

The Ombudsman as Human Rights Defender

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Workshop 1: The Ombudsman as Human Rights Defender

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The ombudsman's role as a promoter of human rights can be nationally significant, depending on the tasks that go with the office and the real opportunities for action that it allows. The actions of the ombudsman can play an especially emphatic role as a developer of good administration and in ensuring that those who have been deprived of their freedom are treated in a way that respects their human dignity, as illustrated here by the experiences of the Finnish Ombudsman, and others. There is also a more general role to play in influencing human rights promotion. But there is no common role, and a human rights mandate or the lack of one is not decisive in this respect. We have seen how difficult it is to use international oversight bodies to safeguard implementation of human rights. States should bear responsibility for implementation of human rights, strengthening fundamental and human rights on the national level would make it unnecessary for people to have to turn to international oversight bodies. The ombudsman can and will, as a part of international networks, influence the respect that fundamental and human rights enjoy at home.

The ombudsman institution comes in a great variety of forms, and there is no one-size-fits-all model. The ombudsman's role as a defender of human rights has been deliberated at various conferences and has been the focus of comparative studies in the legal literature.¹ In these studies, the ombudsman institutions are often divided into so-called classic institutions, whose main task is oversight of government or public authority, and human rights defenders or similar bodies, whose principal aim is to intervene in violations of human rights and promote these rights.

In my view, protection of human rights is an essential part of the work that all ombudsmen do. Irrespective of different roles and emphases, the tasks that ombudsmen perform are closely linked to upholding the rule of law and respecting the fundamental principles that this involves. In the following, I try to analyze some of the ombudsman's different roles as a human rights defender.

First I shall deal with the significance that development of the international system of human rights conventions has had for ombudsman institutions. I see the creation of these institutions as a part of this human rights development.

¹ With respect to recent years, cf. especially Linda C. Reif, *The ombudsman, good governance, and the international human rights system*. Leiden, Martinus Nijhoff Publishers, 2004; Gabriele Kucsko-Stadlmayer (ed.), *European Ombudsman-Institutions*. Vienna, Springer, 2008.

But it has also brought changes in individual institutions. The Ombudsman in my own country is an example of this. I shall use a few observations to describe this development.

Then I shall analyze the ombudsman's different roles as a human rights defender. I shall deal with this in the light of some of the ombudsman's key tasks, namely the ombudsman's role in strengthening the rule of law, in promoting good administration, in defending the rights of persons who have been deprived of their liberty, and in promoting human rights in general.

To conclude, I shall outline a few thoughts about the ombudsman's role in international human rights development in the future.

The ombudsman institution and international systems of safeguarding human rights and the ombudsman institution

We have been living since at least the 18th century in a world of nation-states. Legislation has steered the development of society and the principle of the rule of law has become our objective. According to this principle, the exercise of public power must be anchored in law, which has to be scrupulously followed in all public actions.

Now we are living in an era when the aim is to protect the fundamental rights of everyone by means of international conventions. Human rights are seen as springing from human dignity, not the grace and favour of the state.² An important milestone in this change of thinking was the Universal Declaration of Human Rights, the 60th anniversary of which we celebrated towards the end of 2008.

The past 60 years have seen an impressive number of international human rights conventions come into being. Some of the important ones within the United Nations system were created in the 1960s and 70s. The European Convention on Human Rights dates all the way back to the early 1950s. It includes a far-reaching oversight system, provides the possibility of complaints by individuals and has a court of its own. The aim with these conventions has been to strengthen the rights of citizens, or more accurately, all people relative to the public authorities.

Associated with this development is the creation of posts for international human rights commissioners, namely the UN High Commissioner for Human Rights and the Council of Europe Commissioner for Human Rights, both of which made their debut in the 1990s. However, I also see the establishment of national ombudsman institutions as a part of this general development.

Ombudsman institutions relate, naturally, to their own time and their international and national communities, and they have come into being and developed as a part of these communities. The Swedish and Finnish ombudsmen were a part of the development of the rule of law in the nation-states that produced them. The rule of law and the tripartite separation of powers are the

² Rosas Allan, Kansainvälisten ihmisoikeussopimusten merkityksestä, *Lakimies* 1/1995, s. 69. Cf. also Lauterpacht H., *International Law and Human Rights*, 1950.

fundamental principles on which a democratic state is founded. It was precisely these factors – equilibrium in the relations of power within the state and compliance with the law in public actions – that the rulers in Sweden wanted to strengthen when they created the post of ombudsman in their country.³

The primary task of the Swedish and Finnish ombudsmen was to oversee compliance with the law and hold public servants to account for their negligence with respect to their official duties. The role of prosecutor was necessary in the implementation of legal responsibility for misconduct or negligence in office.

