INTERNATIONAL FRAMEWORK OF THE OMBUDSMAN INSTITUTION

SÍNDIC
EL DEFENSOR DE LES PERSONES

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SUMMARY

PREAMBLE

Ombudsmen now represent an institutional opportunity for contribution to the renewal of democracy. While it is true that ombudsmen can trace their existence back to their creation by the Swedish monarchy in 1809, it is no less so that this figure was not spread to other democracies until practically the mid and late 20th century.

In current times, before the challenges now faced by democracies, the role of ombudsmen has grown thanks to the concept of the defense of rights as well as the new responsibilities granted to them.

Nonetheless, the contradictory situation that ombudsmen now find themselves in must be taken into account, as when they should seem more necessary than ever to guarantee the rights of people in a world that is changing and stricken by a structural crisis that affects every facet of social relations, there have emerged temptations to silence or do away with them on the grounds of scarcity of resources and savings of public funds.

That is why it is so important that in a world that is becoming more globalized, international organizations have taken increasingly clear and precise positions, regarding the role of ombudsmen, defending the need for their existence and their institutional consolidation.

This is a trend that must be known and disseminated by the ombudsman community, as it adds a new and greater dimension to any of the legal definitions that exist at different levels, be they state, regional or local.

Therefore, at the Síndic de Greuges de Catalunya (Catalan Ombudsman) and from the learning we have acquired on international relations, we have deemed it opportune to undertake a research effort on the international defining elements of the role of ombudsmen in today's democracies. We have done so with the aid and cooperation of the academic world, through the direct contributions of professors Vintró and Aragonés. With them, over the past months, we have exchanged drafts and contributions to the text we offer herein. It has been an enriching experience of synthesis between the university and institutional viewpoints. It has also been made possible thanks to the financial contribution of CaixaBank, which has covered part of the expenses arising from this research project.

We are pleased to offer this small contribution to the ombudsman community, in our quest for dissemination and continuity of the commitment to our institutions. We are open to any sort of exchange and learning that could originate from this text. Further, it will be necessary to update the terms it contains as the consideration and recognition of ombudsmen advance in international organizations.

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I. INTRODUCTION

Year after year, a growing interest is observed among international organizations –especially the Council of Europe and the United Nations– in the implementation and strengthening of the ombudsman institution as an institutional mechanism to guarantee human rights. Furthermore, it can be observed that certain statements and reports of international organizations relative to this field have been unanimously approved by parliamentary representatives of the member states. Based on this reality, the purpose of this study is to describe the international framework of the ombudsman's core characteristics, and to underscore the relevance of the recognition of this unique figure transcending a purely state realm, to reach a supranational level.

II. REGULATORY SOURCES

1. List of texts and general characteristics

The international texts that deal with the ombudsman institution chiefly consist of decisions approved by the General Assembly of the United Nations, by the Parliamentary Assembly of the Council of Europe (hereafter PACE) and the Congress of Local and Regional Authorities of the Council of Europe (hereafter CLRACE). Furthermore, mention should be made of a diverse array of other relevant documents, such as the compilation on the ombudsman institution by the Council of Europe's Venice Commission. In addition to those mentioned hereafter, in the course of this study, consideration was also given to other international texts that refer to the ombudsman at some point. The relevant reference and links are included in each case. A majority of the international texts are still from the European sphere, but it is certain that in the near future, new international texts on the ombudsman will emerge on the other continents, as stated by the recent Resolution of AOMA (2 March), on standards of Ombudsmen.

a) United Nations: General Assembly

- The role of the ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights. (A/RES/67/163, 20 December 2012).

- The role of the ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights (A/RES/65/207, 21 December 2010).

- The role of the ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights (A/RES/63/169, 18 December 2008).

- National institutions for the promotion and protection of human rights (A/RES/48/134, 20 December 1993). - The "Principles relating to the status of national institutions" are annexed to the resolution.

b) Council of Europe: Parliamentary assembly

- Strengthening the institution of Ombudsman in Europe. Parliamentary Assembly Resolution 1959 (2013), 4 October.

- The institution of Ombudsman. Parliamentary Assembly Recommendation 1615 (2003), 8 September.

c) Council of Europe: Congress of Local and Regional Authorities

- The Office of ombudsman and local and regional authorities. Resolution 327 (2011), 18 October.

- The Office of ombudsman and local and regional authorities. Recommendation 309 (2011), 18 October.

- On Regional ombudsperson: an institution in the service of citizen's rights. Recommendation 159 (2004), 4 November.

- On the role of local and regional mediators/ ombudsmen in defending citizen's rights. Resolution 80 (1999), 17 June. The "Principles governing the institution of the mediator" are set down in the appendix.

- On the role of local and regional mediators/ ombudsmen in defending citizen's rights. Recommendation 61 (1999), 17 June.

d) Council of Europe: European Commission for Democracy through Law (Venice Commission)

- Compilation on the Ombudsman institution. CDL(2011)079. 1 December 2011. This

document is a compilation of excerpts from opinions pronounced in reports and studies on this subject.

2. Legal character

As outlined in the foregoing section, the international texts that address the ombudsman institution are decisions and recommendations handed down from international political bodies of a general or regional scope (the UN and Council of Europe), and more precisely, some of their representative and consultative bodies (General Assembly and Parliamentary Assembly). The internationalist doctrine holds that, in principle, these decisions and recommendations do not have a binding legal character. That said, the same doctrine also states that, in general terms, and without prejudice to the specific characteristics of each case, decisions and recommendations adopted by the international organizations mentioned in this study can have relevant effects and consequences.

First, it is stated that these decisions and recommendations possess a political, and even moral authority, as they can contribute to making international law and the internal law of states evolve. Along these lines, the mere belonging to an international organization gives the member states a generic obligation to respect the decisions and recommendations it may approve.

Second, these decisions and recommendations raise the application of what Anglo-Saxon doctrine terms soft law, through which these decisions would set standards of conduct that must be taken into consideration to stimulate behaviors and generate expectations that the international community considers desirable.

Last, it is asserted that these decisions and recommendations make up something of a programmatic law, by virtue of which they would have a prospective, orienting nature, as they proclaim principles of observance whose practice has not yet been consolidated.

Once this general characterization is established, we must now briefly examine the essential traits of the international organizations from which the international law instruments considered in this study emanate.

As regards the General Assembly of the United Nations, made up of all its members (193 states), it is a body of general competencies, as it has powers to debate and make decisions on any matter that refers to the duties of the organization, except for initiatives on matters being debated in the Security Council. Along these lines, Article 13.1 of the UN Charter states that the Assembly can make recommendations to promote international cooperation.

