons why Britain and France decided on the device of limiting the ombudsman's cases to those coming through members of parliament, yet such a device prevents the plan from meeting much of the need.<sup>3</sup>

#### D. NETHERLANDS

In the Netherlands, which did not have administrative courts, an ombudsman was proposed for the city of Rotterdam as early as 1964, but rejected by its council. The same year, following a study of the Scandinavian plan by J.G. Steenbeek, a commission of the Society for Administrative Law recommended a general plan for the Netherlands, and included a draft bill in its report. This report was

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<sup>3</sup>For a further discussion of the proposal for an ombudsman board for populous countries, see Rowat, "A Public Complaints Commission", *Policy Options* 3, 2 (March-April 1982), 33-35.

discussed at the Society's annual meeting in September 1964, and most of the speakers were in favour of the plan. The Dr. Wiardi Beckman Foundation (the research arm of the Labour Party) also reported favourably on the idea. Since the government took no immediate action, in 1967 the commission for petitions of the two chambers of parliament proposed that it should be given the same powers as a parliamentary commission of inquiry to inspect documents and to hear public officials, and that an office should be set up to prepare the reports of the two committees.

In the 1968-69 session, however, the Ministers of Interior and Justice issued an "ombudsman memorandum" proposing an institution modelled on that of Denmark and Britain, but with more limited independence and power. Complaints would be routed through the commission for petitions, and the ombudsman would handle only those specifically authorized by the commission. Members of parliament criticized these limitations, however, and the proposal was not adopted.

Then, in October 1976 the government submitted a plan in the form of a bill to the Lower House, but the House raised certain objections to it. After a change of government, the new Ministers of Home Affairs and Justice submitted a radically amended version in January 1980, a parliamentary committee produced a report on the new version in May, and a National Ombudsman Act was approved in February 1981, to become effective on the first of January,



1982. The first national ombudsman, who was appointed by the Lower House in September 1981, is Dr. J.F. Rang, a former professor of Labour Law at the University of Utrecht. His scope includes only the central administration, but is expected to be extended to the provincial and local authorities before 1984.

Factors that have delayed the plan in the Netherlands are the existence of an active parliamentary committee on petitions, an extension of the scope of administrative appeal in 1976 through the creation of an independent judicial division of the Council of State, and the appearance in 1971 of a non-governmental television ombudsman, on which the more recent ones in Austria and Canada were modelled, who has remedied many complaints against the administration.

#### **E. IRELAND**

Ireland took an early interest in the idea, but no official proposal was made until the Public Service Organization Review Group, appointed by the Minister of Finance, recommended the plan in 1969. Official interest then lapsed until parliament passed a private member's motion favouring an ombudsman in May 1975. An all-party committee chaired by the Minister of Finance then recommended a plan in May 1977, but the government changed in July and the new Minister decided to place a notice in the newspapers in January 1978 inviting public comments on

the proposal. Finally, in November 1979, the government introduced a bill that became law as The Ombudsman Act in July 1980.

In its main features this Act follows the classical pattern. Initially it applies only to government departments, but is expected to be extended to local authorities, health boards and other bodies within three months of the ombudsman's appointment. He is to be named by the government in consultation with the leaders of the main opposition parties and with the approval of parliament. The appointment was delayed by an election in May 1981, and the new government, though favouring an ombudsman, had not named one by mid-1982.

#### F. SPAIN

A national plan was also approved recently in Spain, though the ombudsman had not been appointed by mid-1982, as in Ireland. Spain made provision for a Defender of the People in its new democratic constitution which became effective in December 1978. The wording in Article 54 is as follows:

An organic law shall regulate the institution of Defender of the People, who shall be the supreme instrument of the Cortes Generales, appointed by them to defend the rights contained in this Title; for this purpose he may supervise administrative activities, reporting thereon to the Cortes

### Generales.

Although this wording could provide an officer with functions to protect human rights that are much broader than those of an ombudsman, the organic law has instituted a version of the ombudsman plan.

My edited book, *The Ombudsman: Citizen's Defender*,<sup>4</sup> had been translated into Spanish in 1973,<sup>5</sup> and then some Spanish scholars produced books and articles on the subject.<sup>6</sup> In July 1979 the Spanish television program, *La Clave*, devoted a program in prime time on a Saturday night to a panel discussion of the plan, and included as guest participants the chief ombudsman from Sweden, the Ombudsman from Britain, two Spanish scholars, the head of a Spanish consumer organization, and myself. In October of that year the Spanish government accepted for parliamentary consideration an ombudsman bill drafted by Professor A. Gil Robles and presented by the opposition PSOE party. This bill follows the Swedish-Danish model. The government proposed amendments based on the British-French model, but these were not accepted. The final organic law was passed

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<sup>4</sup>London: Allen and Unwin; Toronto: University of Toronto Press; and Stockholm: Norstedt; 2nd ed., 1968.