Later, when the ombudsman institution spread from Denmark to other countries in the late decades of the 20th century, the emphasis shifted to assessing the appropriateness of administrative procedures and developing them as public administration grew vigorously. The ombudsman, as a non-judicial institution, was an ideal instrument for doing this. The role of prosecutor was no longer indispensable.

General promotion of human rights was accentuated in the tasks of ombudsmen in developing nations and of those most recently created.

Thus, what is noteworthy is that the spread of the ombudsman institution has been contemporaneous with the most recent stages of the development of the international system of human rights, and in this way, it is closely associated with this general historical developments in safeguarding the rule of law, democracy and human rights. In each country, political and societal developments and the stage that it has reached in the evolution of the rule of law have influenced the kind of ombudsman institution that has been created there. In general, however, it can perhaps be said that the trend has increasingly been towards accentuating the role of the ombudsman in safeguarding and promoting the human rights guaranteed in international conventions and national constitutions.

The Ombudsman as a promoter of human rights in Finland

The institutions have also developed over the decades along with the evolution of international thinking on human rights and international influences. My own country is a good example of this.

The ombudsman institution was established in Finland, following the Swedish model, 90 years ago. The country had been independent for only two years, but since the early years of the century it had had its own unicameral parliament elected on equal and universal suffrage – the first of its kind in the world.

The Ombudsman was tasked with overseeing the legality of public servants' actions and holding them to account for misconduct or negligence in

³ Mats Melin, *JO-ämbetet 200 år – en blick mot framtiden*. In: *JO – Lagarnas väktare*. Eds: Jesper Ekroth and Kjell Swanström, 2009.

their official duties. This kind of oversight is still a key task. It is performed by investigating complaints and conducting inspections of institutions, especially prisons, police stations, garrisons, child welfare establishments, institutions for the mentally handicapped, psychiatric hospitals and comparable places. The Ombudsman has extensive jurisdiction. It extends to both state and municipal officials, including the police, the armed forces, judges and even government ministers.

The Ombudsman can issue a reprimand on the basis of unlawful action, express an opinion as to what procedure would have been lawful, or draw the attention of the authority to the requirements of good administrative practice and to aspects that promote the implementation of fundamental and human rights. In addition, he or she can recommend the rectification of an error or draw the attention of the government to deficiencies in the legislation. The right to bring a prosecution is the most severe of the sanctions at the Ombudsman's disposal.

Human rights mandate

Promoting good administration has featured centrally in the Ombudsman's work for a long time, especially since the 1970s and 80s, when the machinery of administration expanded, but administrative procedures were unregulated. The stances adopted by the Ombudsman have had a lot of significance when official actions have been developed in accordance with the demands of good administrative procedure.⁴

However, the Ombudsman's oversight of legality in my country has in recent decades been influenced more powerfully by international developments in the field of fundamental and human rights. Starting in the 1970s, Finland acceded to many international human rights conventions⁵ and at the same time began a national process of revising its fundamental rights laws. This process was brought to completion in 1995, when the fundamental rights provisions of the Constitution were comprehensively restructured. This reform incorporated international human rights into our national Constitution. An obligation to oversee implementation of fundamental and human rights was also added to the tasks of the Ombudsman that are enshrined in the Constitution.

In fact, as early as the 1980s, the actions of the authorities were being evaluated in the Ombudsman's decisions in the light of the obligations imposed by human rights conventions, even though the so-called human rights mandate requiring it had still not been written into the Constitution. In those days, the Ombudsman's decisions included a reminder of the direct applica-

⁴ The earliest legislation concerning administrative procedure was enacted in Finland in 1982. The Ombudsman's stances on good administration considerably influenced its contents.