The Parliamentary Assembly of the Council of Europe, made up of 582 representatives from national parliaments, is the deliberative body of this organization and it also has general competency over all areas of activity. The Statute of the Council states that the aim of the Assembly shall be the discussion and approval of recommendations, which are sent to the Committee of Ministers – representative body of the member states– although in practice it also adopts decisions on matters included in the Council's area of activity that handles general citizens' affairs.

The Congress of Local and Regional Authorities of the Council of Europe is a consultative body made up of 636 representatives from these territorial entities chosen by the member states. Its role is to promote the autonomy and democracy of local and regional entities, and to advise the Parliamentary Assembly and Committee of Ministers for this purpose. It can approve recommendations and decisions within this framework.

Last, the European Commission for Democracy through Law (otherwise known as the Venice Commission) is a consultative body of the Council of Europe for constitutional affairs. Pubic and international law professors, judges of constitutional and supreme courts, members of national parliaments and civil servants designated by the states make it up. A total of 59 countries, in addition to the 47 member states of the Council of Europe, form part of the Commission. The main task of the Venice Commission is to provide legal guidance to member states, and

specifically, support the states wishing to develop their legal and institutional structures in accordance with European rules and the international experience in the realms of democracy, human rights and the rule of law. The Commission also provides support for the dissemination and consolidation of a shared constitutional heritage, playing a very special role in conflict management and offering technical constitutional support for states in democratic transition. The opinions and studies of the Commission have a technical and doctrinal auctoritas that is recognized around the world.

III. GENERAL CONFIGURATION

1. Necessity

All international texts emphasize the fact that the creation of the ombudsman mechanism in the various legal systems is necessary, and not just optional, to supervise the Administration and more recently, as will be seen, as an institutional guarantee of the rights and freedoms before the action of public authorities.

2. Regulatory standard of recognition

Traditionally, the development of state institutions, and especially, the regulatory standard of their recognition, was the object of a decision that belonged exclusively to the state, and not international law.

In fact, the decisions of the General Assembly of the United Nations on the ombudsman institution propose neutrality regarding the regulatory recognition of this figure, as they only state that it must have a legislative framework that is appropriate for it to ensure the effective and independent exercise of their mandate, and strengthen the legitimacy and credibility of their actions (Section 2.b A/RES/67/163, of 29 December, 2012).

Nevertheless, this does not impede the Council of Europe from expressly encouraging the establishment of the ombudsman institution being effected in Constitution (section 4.1.1 PACE Decision 1959 [2013]) and that there be a guarantee in this rule of the essence of the characteristics described by the Parliamentary Assembly itself in Recommendation 1615 (2003). In the framemark of the resolutions of the Council of Europe on the Ombudsmen, such reference to the Constitution may be linked both to regional and state fundamental law.

Furthermore, the Venice Commission has reiteratedly and uniformly suggested in its reports that in order to protect the institution of an independent ombudsperson from political fluctuation, it would be preferable to guarantee its existence and basic principles of its activity in the Constitution (s. 1 CDL[2011]079).

On the other hand, it is worth noting that the Congress of Local and Regional Authorities of the Council of Europe states, "in view of the diversity of legal systems in Council of Europe member countries, it would be inappropriate to lay down rigid principles regarding the type of legal rules to be used to institute ombudsmen (constitutional laws, specific laws, statutes of regions or municipalities, decrees, regulations, etc.)" (principle 2 CLRACE Decision 80 [1999]).

3. Purpose, character and institutional position

As regards the ombudsman's purpose, there is consensus throughout the international framework in characterizing the institution as a mechanism for the protection and guarantee of rights. The United Nations underscores the ombudsman more specifically as a figure of promotion and protection of human rights, although they also state that this institution promotes good governance in the public administration: preamble A/RES/67/163 of 20 December, 2012; A/RES/65/207, of 21 December, 2010; A/RES/63/169, of 18 December, 2008. On another note, the Council of Europe emphasizes the more conventional purpose of supervision of proper activity in the administration: s. 4.1.3 PACE Decision 1959 (2013), s. 1 and s. 2 PACE Recommendation 1615 (2003), principle 4 of CLRACE Decision 80 (1999), s. 7.1 CDL(2011)079.

There are two elements that are examined in the international realm to determine the nature and institutional position of the ombudsman: their association with Parliament and the nature of the decisions they can adopt. All texts (except for the absence of references of these points by the United Nations) link the appointment of the institution's office-holder to the Parliament, which the ombudsman is bound to inform of their activity (s. 4.1.2 PACE Decision 1959 [2013], s. 7.II and s. 7.XV PACE Recommendation 1615 [2003], principle 13 of CLRACE Decision 80 [1999], s. 3 and 7.3 CD[2011] 079).

On another note, all of the texts that address the nature of the institution's decisions agree that the ombudsman should be what has been doctrinally referred to as a "magistrate of persuasion". In other words, the impact and efficacy of this institution's final decisions are not derived from their non-existent binding or coercive competencies, but from the rigor, objectivity and independence with which they conduct their activity. In a word, from their *auctoritas*.

The PACE Recommendation 1615 (2003) echoes this line of thought as it states: "The neutrality of the ombudsman and the fact that he or she is universally respected by both complainants and the subjects of investigations are vital to the proper functioning of the institution of ombudsman. The Assembly considers that these attributes are best preserved by limiting enforcement powers to the moral pressure inherent in public criticism, with reports on maladministration to, and subsequent political condemnation of it by, parliament." (s. 5).

Further, and along the same lines, the Venice Commission has stated that: "From the very nature of the institute of ombudsperson, it follows that he or she can only make recommendations. There cannot be a direct obligation to follow these recommendations. However, there should indeed be an obligation for the administrative authority to react within a given time span to the ombudsperson's recommendation, either by accepting it and redressing the situation, or by giving a motivated refusal." s. 7.3 CDL(2011)079.

4. Individual or collegiate body

The individual or collegiate nature of the institution is a matter scarcely addressed in the international framework, and there does not appear to be any inclination for one specific model. In fact, the Congress of local and regional authorities states that the "practical experience in European countries suggests that ombudsmen should be appointed as individuals", though it also readily states that "there do not appear to be any fundamental objections to the choice of a collegiate body" (Principle 14, CLRACE Resolution 80 [1999]).

Nor does the Venice Commission choose a given model as it believes that this depends on states' degree of democratic evolution. Likewise, it emphasizes that the individual model for general activity provides coherence among more specialized areas, although measures must be taken to ensure that it does not affect the efficiency of the checks and balances around the guarantee of rights (s. 9 CDL[2011]079).