<sup>5</sup>*El Ombudsman: El defensor del ciudadano* (Mexico, D.F.: Fondo de Cultura Economica, 1973), translated by Eduardo L. Suarez, with a foreword by Daniel Escalante.

<sup>6</sup>For example, A. Gil-Robles y Gil-Delgado, *El control parlamentario de la administracion (el ombudsman)* (Madrid: Instituto de Estudios Administrativos, 1977), pp. 334, and *El Defensor del pueblo* (Madrid: Editorial Civitas, 1979), pp. 167; and Ismael E. Pitarch, "Estructura i funcions de l'ombudsman al dret comparat. Propostes per a la Generalitat de Catalunya", *Administracio Publica*, n. 1 (Juny, 1978), 129-172.

by the Cortes in April 1981. Also, the 1979 statutes granting autonomy to Spain's northern regions provide for separate regional ombudsmen.

According to the organic law, the Defender of the People is elected by the Cortes for a five-year term. The Congress and the Senate appoint special committees which, at a joint session, choose the candidate(s) for the post. The election is by the Congress with ratification by the Senate. Two deputies are also to be appointed and ratified by these special committees. The office is to be independent, and the expenses of the office and its staff are to be charged to the budget of the Cortes.

The Defender of the People may investigate the acts of all administrative authorities, even ministers. He may act on a complaint, on referral from members of the Congress and the Senate or on his own motion. Should an emergency be declared, he is to continue to exercise his powers. He may refer a matter to the Constitutional Court, and besides an annual report may make special reports to the Cortes. As can be seen, the Spanish plan closely follows the classical model.

## II. WESTERN EUROPE: LOCAL, STATE AND REGIONAL PLANS

### A. SWITZERLAND

The ombudsman idea has been discussed in Switzerland since 1960, when the Danish ombudsman made a speech in Bern at the invitation of the Swiss Society for the Rule of Law and Individual Freedom. The chairman of the society subsequently published a paper proposing that the system should be introduced at the federal level by an amendment to the Swiss constitution, and in 1962 a commission of the Society proposed the appointment of both civil and military ombudsmen. In 1964 a Swiss scholar, Dr. Walter Haller, produced a book in German on the Swedish ombudsman,<sup>7</sup> and since then he has been one of the leading advocates of the idea.

Partly through his influence, provision was made for an ombudsman in a revision of Zurich's city charter, which was approved by the voters in 1970. The city council elected Dr. Jacques Vontobel, an eminent judge with experience in politics and administration, to take office in November 1971, and has re-elected him for a third four-year term. The office has most of the characteristics of a standard ombudsman plan, except for the power to initiate investigations. Dr. Vontobel provides an additional human touch by personally interviewing most of his complainants.

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<sup>7</sup>Der schwedische Justitieombudsman (Zurich: Polygraphischer Verlag, 1964), pp. 320.

He has reported a rather small number of complaints received annually (about 400 a year), but the population of the city is only about 400,000, and he reports only those dealing with city matters. As with other plans at a lower level of government, quite a few of the complaints have been outside his scope because they deal with a higher level, but he has managed to take effective action on many of them.

Largely because of the success of the plan in the city of Zurich, a proposal for an ombudsman for the canton (state) of Zurich was included in a referendum and approved in September 1977, by a vote of 234,268 in favour and 85,666 opposed. Thus Zurich became the first canton in Switzerland to have an ombudsman. According to Swiss constitutional law, a referendum is decisive, and a favourable vote means that its provisions automatically become law. For this reason, there was a "pro and con" press campaign at the time of the referendum, and this of course increased the public's knowledge of the office before it was even created.

The cantonal minister of justice had favoured a strong plan, but the government was split on the issue. Some ministers wanted only an "ombudsmouse", but a cantonal parliamentary committee strengthened the draft law before it was submitted in the referendum. The parliamentary committee also added a provision that the ombudsman could use his own initiative in investigating cases.

The first ombudsman, Dr. A. Wirth, was elected by the cantonal legislature in June 1978 and took office in

September for a six-year term. He had been director of a section of the Federal Institute for Agricultural Research and also an active politician in the Christian People's party. He had also been chairman of the cantonal parliamentary committee that had revised the draft law. Since assuming office he has been receiving about 400 complaints a year, and has personally interviewed most of the complainants, thus indicating that he is following Dr. Vontobel's practice.

In view of the favourable reputation established for the office by Dr. Vontobel, and the success of the similar office at the cantonal level, it is likely that additional cantons will now adopt the ombudsman plan. A committee of the Swiss council of cantonal governments has proposed that all large cantons (over 100,000 in population) should have an ombudsman.