⁵ Inter alia, the UN International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights came into force both internationally and in Finland in 1976. These were followed by many other UN conventions and later also the European Convention for the Protection of Human Rights and Fundamental Freedoms.

bility of human rights conventions and of their impact as guidelines for statutory interpretation. In particular, emphasis was placed on the importance of interpreting the law in a manner amenable to human rights. Human rights had earlier been seen as belonging primarily to the sphere of political activities, and international human rights norms – transposed as such into domestic law in Finland – had not been presented in the reasoning of court decisions. On the other hand, legislation had been developed both in Finland and elsewhere increasingly in the direction of flexible norms that called for discretion and interpretation.

All in all, the development of fundamental and human rights contributed significantly to shaping the Finnish legal order and legal thinking in the later decades of the 20th century. Successive Ombudsmen have contributed to this development, and they are seen to have played a pioneering role in applying international human rights conventions and getting them rooted in the Finnish legal culture.⁶

Implications of the human rights mandate

The concept of legality

The emphasis on fundamental and human rights that international developments in this field have brought is reflected in the Ombudsman's oversight of legality in many ways. I have already referred to one of those effects. The concept of legality has become broader than it earlier was and its content more comprehensive. Good administration and implementation of fundamental and human rights in general have become an essential part of legality. Literal interpretation of the law has had to make way for a broader conception of legality. And, naturally, the foundation of norms has broadened substantially thanks to national constitutional provisions, international human rights conventions and the living and developing case law of international oversight bodies, especially the European Court of Human Rights.

A shift in perspective

Secondly, fundamental and human rights are reflected in the Ombudsman's oversight of legality in that the perspective from which this oversight is conducted has shifted from assessing compliance with the authorities' obligations to examining to what extent the human rights of the individual have been respected.

For example, it is not enough when assessing the unacceptably long duration of a social security appeal process to examine how long it takes each appeal instance to handle the case; instead, the matter must be looked at from the perspective of the benefit to an applicant. Viewed from this perspective, what is involved is a multi-stage process that safeguards one benefit, and also processing times must be examined from the starting point of how this pro-

⁶ Martin Scheinin, *Ihmisoikeudet Suomen oikeudessa*. Helsinki: Suomalainen lakimiesyhdistys, 1991 (Human Rights in Finnish Law. With an English Summary).

cess as a whole ensures the benefit applicant's right to a fair trial and security of basic subsistence.

The Ombudsman can no longer be content to state in a decision that an authority has acted within its discretionary powers. What must also be assessed is whether a decision or procedure has been conducive to safeguarding, in the best possible way, those rights that are enshrined in the national constitution or international human rights conventions. Attention is often drawn in decisions to aspects relating to the promotion of fundamental and human rights that could have called for a different procedure or decision.

New legal issues arise

Something else that has changed is the kind of questions that arise. One of the clearest developments since the fundamental rights provisions of the constitution were revised has been the prominence that economic, social and cultural rights have assumed alongside classical liberties. In Finland, these rights are safeguarded both by international human rights conventions and in our national constitution.

Attention to safeguarding fundamental and human rights has been evident in many ways in the actions of the public authorities since the constitutional provisions dealing with these rights were revised. For example, there has been an effort to make legislation more precise and with more clearly defined limits than in the past.

Constitutional assessment of social rights is a sensitive area, in the border zone between wielding influence in society and legal evaluation.⁷ The legally binding character of these rights is not as such called into question, but the Ombudsman has had to assess implementation of these fundamental rights and adopt a position on the content of the obligation to ensure respect for these rights and the provision of services. The adequacy and appropriateness of legislation as well as resources issues come up in safeguarding these rights, which presuppose active measures on the part of the public authorities.⁸ I shall mention a few examples of this new way of framing questions:

The Constitution of Finland requires the public authorities to ensure, in a manner prescribed in an Act, that adequate health services are available to everyone. An Act regulates the statutory duty that municipalities have to arrange these services. Earlier legislation did not include more detailed provisions on this obligation; for example, waiting lists for non-urgent treatment

⁷ My predecessor as Ombudsman, Lauri Lehtimaja, devoted major attention to developing oversight of respect for human rights in the years after the constitutional provisions dealing with them were revised. He pointed out then that, although an Ombudsman should be cautious in this area, it appeared nevertheless to be time for a critical reappraisal of those of the Ombudsman's earlier positions to the effect that questions relating to how the resources of society are distributed do not fall within the scope of oversight at all.