5. Territorial realms

The international framework under discussion unanimously states that the ombudsman can be established at the state, regional and local levels. Nevertheless, in some texts it is stated that at the infra-state realm it is an optional competency (s. 2.a A/RES/67/163, of 20 December 2012; s.10.1 PACE Recommendation 1615 [2003]).

Likewise, the Congress of Local and Regional Authorities of the Council of Europe, pursuant to their nature as a consultative body responsible for promoting the self-government of these infra-state entities, a defense for which the ombudsman must offer protection at the level closest to citizens (principles 5-8 of the CLRACE Resolution 80 [1999]). More recently, Congress has stated that it is not necessary to create an ombudsman at every local and regional entity, as long as immediate and effective treatment of complaints is guaranteed (s. 3 CLRACE Recommendation 309 [2011]).

About this subject, the last position taken was that of the Parliamentary Assembly of

the Council of Europe, referring to the need to avoid a restrictive budgetary policy that would jeopardize the ombudsman institution's independence, or that could lead to its disappearance. In this regard, the Parliamentary Assembly of the Council of Europe has stated that, particularly in those States with parliaments legislating on rights at national but also at regional level, there is a definite role for bodies that, like the ombudsman, supervise the application of the law by public administrations (s. 6 of PACE Resolution 1959 [2013]). On another note, the text calls attention to the need to articulate coordination among the various ombudsmen that may have been set up in each member state, including regional and/or local, and/or specialized ombudsmen (s. 5).

6. Specializations

First, it bears mentioning that the creation of ombudsmen specialized in given fields is not the common preference among international texts: they tend to refer to a single generalist institution at the relevant territorial level.

In this regard, the opposite of specialization is encouraged in, on one hand, the PACE Resolution 1959 (2013) when it recommends that states "refrain from multiplying ombudsman-type institutions, if it is not strictly necessary for the protection of human rights and fundamental freedoms; a proliferation of such bodies could confuse individuals' understanding of the means of redress available to them" (s. 4.3).

On the other hand, principle 15 of Congress Resolution 80 (1999) does not radically reject specialization, although it is not its most preferred option, either: "The appointment of ombudsmen whose competence is limited to a specific field (health, telecommunications, etc.) or to a specific group of persons requiring protection (persons with disabilities, immigrants, minorities, etc.) is no alternative to the ombudsman with general competence. There is no objection in principle to the appointment of these specialized ombudsmen in addition to other ombudsmen. However, there is a need to avoid excessive proliferation which might interfere with the functioning of a general system for the protection of human rights.

Logically, none of the foregoing is an obstacle to implementing specialization by specific areas inside the ombudsman with a general mandate, an organizational option that is viewed positively by the Venice Commission (s. 9 CDL [2011] 079).

IV. INDEPENDENCE

Without exception, the international framework underscores the ombudsman institution's independence as one of its inherent traits. For that reason, it is necessary that the legal statute of the office-holder as well as the organizational structure provide the institution with the maximum independence and neutrality.

1. Legal statute

Some characteristics of the ombudsman's legal statute are characterized by the Council of Europe, in lesser or greater detail, in Recommendation 1615 (2003) of the Parliamentary Assembly, by the "principles governing the institution of the mediator at the local and regional level", of the Congress of Local and Regional Authorities, as well as the Venice Commission's compilation of the ombudsman institution.

1.1. Personal and professional qualities Ineligibilities

The international framework here analyzed places increasing emphasis on the candidate to hold the office of ombudsman not be an active member of any political party. Along such lines, the Congress of Local and Regional Authorities states that it is best to avoid the appointment of politicians, as "independence and impartiality must be seen by citizens, and in this regard appearances are also important" (principle 10.I, CLRACE Resolution 80 [1999]).

The Congress even more specifically states: on one hand, an exhaustive study of the candidates to exclude those that "may have (or even appear to have) connections with the local authority (interests associated with their careers or functions, political or economic interests, etc.)" (principle 10.II, CLRACE Resolution 80 [1999]). On another

note, this consultative body believes it necessary "to ensure that candidates' training and qualifications are consistent with the duties of the ombudsman," and for that reason it states that they must "possess adequate knowledge of the workings and rules of administration". (principle 10.II, CLRACE Resolution 80 [1999]).

The Venice Commission, following the issue of consultative opinions related with drafts of legal rules on the institution under discussion, has had the opportunity to set as a general standard that the personal and professional qualities required would not have to be excessively restrictive (as would be requiring the candidate to be from a certain ethnic group, or to hold a law degree). The Commission has even considered it necessary to lift the references to the candidate's knowledge and experience in the area of human rights (s. 2.1 CDL [2011]079).

With a lesser degree of specificity, the parliamentary assembly has made known its position that the ombudsman must have a suitably qualified and experienced individual of high moral standing and political independence (s. 7.III, PACE Recommendation 1615 [2003]).

Last, as far as ineligibilities are concerned, only the Venice Commission laconically mentions them to state that, "There is no uniform approach to this issue among the Council of Europe's member states" (s. 2.1 CDL[2011] 079).

1.2. Appointment

The ombudsman appointment procedure is also discussed by the Council of Europe, which establishes general principles that must be implemented into internal regulations.

First, PACE Resolution 1959 (2013) urges the states to implement a purely parliamentary appointment procedure (s. 4.1.2). In addition to this, PACE Recommendation 1615 (2003) specifies that there must be exclusive and transparent procedures for appointment and dismissal by a qualified majority of parliamentary votes sufficiently large as to imply support from parties outside government (s. 7.III).

Following the aforementioned model, the Congress of Local and Regional Authorities' principles on the ombudsman confer the designation to the elected assembly of the local authority (principle 13 of CLRACE Resolution 80 [1999]). Furthermore, the Congress proposes to guarantee that the people appointed to the office are characterized as people with independence, impartiality and competence, who have a good standing in the community (s. 10.c Resolution CLRACE 327 [2011]).

As for the Venice Commission, it too follows the opinions of the rest of Council of Europe bodies, highlighting that the election of the ombudsman by an increased majority of parliament is vital, as it strengthens the impartiality, independence, legitimacy and credibility of the institution before citizens and the administration (s. 3 CDL [2011]079). Additionally, the Commission makes it clear that, like judges, the ombudsman "does not only need to be independent, he or she must also be seen to be independent. The perception (...) as the President's candidate has to be avoided. Given that the prime task (...) is to supervise the executive, the institution should be clearly linked to the Parliament" (s. 4.1.2).