The plan is also being actively discussed for the federal level. A motion favouring a federal scheme was presented to the Swiss Parliament as early as 1966, and in October 1977 the government issued a bill on the subject for discussion by the political parties and the cantons. The federal bill incorporates the main principles of a good plan. It provides for two equal ombudsmen and gives them strong, independent and comprehensive powers. However, it is in the form of ordinary law, and some scholars, such as Walter Haller, argue that it should be a constitutional amendment in order to increase the office's independence.

Since an amendment would require a popular vote, this would greatly increase public knowledge and understanding of the office. In 1979, because of financial constraints, the federal government decided to postpone introducing the bill until near the end of the legislative session in 1983.

## B. WEST GERMANY

In 1974 Rhineland-Palatinate became the first state of West Germany to have an ombudsman. Because the federal government had had a military ombudsman since 1959, West Germany naturally took a serious interest in the idea of a general ombudsman when this institution began to spread internationally in the late 1960's. A society was formed to support the idea and unofficial proposals were made for the "city-states" of West Berlin, Bremen and Hamburg. The Hamburg proposal was in the form of a detailed draft bill modelled on the Danish plan, and was published in *Mensch und Staat* (No. 1, 1967), a journal of opinion which has strongly supported the ombudsman idea. In August 1967, Willi Weyer, then Minister of Interior for North-Rhine Westphalia, the largest state in the federation, proposed that the idea should be considered by the permanent Interstate Conference of Ministers of Interior, and in September one of the most widely-read weeklies, *Christ und Welt*, published an article entitled, "When Will a West German Ombudsman Come?" The federal Minister of Justice at that time, Gustav Heinemann, said that he favoured a general ombudsman plan for civil



administration, but felt that it should be tried out first in one or two of the smaller states.

After 1967 the enthusiasm for the idea declined. Rhineland-Palatinate eventually adopted a plan that went into operation in May 1974, but since then there have been no further adoptions, though West Berlin has an executive ombudsman appointed by the mayor.

The first ombudsman in Rhineland-Palatinate, Dr. Johannes Baptist Rosler, was president of the state assembly at the time of his appointment, and had chaired the assembly's petitions committee from 1965 to 1971. He was appointed for an eight-year term and can be reappointed. An unusual feature of the office is that the ombudsman also handles complaints that go to the petitions committee. Altogether he receives about 2,500 petitions and complaints a year, of which fewer than 100 are by telephone - an indication that the office emphasizes formal complaints.

Several factors help to explain why there have not been more adoptions to date in West Germany. One is the mixed reputation acquired by the military ombudsman due to the involvement of the first incumbents in public controversies. Another is West Germany's comprehensive system of administrative courts. And a third is the existence of active petitions committees in the federal legislature and all state legislatures except in Lower Saxony. Legislation passed in 1975 extended the powers of the Bundestag's petitions committee (a 27-person committee

of the federal lower house) to investigate complaints against the federal administration. These powers include access to documents and the right to inspect and hold hearings. It now receives more than 11,000 requests and complaints a year, and the state committees receive more than 20,000. Hence, the most likely development in West Germany is that a version of the ombudsman plan will grow gradually out of the system of petitions committees, by providing them with a politically neutral senior officer to receive and investigate complaints on behalf of the committee.

### C. ITALY

The most important ombudsman development below the national level in Europe has been the recent rapid establishment of ombudsman plans for the regional governments in Italy, beginning with Tuscany in 1975 and Liguria in 1977. The ombudsman idea had been discussed in Italy during the 1960's. Later, a comprehensive comparative study published in 1974 by a group of scholars based at the University of Turin was influential in promoting the idea.<sup>8</sup> However, it was not until the regional governments that had been promised in Italy's post-war constitution were finally created throughout the country in the 1970's that the idea came to fruition. The organic statutes for three of the

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<sup>8</sup>Constantino Mortati, ed., *L'Ombudsman (Il difensore civico)*, Studi di Diritto Pubblico Comparato III (Torino: Unione Tipografico-Editrice Torinese, 1974).

fifteen new regions provided for a "civic defender" - in Lazio, Tuscany and Liguria - but the office was at first established only in Tuscany and Liguria. Other regions quickly followed: Campania with a regional law in 1978, Umbria in 1979, Lombardy and Lazio in 1980, and Friulia-Venezia Guilia, Puglia, Marche and Piedmont in 1981. Thus by 1982 ten Italian regions had adopted the plan. The offices for these regions follow the pattern for ombudsmen elsewhere, but their scope is restricted to the regional level and does not include national, provincial or local administration. They are therefore very limited experiments with the ombudsman institution in Italy. An outline of the oldest plan, which I was able to study in operation in 1978, will give the reader some idea of the nature of Italy's regional ombudsman.