⁸ Section 22 of the Constitution of Finland requires the public authorities to guarantee the observance of fundamental rights and liberties and human rights. The key means of fulfilling this obligation are seen as being, in addition to interpreting the law in a manner amenable to these rights, the enactment of appropriate legislation and the allocation of sufficient resources to ensure that the real prerequisites for their implementation are in place.

were significantly long. Patients could wait several years for treatment that had been assessed as necessary. In my view, the right of a sick person in need of treatment to adequate health services was not being realized in these situations in the way that is meant in the constitution, and this led to the Ombudsman pointing to a need to amend legislation. I stated in my recommendation that a precise definition of the extent and at level of quality basic health care services should be implemented everywhere in the country to help ensure people's rights to adequate services on a basis of equality. The legislation has, in fact, subsequently been explicated by defining the time within which treatment must, according to law, be obtained. This "treatment guarantee obligation," as we call it, has in the course of four years reduced the number of patients spending six months or more on waiting lists for specialized hospital treatment from 66,000-plus to less than 2,000.

My second example concerns restrictions on the right of self-determination and the use of coercion in institutional care. In order for fundamental and human rights to be safeguarded, there must be precise and detailed legislation on the prerequisites that have to be met before there can be an intervention affecting the freedom, personal integrity, right of self-determination and privacy of people in institutions. Proposals with this in mind have been made to amend legislation dealing with the use of coercive measures and restraint in such fields as specialized care for the mentally handicapped, mental health and child welfare. In the case of my proposal concerning the right of self-determination of patients committed for mental treatment against their will, what I recommended was based on an extensive study of all psychiatric hospitals and the isolation practices used in them, and it led to the amendment of sections of the Mental Health Act.

Own initiatives gain importance

One can conclude that the Ombudsman's oversight of legality has, in the period since the fundamental and human rights mandate, led to an examination of problems with these rights that goes beyond individual cases and shortcomings. The cases in question were prompted by claims presented in complaints, but above all they were based on information gained during inspection visits or presented in the media. These initiatives have often proven to be demanding and laborious, but especially significant in their impact.

A few years ago, when we commissioned a study of the impact that the Ombudsman's decisions have on legislation and official actions, the results confirmed that work based on our own initiative and our inspection visits had achieved especially impressive results.⁹

⁹ Parliamentary Ombudsman of Finland, *Näkökulmia oikeusasiamiesinstituution vaikuttavuuteen*. Helsinki: Yliopistopaino 2007 (Perspectives on the effectiveness of the Ombudsman institution. With an English Summary. Also available In the Summary of the Ombudsman's Annual Report 2007). Cf. also Pajuoja Jussi, The Impact of the Parliamentary Ombudsman Institution in Finland. Rita Passemiers, Herwig Reynaert and Kristof Steyvers (eds.), *The Impact of Ombudsmen*. Brugge, Vanden Broele, 2009.

Other activities

In recent years we have also chosen themes, such as good administration and protection under the law, to be taken into consideration on inspection visits and in our other activities. Themes of this kind have included equality, the provision of advice as well as publicity and access to information.

The implementation of fundamental and human rights, along with the Ombudsman's observations and stances in this respect, is dealt with comprehensively in the annual report that the Ombudsman makes to the national parliament, the Eduskunta. These sections of the reports have been regarded as important for their educative role in the development of official actions.¹⁰

The ombudsman as a promoter of human rights

After these few national observations, I shall go on to a more general examination of the ombudsman's importance as a promoter of human rights. I shall try to analyse it in the light of some of the ombudsman's roles. First, the ombudsman's role in strengthening the rule of law. In many countries, this is the most important role in the sphere of human rights. In many other places, in turn, the ombudsman's key significance has related to promoting good administration, also an important way of promoting human rights. One task traditionally entrusted to the ombudsman has been that of defending the rights of persons who have been deprived of their freedom, and I see this as an important role in the promotion of human rights. I shall conclude by examining the ombudsman's role in the elimination of some of the severe human rights problems of our societies.