1.3. Term

As for the term, the international framework makes contrasting references to its specific time of duration. Within the Council of Europe, PACE Recommendation 1615 (2003) states that renewable terms should be implemented that are at least of the same duration as that of parliament (s. 7.III). But the Venice Commission firmly advocates that it is preferable, in the name of the independence of the institution, that a long-lasting term be established (without specifying the duration) but which would then not be renewable, thus avoiding any possibility of the ombudsmen compromising themselves by the interest of gaining future re-election (s. 5.1.CDL [2011] 079).

The Congress of Local and Regional Authorities does not specify a specific duration of the ombudsman's term either, but does propose re-election and, underscores the importance of weighing the functions of the post in order to ensure

that suitable candidates apply (principle 11 CLRACE Resolution 80 [1999]).

Consequently, it could be said that the international framework seems to set out criteria favorable to a term that does not coincide with, and lasts longer than, the legislature's.

1.4. Dismissal

Few texts address the grounds for dismissal despite its undeniable relevance in the institution's legal statute. In certain texts of the Council of Europe, mention is made of the principle of immovability of the post once the incumbent is elected: on one hand, PACE Recommendation 1615 (2003) states that the procedures for dismissal must be special and transparent (as with the appointment) and specifically says that dismissal by parliament must be "for incapacity or serious ethical misconduct" (s. 7.III and s. 7.V). On another note, the Venice Commission states that there must be established an increased majority to dismiss the ombudsman because an ombudsman should not be dismissed as a consequence of their actions not pleasing the governmental parliamentary majority (s. 5.2 CDL [2011] 079).

1.5. Incompatibilities

It is also not very common for the international framework to establish the causes of incompatibility of the office which is the subject of this study. However, PACE Recommendation 1615 (2003) firmly outlines the necessary "prohibition of the incumbent from engaging in any other remunerated activities and from any personal involvement in political activities" (s. 7.IV). Therefore, the Venice Commission almost identically holds that the office "should not be compatible with another function or profession, public or private, neither with the belonging to political parties or unions. It could eventually be compatible with lecturing but, even in that case, the activity should be exercised without compensation," (s. 2.2 CDL [2011] 079).

1.6. Prerogatives

The ombudsman's prerogatives are reduced in international documents to the establishment of functional immunity. On the one hand, PACE Recommendation 1615 (2003) establishes that the institution should benefit from "personal immunity from any disciplinary, administrative or criminal proceedings or penalties relating to the discharge of official responsibilities, other than dismissal by parliament for incapacity or serious ethical misconduct," (s. 7.V). On the other, the Venice Commission also considers functional immunity, specifying that it should be of indefinite duration, and extended to the ombudsman's staff (s. 4.1.2 CDL [2011] 079).

1.7. Remuneration

As regards remuneration, aside from its inter-relation with the budgetary autonomy of the institution, the Congress of Local and Regional Authorities adopted as its criteria that it should be adjusted depending on dedication to the office, and be comparable to the remuneration paid to senior officials of the administration. In any event, it makes it clear that "Where ombudsmen receive no remuneration, there are insufficient guarantees of independence and impartiality" (principle 12 CLRACE 80 [1999]). The Venice Commission has taken a similar position, indicating that there is no European standard that refers to the institution's status in this regard (s. 4.1.1 CDL [2011] 079).

1.8. Guarantees of activity: obligation to cooperate with the ombudsman

When it comes to the guarantees of activity, the international framework of the ombudsman institution entails a number of principles that are up to the states, regions and municipalities to implement. Without prejudice to the more detailed discussion offered hereafter, it can be said that all of the texts provide for, with more or less specificity, the obligation to cooperate with the ombudsman as a general principle by which to guarantee their activity.

2. Organizational autonomy

A virtual majority of the resolutions, recommendations and consultative opinions of the international bodies coincide in the necessity to endow the ombudsman

institution with organizational autonomy to give it the desirable independence and neutrality.

With this purpose in mind, the Parliamentary Assembly of the Council of Europe clearly states that one of the essential characteristics for the institution to effectively discharge its duties is "complete autonomy over issues relating to budget and staff" (s. 7.VII PACE Recommendation 1615 [2003]).

Likewise, the Congress of Local and Regional Authorities insists on this need to guarantee organizational autonomy: on one hand, the ombudsman offices must be staffed by "people with independence, impartiality and competence, receiving salaries commensurate with their responsibilities, with knowledge of the administrations for which they handle complaints" (s. 8.d CLRACE Recommendation 309 [2011]). On another note, reference is made to the fact that the institution's services be "properly staffed and resourced, to enable them to function effectively and with complete independence, which should directly benefit the quality of local and regional services", (s. 7, CLRACE Resolution 327 [2011]).

The Congress, on the other hand, is not very incisive with regard to this matter in the principles that must govern the institution as it acknowledges that "The need to adopt solutions which are appropriate to each particular case, according to the different factors of organization, size of the local or regional authority, budget, etc. make it impossible to lay down guidelines". Despite this statement, the Council believes it useful to set down a number of essential goals in the organizational realm: First, the ombudsman must have "a level of staff, in terms of numbers and qualifications, appropriate to the extent of his territorial competence and the number of individuals who might call on his services"; second, the staff "may be placed at the ombudsman's disposal by the local authorities or recruited directly by the ombudsman." The latter solution is preferable, in view of the need for independence which also applies to the ombudsman's officials; third, the institution must have "the premises, technical services and other services necessary for him to perform his duties effectively" (CLRACE Resolution 80, Principle 16 [1999]).

3. Budgetary autonomy

The acknowledgement of budgetary autonomy is stated in some of the international texts. In the first place, mention is made of "complete autonomy over issues relating to budget and staff" as one of the essential characteristics of the institution for it to effectively discharge its duties (s. 7.VII PACE Recommendation 1615 [2003]).

With lesser intensity, there is recognized the need that "ombudsman offices should be financially independent and adequately resourced in order to be able to conduct the enquiries necessary to follow up complaints" (s. 8e Recommendation CLRACE 309 [2011]).

As for the Venice Commission, it is less in favor of budgetary autonomy, as it limits the institution's competency in this realm to proposing a draft budget, although it also advocates its being adequate for the needs of independence, competencies and the number of complaints received by the institution (s. 6, CDL[2011]079). More recently, the general desire to provide the institution with the necessary personal and financial resources has been formulated (s. 4.4 PACE Resolution 1959 [2013]).

The United Nations do not formulate any principles of budgetary autonomy of the institution, although there is a minimal reference to the need to endow the ombudsman with the financial resources adequate to ensure the effective and independent exercise of their mandate (s. 2.b A/RES/67/163 of 20 December 2012).

Beyond that, it must be mentioned that in recent years some resolutions and recommendations of the Council of Europe echo the effects that could befall the ombudsman institution due to the current financial crisis.