Tuscany is the region that includes the city of Florence. It has a population of about 3.5 million, while the population of Florence is about 500,000. It includes nine provinces and 281 local governments. The office of civic defender was established by regional law no. 8, passed in January 1974, but did not become effective until May 1975. Dr. Italo de Vito, a retired provincial prefect, was appointed as the first civic defender. He was required to be appointed by a two-thirds majority vote of the regional council, which has 50 members. The procedure followed was for the party leaders to agree on proposing his name, and the favourable vote was unanimous.

The civic defender is appointed for a five-year term, which is renewable only once. His salary is fixed at the same level as that of a regional councillor, and he has an independent budget. He has the usual powers of an ombudsman except that, unlike the civic defender in Liguria, he does not have the formal power to initiate investigations on his own. But he manages to do so in any case, and the law may be amended in this respect to conform with that of Liguria.

Although he has been receiving complaints at the rate of about 1,200 per year, he has a total staff of only four persons. This is not surprising since the number of public employees working for the region is only about 2,200, and only about 30 per cent of the complaints deal directly with regional matters. The others are mainly concerned with local, provincial and especially central administration. Although these are formally outside his jurisdiction, he manages to get favourable action on a great many of them. His proposals for remedial action on cases within his jurisdiction go directly to the department concerned or to the regional council, according to the case. There is not general control over his office by the regional council and no special committee of the council to consider his reports. The main problems in the complaints that he has received are administrative delay and the refusal of officials to reply to enquiries and requests.

In recent years the idea of a national plan has also been discussed. The Liberal party has proposed a plan at

the national level, and a study on the ombudsman has been published by the secretariat of the chamber of deputies. However, the prospects for adoption depend heavily on the success of the ombudsmen at the regional level.

The regional ombudmen, in turn, face a number of difficulties which are likely to diminish their effectiveness. One is the very fact that they are limited to regional administration. This means that they are unable to remedy the large number of non-regional complaints that come to them, and this is likely to diminish their prestige. Also, they suffer from a lack of visibility. Their efforts at publicity have not been very effective and they have not become known to the average Italian citizen in their regions. Fortunately these difficulties can be overcome. The first would be automatically solved if an ombudsman were created at the national level and if their jurisdiction were extended to the provincial and local levels or separate ombudsmen were created for these levels.

Other factors likely to diminish the effectiveness of the office in Italy are not so easy to overcome. One is the politicization of administration and the influencing of administrative decisions by political pressure. Another is the existence of pockets of corruption in Italian administration. With these factors an ombudsman is not very well equipped to deal. Because of them, and of the intense rivalry among the political parties, it is extremely important that in the Italian situation the ombudsman

institution should be politically neutral and independent. Even if a person is found who is acceptable to all political parties and who is in fact non-partisan, the highly politicized nature of Italian life means that some sectors of the public are still likely to regard him as under the influence of a particular political party or configuration of parties. For these reasons, many people will not entrust him with really serious complaints against the administration, or if they do, he is not likely to be able to take effective action. As one Italian professor expressed it to me, they may be willing to complain to an ombudsman about minor cases of delay or failure to respond, but in serious cases they will either seek out a "fixer" in one of the political parties or, if they are in search of administrative justice, will take their case to the administrative courts. The latter, though not speedy, can usually reach a decision within about six months, and are probably regarded as more independent than a regional ombudsman.

Despite these difficulties, the first regional plans were successful enough to foster clones in other regions. The first ombudsmen have been regarded by the political parties as reasonably neutral and objective, and the ombudsmen themselves seem determined to remain independent and free from political influence. If they succeed in establishing this fact to the public by taking a strong stand against the administration in deserving cases, and if

they succeed in increasing their visibility by judicious publicity, the prospects for the spread of the ombudsman institution to the remaining regions and even to the central government appear to be good.

#### D. BELGIUM

Proposals for a national plan in Belgium have been made by several senators and deputies for a number of years. A private organization, the Commission for Justice and Peace, has been preparing a study on the feasibility of a national plan, and a commission has been preparing a bill based on a proposal supported by the leaders of several political parties. The proposal is for two ombudsmen, one for each linguistic region. Also, the Belgian city of Bruges has passed an ordinance providing for an ombudsman to be appointed by competitive examination. Exams were held in 1980 but no candidate qualified, so the strictness of the qualifications is under review, and no appointment had been made by mid-1982.

#### E. AN OVERVIEW

This survey reveals that within the short span of only fifteen years the ombudsman plan has spread from Scandinavia and Britain throughout the rest of Western Europe. It has been adopted at some level of government in every country except Luxembourg. Counting the older plans in Scandinavia and Britain, general national plans have now been adopted in

ten countries of Western Europe. Besides Luxembourg, the only countries without such a plan are Belgium, Germany, Italy and Switzerland. It may not be long before Switzerland approves one, and it is probable that the other four countries will eventually adopt a version of the plan at the national level.