The rule of law

The rule of law is a concept that applies differently in different legal cultures. However, the trend in the civilized world is towards democracy and the rule of law. For example, strengthening the rule of law on both the national level and the international was stressed at a UN summit in 2005.¹¹

The rule of law is generally regarded as a principle that includes legality, separation of powers and the protection of fundamental rights.¹² In the European legal culture, one of the central elements of the rule of law is that all exercise of public power must be founded on the law, which must always be scrupulously complied with when this power is wielded. Thus everyone who exercises public power must be so authorized by a law enacted by the parliament.¹³

The rule of law is an essential part of implementation of human rights. A prerequisite for these rights being respected in practice is that authorities and

¹⁰ The English summary did not earlier contain this part of the Annual Report, but in the summary of the 2008 report it has been partly included.

¹¹ 2005 World Summit Outcome. UN General Assembly Resolution A/RES/60/1 (2006).

¹² Pekka Hallberg, *The Rule of Law*. Helsinki, Edita, 2004, pp. 70.

¹³ E.g. Section 2 of the Constitution of Finland.

officials comply with national laws and international conventions. For instance, in a society where officials are bribable or where the actions of the police are not scrupulously in accordance with the law, the prerequisites for implementation of human rights do not exist.

Corruption

We know that bribery exists everywhere in the world, and in some countries it is so widespread that it constitutes one of the biggest obstacles to building the rule of law. According to international statistics, my own country and its Nordic neighbours are among the least corrupt in the world.¹⁴ Cases are rare and the law is very strict; civil servants are not allowed to receive any gift or other benefit in a manner conducive to weakening confidence in the impartiality of the actions of authorities.

Nevertheless, individual cases do crop up in the Ombudsman's oversight of legality, and there is no reason for smugness anywhere. For example, in some cases decision has been taken as to where the line can be drawn between ordinary hospitality and exercising influence to a degree that can be considered bribery.¹⁵

I see general understanding of the principle of legality rooted in public thinking as a key factor in weeding out corruption. A legalistic administrative culture, trust in public authorities, open, transparent administration and good public services for all serve as anti-corruption cornerstones in many countries. The ombudsman's significance in this respect is strengthened by the right to initiate criminal prosecutions and to press criminal charges against civil servants. Although the number of charges laid by the Ombudsman in my own country is very small, the fact that it is possible at all is important from the perspective of strengthening the principle of legality in general.

It is easy to imagine what enormous challenges many of our colleagues have to contend with in countries where corruption is firmly rooted in the structures of society. Indeed, the importance of an incorruptible public service for the implementation of human rights has been accorded weight in the tasks of some of the new ombudsman institutions created in recent years and decades. In some countries, the ombudsman's primary task is precisely to fight corruption.¹⁶

Police activities

The implications of the police intervening in civil rights are clear to everyone. The environment in which the police operate has become increasingly internationalized in recent years. Combating serious crime, often of a cross-border

¹⁴ 2008 Corruption Perceptions Index. Available on the web site of Transparency International: www.transparency.org.

¹⁵ In one case, the Ombudsman ordered criminal charges to be laid against several judges of the Water Rights Court for having received hospitality (lunches and social evenings) from a company with pending issues before the Court. The criminal proceedings ended with the Supreme Court finding the judges guilty of negligent failure to perform their public duties.

¹⁶ See Linda C. Reif, *supra note 1*, pp. 9.

character, presupposes international cooperation. One of the effects of this is that the powers of the police and the means available to them in both combating and preventing crime have increased. International interaction poses many challenges to the police. However, safeguarding human rights requires that the police act within the framework of the law and that any interference with people's rights is in accordance with the principle of least severe intervention.

We have been able to familiarize ourselves with massive police operations in some parts of the world and the decisions that our colleagues have made in the wake of some especially dramatic ones.

In Finland, the Deputy Ombudsman has adopted a position on police actions at the "Smash Asem" demonstration that took place in Helsinki in conjunction with the international Asia-Europe Meeting (ASEM). The police launched a massive operation to end this demonstration. Although the Deputy Ombudsman found that ending the demonstration was lawful, he observed that the police had also acted unlawfully in some respects. The decision involved, as is very often the case, a weighing of the actions of the police against the correctness of their scale. The scale and duration of the cordoning-off was deemed to be problematic. The police had placed a considerable amount of emphasis on effective action, with little concern for the personal liberty of those present at the scene. The Deputy Ombudsman emphasized that the law must be scrupulously observed in all official actions.

All of us who oversee legality have made similar observations about police operations, big and small.