Thus, PACE Resolution 1959 (2013) urges member states to "to make all efforts to avoid budget cuts resulting in the loss of independence of ombudsman institutions or even their disappearance altogether." Added to this, as a reason that justifies the avoidance of this restrictive budgetary policy, "Particularly in those States with parliaments legislating on rights and

freedoms not only at national but also at regional levels, (as) there is a definite role for bodies supervising the application of the law by public administrations, as the institution of ombudsman does by definition" (s. 6). Therefore, a fundamental premise of this Parliamentary Assembly Resolution is based on defending the existence of the ombudsman figure, firmly rejecting any temptation to do away with it for budgetary reasons.

Last, CLRACE Resolution 327 (2011) states that "in the current difficult economic climate, which is putting increasing pressure on local and regional public services, ombudsman services are needed more than ever before", as they "remain a valid summary of the value and purpose of the institution" (s. 3).

V. DUTIES AND AREAS OF ACTIVITY

1. Duties

As everyone knows, the ombudsman institution appeared in the Swedish Constitution of 1809 to supervise the activity of the administration, and with this purpose, and models and scopes broadly differing from the Swedish prototype, it was set up in a number of states. With the ombudsman it was initially intended to make up for the insufficiencies in traditional supervision –parliamentary, from inside the administration itself, judiciary– through a figure with unique traits: organic and functional independence (despite their status as parliamentary commissioners in many cases), accessibility, flexibility of action, possibility for ex-officio intervention, scope of administrative supervision that is broader than that of the courts, decision parameters not limited to criteria of legality, and decisions that, while judicially non-binding, have great potential impact.

Although, especially after World War II, there began the practice of linking ombudsmen and the defense of citizens' rights, it was not until the Portuguese constitution of 1976 and the Spanish constitution of 1978 that the defense of citizen rights took on the maximum regulatory importance in the configuration of ombudsman institutions.

In recent years, the conventional ombudsman duties have been expanded into areas such as those relative to the promotion of good administration, the access to information, attribution of the condition as authority for the prevention of torture and other cruel, inhuman or degrading treatment, as well as accreditation as national institutions for the promotion and protection of human rights.

1.1. Supervision of the public administration

Supervision of the public administration is, without a doubt, the hallmark competency for the international framework, along the lines of the aforementioned traditional configuration of the Swedish ombudsman.

This duty is also the subject of contrasting interpretation by international organizations: the Council of Europe focuses on the principles of the Rule of Law and the supervision of what in Anglo-Saxon doctrine has been called "maladministration". On another note, the United Nations refers only to the relationship of the ombudsman with human rights.

In reference to this, the Parliamentary Assembly of the Council of Europe expressly recognizes the evolution of the traditional role of this institution when it states that "the development of methods of human rights protection has influenced the role of the ombudsman in that respect for human rights is now included in the standards to be respected by a good administration, on the basis that administrative actions which do not respect human rights cannot be lawful" (s. 3, PACE Recommendation 1615 [2003]).

More recently, the Parliamentary Assembly restated that protection of citizens against "maladministration" played a vital role in the consolidation of democracy, the rule of law and human rights (s. 1 PACE Resolution 1959 [2013]).

The Congress of Local and Regional Authorities also states that the supervision of the Administration is the chief trait of the ombudsman institution, though it also stresses that it is not desirable to propose a

single model of competencies of this figure, given the differences in the legal systems, administrative organization and degree of autonomy of local and regional bodies (CLRACE Resolution 80 [1999], principle 17).

1.2. Protection and defense of rights and freedoms

One of the main promoters at the international level of the association between ombudsmen and the defense of human rights is the United Nations, as is clearly outlined in section 1.6 of this part of the study, regarding the national institution for the promotion and protection of human rights.

In the same way, the progressive relevance of human rights in ombudsman duties has also been addressed by the Council of Europe. First, the Parliamentary Assembly includes as a realm of the institution's competency the protection of human rights and fundamental freedoms, aside from the supervision of the Administration (s. 4.1.3, PACE Resolution 1959 [2013]) and suggests that ombudsmen consider the possibility of becoming accredited as national institutions for the promotion and protection of human rights before the relevant Committee (s. 4.5, PACE Resolution 1959 [2013]). Additionally, and in the same manner, the Venice Commission states that the promotion and observance of human rights forms part of the function inherent to ombudsmen (s. 7.1 CDL[2011]079).

Last, mention must be made in this section of the fact that Protocol no. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms modifies its article 36.3 to enable the Commissioner for Human Rights of the Council of Europe to present written comments and participate in hearings on any matter before a Chamber or Grand Chamber of the European Court of Human Rights (ECHR). This provision establishes an indirect interrelationship between the ECHR and the ombudsmen of the member states given that the Commissioner, pursuant to their regulations, must coordinate their actions with the ombudsmen of member states (Art. 5.1 Resolution 99(50), of the Council of Europe Council of Ministers, 7 May 1999). Consequently, a multi-level structure is articulated to guarantee respect for human rights at all administrative and political levels. With this purpose, it must be said that the Commissioner for Human Rights of the Council of Europe has convened the ombudsmen of the different state and regional territorial levels on several occasions to benefit from their cooperation in this mission.

1.3. Promotion of good governance and good administration

As stated at the beginning of this part of the study, the basic duty of the ombudsman institution in its early history was exclusively the supervision of administrative activity, with decision parameters focused especially on criteria of lawfulness. But this function was progressively transformed by new political, social and economic tendencies. Thus, in recent years, the promotion of good governance and good administration has gained prominence in public management theory, especially in the realm of the European Union. In a way that is coherent with this phenomenon, it is possible to detect, albeit incipiently, a certain suggestion of a possible contribution by ombudsmen to the promotion of good governance and good administration.

Especially relevant to this subject matter is PACE Recommendation 1615 (2003) (s. 10.VI, s. 10 VII and 11), in which the lack of action by the Council of Europe itself is underscored, and contrasted against the adoption by the European Ombudsman of a European Code of Good Administrative Behavior (2001) or the confirmation in Article 41 of the Charter of Fundamental Rights of the European Union of the right to good administration. Said code, ratified by the European Parliament by Resolution 6 of September, 2001, refers to the actions of civil servants before natural or corporate persons, and includes the following principles and criteria: lawfulness, non-discrimination, proportionality, consistency, impartiality, independence, objectivity, legitimate expectations, justice, courtesy, respect for linguistic diversity, confirmation of reception of documents sent to it, identification of the competent civil servant, referral to competent services, hearings, reasonable period for resolutions to be given, grounds and notification of the decision and instructions on the appeals that can be lodged, personal data protection or transparency. Pursuant to Article 26 of this Code, any failure to comply with it could be

the subject of a complaint to the European ombudsman.