My aim in presenting these few thoughts about corruption and police activities has been to concretize the importance of traditional oversight of legality in safeguarding human rights. It is in overseeing the authorities and the legality of their exercise of public power where this institution's key significance in the promotion of human rights lies, although in many countries there is a tendency to shy away from the ombudsman's oversight of legality as being a too narrow and formal perspective; indeed, some even see it as an activity that does not belong to the ombudsman at all.

Good administration as a human right

International human rights conventions have long provided for the right to a fair and public trial.¹⁷ By contrast, the right to good administration is only beginning to gain a foothold as a human right in international conventions. European economic integration has contributed to this development. But development of the general principles and procedures of administration has also been done within the Council of Europe. In the recommendations that the Council of Europe has issued, good administration is accentuated as being to the benefit of the rule of law, and the Charter of Fundamental Rights of the European Union is one of the documents that enshrine good administration as

¹⁷ Article 6 of the European Human Rights Convention and Article 14 of the International Covenant on Civil and Political Rights.

a right.¹⁸ Although the provision in the Charter is binding only on the Union's institutions, in practice it guides and lends uniformity to national administrative procedures. Administrative procedures are in many countries comprehensively regulated in the law. However, it is quite rare for good administration to have the status of a fundamental right in the legal system. This is the case in my own country.¹⁹

Good administration includes the right to have one's case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to rights or obligations reviewed by a court or other independent organ for the administration of justice. Naturally, guarantees of good administration do not stop with these demands. Conformity to law, equality, non-discrimination, openness of administration and publicity are further examples of the things that must be in place in order for good administration to become reality. Impartiality, proportionality and legal certainty are just as important.

Let us take the principle of publicity as an example. As I have already emphasized, the principles of publicity and openness of administration are of major importance as means of reducing corruption. But their importance is, naturally, great in other respects as well. Prerequisites for a democratic society are free formation of opinion, an open public discourse, free development and pluralism of mass media as well as the possibility of public control of the exercise of power. Indeed, freedom of expression and publicity are safeguarded as a human right by international conventions and the constitutions of many countries. Freedom of expression includes the right not only to express and publish, but also to receive information, opinions and messages without anyone preventing it.

In all of the Northern countries, openness and transparency are essential features of the public administration, and they are expressly guaranteed by law.

It is my view that openness and publicity of administration are key prerequisites for the implementation of human rights. Implementing the principle of publicity as an essential part of good administration is a central part of many ombudsmen's work, irrespective of their roles and job descriptions. Perhaps it should also be borne in mind that one of the important tasks that the Swedish Ombudsman has fulfilled from the very beginning is seeing that the principle of publicity is observed in official actions.²⁰

Irrespective of what status good administration has in each country as a human right or a fundamental right, promoting good administration has been a central task of all ombudsmen. Delays in administration, shortcomings with

¹⁸ Article 41 of the Charter of Fundamental Rights of the European Union and Council of Europe Recommendation CM/Rec(2007)7 on good administration.

¹⁹ In fact in section 21 of the Finnish Constitution the right to protection under the law and good administration is guaranteed. Good administration is a legal concept in Finland. One of the things that this means is that a civil servant's official duties include observing the provisions and principles of a law requiring good administration and that failure to comply with this obligation can incur sanctions in the form of penalties.

²⁰ Hans Ragnemalm, *JO om offentlighetsprincipen*, p. 3, Stockholm, 1992.

regard to advice, guidance and information, scantily reasoned decisions, failure to provide information, passivity of all kinds, carelessness, improper treatment, neglecting to reply to queries, and so on – all are part of the everyday reality of the lives of citizens and ombudsmen everywhere. Through their stances, ombudsmen have developed good administration.

In countries that have lacked legislation on administrative procedures, many ombudsmen have developed different codes of good practice in this respect. The Parliamentary Commissioner in the U.K. recently developed a set of Principles of Good Administration, and my predecessor and later the first European Ombudsman Jacob Söderman did outstanding work in developing a Code of Good Administrative Behaviour for the EU.

The value of procedural protection cannot be underestimated. It creates the prerequisites for implementation of other fundamental and human rights. Although few people are likely to take to the streets in demonstrations demanding good administration, I would argue that its importance in the everyday lives of citizens is enormous. The relevance of good administration as a human right will continue to strengthen and the ombudsman's role in this respect as a safeguarder of human rights will grow.

The rights of persons who are deprived of their liberty

Besides good administrative procedures, defending the rights of persons who have been deprived of their liberty has been an essential part of the ombudsman's tasks in several countries – and rightly so. Torture and inhuman treatment in prisons and police custody is an everyday reality in many countries and there is a crying need to prevent both.

Matters that are especially sensitive with respect to human rights include the use of force and other coercive measures by the police as well as conditions in closed institutions and the military units where conscripts serve. Persons involuntarily committed to psychiatric hospitals for treatment, those arrested and detained by the police and inmates of prisons are all in special need of protection. In all institutions where persons are deprived of their freedom, oversight and inspection visits are important in order to protect human rights. When we assess what constitutes treatment that violates human dignity, we are bound by the changing values and concepts in society. There is both a need and room for the ombudsman's oversight.

International human rights conventions prohibit treatment that offends human dignity and protects the individual's life, liberty and personal integrity and safety. Indeed, personal integrity is the starting point for all fundamental and human rights. It is the state's task to protect it. The ombudsman's oversight of the public authorities' actions in this respect plays an extraordinarily important part in safeguarding human rights.

The European and the UN Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment came into being in 1987. The UN Convention's Optional Protocol (OPCAT) establishes a system of regular visits to all places of detention in order to prevent torture and other cruel, inhuman or degrading treatment. Visits are carried out by a new inter-

national body and by one or several of the national preventive mechanisms that states set up, designate or maintain.

In many countries, it is the ombudsman who has been designated as the national preventive mechanism that the Optional Protocol provides for.²¹ The reason for the choice is probably the fact that ombudsmen meet the requirements with respect to independence, but an additional factor is that they have long been overseeing and inspecting those places mentioned in the convention. The ombudsman's designation as the national mechanism can be interpreted as a vote of confidence in the ombudsman institution and, in my view, suits well our traditional function as a defender of those who have been deprived of their liberty.

What is clear is that the international trend of development is to focus more emphatically on oversight of human rights in this area, on the basis of the CPT (Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) agreements and the oversight mechanisms for which they provide. I also believe it is probable that, whether with or without the OPCAT task, the ombudsman's oversight of institutions and the significance of the rights and treatment of persons who have been deprived of their freedom will increase. I see the ombudsman's opportunities for action in safeguarding human rights in this area as important.

The ombudsman and the big human rights problems of our time

What about the major human rights problems of our times? What are they and how can an ombudsman struggle against violations of these rights?

On the global scale, the biggest human rights problems are, of course, those relating to wars, poverty, undernourishment, the non-availability of clean water and inadequate environmental protection. There are shortcomings in implementation of social and cultural rights and civil and political ones. The same applies in many places also to an independent court system, effective administrative structures and a well-functioning civil society. Violence against women and children is widespread, as is human trafficking. Immigrants, minorities and the handicapped are discriminated against; indigenous peoples are subjugated. There is corruption and torture.

The primary task of ombudsmen in developing nations and in many of the new institutions that have been created is specifically to promote human rights. Some ombudsmen have risked their lives as they struggled to do so.

The statutory powers enjoyed by ombudsmen and the instruments available to them, naturally, largely determine the role they play and their opportunities for action in influencing human rights policy.

²¹ A solution of this kind has been made in about 20 countries. Cf. for more detail the web site (www.apr.ch) of the Association for the Prevention of Torture (APT). Also Jari Pirjola, The Parliamentary Ombudsman of Finland as a National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. *Nordic Journal of International Law* 77 (2008), pp. 163–174.

By virtue of their tasks, ombudsmen with a general mandate to promote human rights and a national human rights institution in accordance with the UN's Paris Principles are by nature figures who adopt positions on human rights issues of this kind. On the other hand, I see no reason why the so-called classical ombudsmen cannot have a role in highlighting common human rights problems and intervening in them in their own countries. If an ombudsman's powers are limited to overseeing the discharge of official functions and public tasks, his or her actions can naturally be focused on authorities alone. However, authorities can be proactive about or indifferent to human rights problems when they perform their tasks. An ombudsman can likewise be proactive or indifferent when it comes to intervening in the authorities' indifference.