In light of this background, the Parliamentary Assembly charged the Council of Ministers with the task of drafting an articulated text on the right to good administration, and therefore Recommendation CM/Rec(2007)7, of June 20, on good administration in member states, contains a code on the principles, rules and appeal procedures that should make this right effective. In fact, it contains very few new developments with respect to the content of the European ombudsman code.

It must also be said that the United Nations and Congress of Local and Regional Authorities make only a tangential reference to good governance (preamble A/RES/67/163, of 20 December, 2012, s. 1 CLRACE Resolution 327 [2011]). Perhaps there should be an implicit understanding of good administration in principle 18.III of CLRACE Resolution 80 (1999), which includes promotion of administrative efficiency as an essential function of the ombudsman.

Consequently, as of now, the content and scope of good governance and good administration are now under debate as elements that could be added to the functions and the parameters of activity for the unique figure now being discussed.

1.4. Mediation between citizens and the administration: guarantee of access to information and transparency

Aside from the novelty brought about by the function discussed in the foregoing section, it is appropriate to include more developing areas where the ombudsman's effects may be felt: the right of access to public information. It is now important to note the Council of Europe Convention on Access to Official Documents, approved by the Council of Europe Council of Ministers on November 27, 2008 and still awaiting its entry into force due to an insufficient number of adhesions from member states.

The Council of Europe defines this agreement as the first international legal instrument that recognizes, with a general scope and in a binding manner, the right of access to documents in possession of public entities. The Convention points out its two-fold value: on the one hand, from a collective viewpoint, as a key element to guarantee transparency and good governance of public entities, strengthen the trust of citizens in institutions and promote citizen participation; and on the other, from an individual perspective, it interprets access to information as essential for personal development and exercise of a person's fundamental rights.

Beyond the specific regulation of the aforementioned Convention, special emphasis must be placed on its Article 8 providing for a review procedure for the denial of access to official documents, by virtue of which the signatory states must establish the possibility to lodge an appeal with the Court or other independent and impartial body established by law. Further, it establishes that the applicant "always have access to an expeditious and inexpensive review procedure, involving either reconsideration or review by a public authority." In fact, the Convention's explanatory report mentions the ombudsman in its Article 8, as it states that in some member states it is possible to file a complaint before this institution regarding the impedance or malpractice of the Administration in the area of access to information. Within the context of the Convention, this reference to the ombudsman must be understood at any of its territorial levels of action.

The options for the implementation of this mission can range from the creation of ad hoc commissioners or the commissioning of this task from the ombudsman. Therefore, it appears that this new function can be easily included within the institution under analysis, given the mandate of the Convention, and even if bearing in mind its general function of supervision over the administration.

1.5. Authority for the prevention of torture

Pursuant to Article 17 of the Optional Protocol of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations through Resolution 57/1999, of 18 December, 2002 (A/RES/57/1999), each party state must

have one or several independent national mechanisms for the prevention of torture. This tenet also expressly acknowledges that in compound states, the mechanisms established by decentralized bodies may be designated as national prevention mechanisms. This is already the case of the United Kingdom (Scotland, Wales and Northern Ireland), Spain (Catalonia) and Argentina (24 provinces).

Pursuant to the mentioned protocol (Art. 18) states must guarantee the functional independence of these prevention mechanisms as well as their staffs. In the same way, states must provide the resources necessary for these prevention mechanisms to duly exercise their functions.

The national authority has the legal mandate, taken up in the Optional Protocol to establish a system of regular visits to sites housing persons deprived of their liberty, make recommendations to public authorities to improve the conditions of these persons or proposals for legislation, all of which is meant to prevent torture and other cruel, inhuman or degrading treatment or punishment.

It must be mentioned that many ombudsmen already carry out preventive and reactive work regarding protection of the rights of persons deprived of liberty prior to the adoption of the optional protocol of the Convention Against Torture. Furthermore, assuming the condition of authority for the prevention of torture means equipping the institution with a recognized power guaranteed by an international body. In fact, a number of countries have already designated their ombudsman as such authorities, given that they are considered an appropriate, valid option because of their characteristics of independence and progressively central position in the protection of rights and freedoms of persons (in Europe: Austria, Albania, Armenia, Bulgaria, Croatia, Slovenia, Spain, Denmark, Georgia, Luxembourg, Macedonia, Moldavia, Montenegro, Norway, Poland, Portugal, the Czech Republic, Serbia, Sweden, the Ukraine; in Latin America: Costa Rica, Ecuador, Nicaragua, Uruguay; in Australasia, New Zealand). In the case of Spain, the state ombudsman (El Defensor del Pueblo), as the national authority for the prevention of torture, co-exists with a regional ombudsman with the same function (the Síndic de Greuges de Catalunya or Catalan Ombudsman).

1.6. National institution for the promotion and protection of human rights

As is well-known, in 1948 the General Assembly of the United Nations adopted the Universal Declaration of Human Rights (UDHR), and in 1966 the international pacts for economic, social and cultural rights in addition to civil and political rights. This notwithstanding, it was not until 1977 that, on occasion of the 30th anniversary of the UDHR, for the first time, the Assembly suggested the creation of national or local institutions for the promotion and protection of human rights (s. 1.e annex A/RES/32/123, of 16 December 1977).

Over the course of the last decades of the 20th century, whenever it was in session, the General Assembly recurrently encouraged states to establish these institutions: along these lines, the Resolution A/RES/48/134, of 20 December 1993, is especially notable, as it takes up the “Principles Relative to the Status of National Institutions” (also known as the ‘Paris Principles’). These institutions are promoted with certain specific traits of composition and guarantees that aim to endow them with independence and autonomy, although states are given the competency to choose the legal and institutional framework they consider most appropriate for their needs (s. 12 A/RES/48/134).

It must be noted that, pursuant to this Resolution, national institutions must mainly respond to the following items: the mandate must be as broad and stable as possible, clearly outlined in the Constitution or the laws; the consultative competencies and resources must be very extensive; the composition and appointment procedure must guarantee plural representation of civil society; last, the autonomy vis-à-vis the government must be recognized, especially as regards its staffing, material and budgetary resources.

More recently, the general assembly associates these institutions with the ombudsmen, and in fact the titles of the resolutions that have been approved up to

the present are significant enough in this regard: "The role of the ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights", A/RES/67/163, of 20 December, 2012; A/RES/65/207, of 21 December 2012; A/RES/63/169, of 18 December 2012.