Let me take the example of a major human rights problem that afflicts many societies: Domestic violence. It can have children as its direct victims or be between spouses, with the children having to witness and hear it. Because in Finland, the Ombudsman's powers of oversight are limited to official actions, the starting point that I adopted when taking action in this issue was to study what the authorities are doing to prevent, investigate and deal with violence against children. My studies led to a separate report to the Parliament and several legislative proposals. I also called on the authorities to demonstrate initiative and alertness as well as the courage to prevent domestic violence and help its victims.

The actions of the police and other authorities in investigating and prosecuting racially motivated crimes could serve as my second example. If the police and other authorities adopt a disparaging attitude to preventing this kind of crime and bringing the perpetrators to justice, it can affect the general climate of opinion towards such groups as immigrants or indigenous minorities. An ombudsman can be active and take the initiative in investigating and assessing the actions of the police, the prosecutors and others, and in this way help reduce violations of human rights.

The fundamental and human rights problems that come up in the ombudsman's work can be strongly highlighted in various ways. In my own country, for example, the drafting and subsequent deliberation of the report on human rights policy that the government submits to the Parliament every four years provided good opportunities to draw attention to such matters. I have also emphasized that the public authorities must have a clear and binding programme to eliminate the main human rights problems; something that the reports have not contained so far.

My view is that the ombudsman's role as human rights defender is determined essentially by the powers and means that go with the job, and by his or her approach to promoting fundamental and human rights. As I see it, the fact that an ombudsman's official powers are limited does not preclude his or her working energetically to eliminate human rights problems of this kind. It is quite another matter that I shy away from various ombudsmen's declarations concerning other countries' human rights problems that have been proposed in recent years.

Naturally, the ombudsman's mandate, powers and the instruments available for use determine these possibilities and set limits to them. However, I believe that sensitivity to fundamental and human rights and real opportunities for ombudsmen to act on their own initiative despite a growing flood of incoming complaints are no less important.

Conclusion

By way of conclusion, the ombudsman's role as a promoter of human rights can be nationally significant. Depending on the tasks that go with the office and the real opportunities for action that it allows, an ombudsman's real significance can lie primarily in traditional oversight of legality and through this in strengthening the principle of the rule of law. An ombudsman can play an especially emphatic role as a developer of good administration and in ensuring that those who have been deprived of their freedom are treated in a way that respects their human dignity. There is also a more general role to play in influencing human rights promotion, or in all of these respects.

In the light of this discussion, it is my view that, although the roles that ombudsmen play in the promotion of human rights are manifold and heterogeneous in an international comparison, they can be important on the national level. But there is no common role, and a human rights mandate or the lack of one is not decisive in this respect.

The importance of national action has been underscored in the international human rights developments of recent times – and quite rightly so. We have seen how difficult it is to use international oversight bodies to safeguard implementation of human rights. This is due in part to the structural weaknesses in oversight of human rights conventions, and in part to the fact that even in the best-case scenarios they can handle only a limited number of complaints. As we know, the resources available for instance to the European Court of Human Rights are nowhere near enough to deal with all complaints in reasonable time. States should bear responsibility for implementation of human rights, and the objective now is to strengthen this national responsibility. One way of strengthening national responsibility has been the establishment of national human rights institutions in accordance with the Paris Principles formulated within the UN.²²

In many of my presentations, I have called for a strengthening of fundamental and human rights on the national level in a way that would make it unnecessary for people to have to turn to international oversight bodies to investigate, deal with and remedy violations of human rights. In light of my experience, however, this does not seem very realistic. Many problems relating to the implementation of fundamental and human rights to which ombudsmen and others have repeatedly drawn attention are not being remedied. One reason for this in my country is that, on the national level, the possibility

²² The Paris Principles. UN General Assembly Resolution A/RES/48/134 (1993).

of compensation for violations of human rights is inadequate. Besides, it is evident that international criticism tends to make domestic decision-making and administration more sensitive.

In my view, the ombudsman can and will in the future, as a part of international networks, influence the respect that fundamental and human rights enjoy at home. This can happen in parallel with national human rights institutions or through them. In either event, international networking of ombudsmen is important. In Europe, cooperation between ombudsmen takes place within the frameworks of the IOI and both the European Union and the Council of Europe. Something that I see as important in Europe is the network of national human rights institutions and other structures in this field that has come into being on the initiative of the Council of Europe's Commissioner for Human Rights, and as a part of which the Ombudsman works.