According to data from the International Coordinating Committee of National Institutions for Promotion and Protection of Human Rights, a vast majority of states that have created these institutions have done so through specific committees or councils. The ombudsman has only been accredited for this purpose in a few cases. This frequent option of creating internal institutions for the promotion and protection of human rights raises reasonable doubt regarding the suitability of duality or co-existence between both figures, given that, for the legal status as well as the functions, it would seem more functionally and materially advisable for the ombudsman to perform this duty. Implementation of the institutions under discussion in this section at the regional level could also be examined, although it is not specifically provided for as in the authorities for the prevention of torture. In this regard, the fact that the term "national" is exclusively used is not an obstacle. In fact, the Scottish Human Rights Commission was accredited in 2009. It now chairs the European group of the national institutions. What is more, it can be recalled in this regard, that the General Assembly, in the first Resolution that mentions national institutions in 1977 also included the term "local" in the name (s. 1.e annex A/RES/32/123, 16 December 1977).

Aside from the pronouncements of the United Nations, as has been previously mentioned, the Resolution of the Parliamentary Assembly of the Council of Europe 1959 (2013) also suggests that ombudsmen consider the possibility of accreditation as national institutions for the promotion and protection of human rights before the coordination committee (s. 4.5)

2. Areas of activity

As of today, the ombudsmen's areas of activity is the object of little discussion in the institution's international framework, where the determinant subjective element of their intervention is limited to the presence and activity of the administration. As opposed to the subject of the preceding section, the United Nations Resolutions do not address this matter, pursuant to the philosophy of referring its specific development to the national framework.

2.1. National, regional and local public administrations

The main international texts that are the subject of this study hardly specify what they mean by public administration, and implicitly refer to what is understood as such on a common basis throughout the different legal systems.

Within the Council of Europe a broad general principle is recognized in terms of the scope of the supervision that the ombudsman may conduct; the door to limitations is only opened on an exceptional basis. Thus, on one hand, the Parliamentary Assembly does not establish limitations of any kind on the scope of supervision (s. 4.1.4 PACE Resolution 1959 [2013] and s. 7.VIII PACE Recommendation 1615 [2003]). On the other hand, first, the Congress of Local and Regional Authorities has stated that "any limitations in respect of acts and conduct relating, for example, to particular fields (national defense, public security, law enforcement, etc.) should be reduced to what is essential" (principle 17.III CLRACE 80 [1999]); and second, the Venice Commission excludes from the realm of supervision only those matters of an exceptional political nature (including such examples as declarations of war or the appointment of the prime minister) (s. 7.1 CDL [2011]079).

Generally, most international documents do not specify the realm of territorial activity of the institution under discussion. The Congress of Local and Regional Authorities logically emphasizes these levels of government, but when it comes to co-existence with the national ombudsmen, no system of concurrence or shared competencies is decided on, as long as they are distributed "in such a way that all activities and conduct of the public authorities are covered and no gaps are left which would leave the individual unprotected" (principle 17.II CLRACE Resolution 80 [1999]).

2.2. Justice Administration

The texts of the Council of Europe take the unanimous position that the ombudsman cannot interfere in a matter that has been the subject of judicial resolution, or in activities against which legal action has been taken in a judicial body (s. 6 PACE Recommendation 1615 [2003], principle 4, CLRACE Resolution 80 [1999], s. 7.4 CDL[2011]079). Nonetheless, the documents of the Parliamentary Assembly and the Venice Commission advocate the posture that this is not an obstacle for the ombudsman to make recommendations for the improvement of procedures and the operation of the Justice Administration.

2.3. Private bodies that manage public services or provide general-interest services

The growing trend toward the indirect provision by private economic operators of numerous public services, or those traditionally considered of general interest, means that the ombudsman's realm of supervision no longer falls exclusively to public administrations.

Despite the emergence of this phenomenon, it is surprising that the international framework of the institution now being studied makes little mention of it. One exception is the laconic reference made in CLRACE 159 (2004), which states "Similarly, the tendency for social services to be privatized, one of the effects of which is to distance users more from the authorities which supervise these services, is giving a new dimension to the ombudsperson's role" (s. 17).

In this regard, the Report of the Committee on Legal affairs and Human Rights (doc. 13236, of 21 June, 2013, section B.6.3), prior to PACE Resolution 1959 (2013), makes it clear that the externalization and privatization of public services, with the consequent creation of private sector ombudsmen blurs the landscape of the ombudsman institution. The report gives the example of the United Kingdom, following the privatization in the 1980's of such activities as water and energy utilities, as well as telecommunications, and the creation of private systems for conflict resolution. The report mentions other countries that have followed the English model: in Belgium, an energy ombudsman has been set up, and in Denmark, private consumer advocate ombudsmen have been established. This trend is described with concern in the report, as it argues that it makes it difficult for citizens to find the appropriate system of protection, and because the financing for this type of private bodies is often provided by the industrial sectors themselves, and consequently, their independence may not be clear. The issue is concluded with the statement that it would be expedient for the ombudsmen to retain their competencies in such cases. Along these lines, it is worth noting that the Statute of Autonomy of Catalonia of 2006 was a forerunner for including within the Catalan ombudsman's area of competencies "private companies that manage public services or that carry out activities of general or universal interest, or equivalent activities in a publicly-subsidised or indirect way, and that of other persons with a contractual relationship with the Administration of the Generalitat and with the public bodies which are answerable to it." (Art. 78.1).

Additionally, in recent years within the European Union it is important to mention that through its legislation certain alternative dispute resolution mechanisms have been implemented for private consumer protection (ADR, in English). On the one hand, Directive 2013/11/EU of the European Parliament and of the Council, of 21 May, 2013, regarding the alternative resolution of disputes in consumer disputes, amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC aims to guarantee that consumers can, if they so desire, file claims against traders through organizations that offer alternative dispute resolution procedures, and who are independent, impartial, transparent, effective, fast and fair. On the other hand, Regulation (EU) no. 524/2013 of the European Parliament and of the Council, of 21 May 2013, regarding online dispute resolution in consumer affairs, amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, has as its goal the implementation of a European platform for dispute resolution that facilitates online dispute resolution (ODR) between consumers and traders in an independent, impartial, transparent, effective and fair way. It can be stated that with this European regulation, a pathway is opened from which the ombudsman may find a new area of

activity, as this institution fully matches the characteristics of the entities to be established.

Last, mention must be made, on one hand, of Directive 2009/72/EC of the European Parliament and of the Council of 13 July, 2009, on common rules for the internal market in electricity, and repealing Directive 2003/54/EC; and on another note, Directive 2009/73/EC, of the same date, on common rules for the internal market in natural gas and repealing Directive 2003/55/EC. By virtue of both directives, there must be created independent mechanisms for dispute resolution derived from the bodies providing these services. Along these lines, a number of ombudsmen are already developing this area of activity, and a number of them have created the National Energy Ombudsmen Network (NEON) as an independent, non-profit pan-European association made up of the ombudsmen and mediation services that have been recognized as such in their respective countries. At present, the ombudsman Services (United Kingdom), the Médiateur national de l'énergie (France), the Síndic de Greuges (Catalonia, Spain) and the Service de médiation de l'énergie (Belgium) are members of this network.

VI. COMPETENCIES

1. Principles of activity: Citizen accessibility, access free of charge, expediency, confidentiality, transparency

The international framework is exclusively made up of the resolutions, recommendations and consultative opinions adopted by the Council of Europe.

All of the texts highlight that access to the institution is universal for everyone, regardless of any personal or legal circumstance, especially nationality or the condition of legal entities (s. 4.1.6 PACE Resolution 1959 [2013], s. 7.X PACE Recommendation 1615 [2003], s. 10.d Resolution CLRACE 327 [2011], s. 8.a Recommendation CLRACE 309 [2011], principle 19, CLRACE 80 [1999] and s. 8 CDL [2011] 079).

In some cases, it is also specified that accessibility must be so in terms of availability as well as comprehensibility of the information on the existence, identity, purposes, procedures and powers of the ombudsman (s.7.X PACE Recommendation 1615 [2003]). It is even stated that the institution's office must remain open every day (principle 20, CLRACE Resolution 80 [1999]).

In order to guarantee accessibility of the ombudsman, most texts advocate the need to ensure that their procedures be easy and broadly accessible, simple and free of charge (s. 4.4 PACE Resolution 1959 [2013], s. 7.XI PACE Recommendation 1615 [2003], s. 8 CDL[2011]079). In similar terms, it is suggested that the institution's services must be provided free of any charge, and that the procedure must be flexible, with no additional formalities, to avoid delays, obstacles and expenses for the individuals (principle 21, CLRACE Resolution 80 [1999]).

On another note, certain texts indicate that it is necessary to ensure confidentiality of the procedures in all cases, and guarantee the anonymity of the applicant's identity when investigations are publicized (s. 7.XI PACE Recommendation 1615 [2003]). It is stated, however, that while applications cannot be anonymous, applicants should be given the possibility of requesting that their identity be kept confidential by the ombudsman (s. 8 CDL[2011]079).

2. Parameters of activity: international and national legality; criteria of good administration

Regarding the parameter or parameters of activity of the institution here being analyzed, it has been said that one of its key traits is the lack of limitations toward strictly using legality –whether international or national– as a parameter of supervision, but that it also includes the weighting of other criteria such as good administration.

3. Guarantees of activity: access to the information, staff and facilities making up the areas of activity

In the international framework, the obligation to cooperate with the ombudsman is generally linked with the freedom of access to administrative documentation and all of the necessary information in the

course of their investigative activity (s. 4.1.4 PACE Resolution 1959 [2013], s. 7.VIII PACE Recommendation 1615 [2003], principle 24 of CLRACE Resolution 80 [1999], s. 7.2 CDL[2011]079).

Some texts expand the scope of this obligation: access without restriction to all detention centers (s. 4.1.4 PACE Resolution 1959 [2013], and s. 7.2 CDL[2011]079), that the restrictions of access are only admissible in cases related with state secrets or security, as well as the freedom of access also including the possibility to conduct investigations and visit and/or inspect the relevant site with the help of experts when the situation so requires it (principles 24 and 25, CLRACE Resolution 80 [1999]).

Only the principles encoded by the Congress of Local and Regional Authorities recommend that "In order to ensure effective freedom of access, appropriate penalties should be laid down and imposed for any refusal, obstacle, impediment or other form of obstruction on the part of a civil servant or public official" (principle 28, CLRACE 80 [1999]). What is more, with a view to strengthening the effective intervention of the institution, it is asked that "governments and local and regional authorities should consider the possibility of conferring on (it) the following powers: i. the power to initiate disciplinary proceedings directly against a civil servant or public official who has seriously impeded the exercise of the ombudsman's functions, or where the ombudsman's action has revealed and proved that the civil servant or official concerned is directly liable for the harm sustained by the applicant; ii. the power to report to a higher authority the authorities' refusal to follow the ombudsman's recommendations and suggestions where the reasons given for not doing so appear unsatisfactory," (principle 31, CLRACE 80 [1999]).

Last, it must be noted that the United Nations does not mention these activity guarantees although it is considered that public authorities must "give serious consideration to implementing the recommendations and proposals" made by the institution (s. 2.b A/RES/63/169, 18 December 2008).

4. Investigation of citizen complaints and investigation of ex-officio actions

The international framework of the institution, as made clear in section 1 of this part of the paper, outlines a series of principles around the institution's activity. This notwithstanding, there is not a common specification of the elements that should configure the citizen complaint-filing procedure. As an exception, the foregoing principles of the Congress of Regional and Local Authorities make it clear that "Applicants should be kept informed of the initiatives taken by the ombudsman and, if possible, of subsequent developments and the final outcome. Where the action taken is aimed at achieving a compromise, the applicant's prior consent must be obtained" (principle 22 CLRACE 80 [1999]).

Along the same lines, some documents of the Council of Europe acknowledge the ombudsman's capacity to take ex-officio or proprio motu action (principle 23 CLRACE Resolution 80[1999], s. 8 CDL[2011]079). Nonetheless, recommendation PACE 1615 (2003) only provides for this competency to make proposals on legislative or regulatory reforms (s. 7.XIII).

5. Pronunciation of the final result of investigations and actions

Again, it must be remembered in this section, as already stated in section 3 of part III, that the nature of the ombudsman institution as that of a "magistrate of persuasion". This has not been an obstacle for the international framework to underline the appropriateness of imposing on public administrations the obligation to respond to the recommendations and suggestions made by the institution at hand.

In this line of reasoning, the PACE Recommendation 1615 (2003) states "the requirement that the administration furnish within a reasonable time full replies describing the implementation of findings, opinions, proposals and recommendations or giving reasons why they cannot be implemented" (s. 7.XV).

In similar terms, the principles contained in CLRACE Resolution 80 (1999) establish that "The administrative authority concerned should be required to take the ombudsman's recommendations, suggestions and other initiatives into consideration and in any event to state the reasons which in its view prevent it from giving effect to them. The authority's response should be received within a prescribed period" (principle 27).

As stated in the foregoing section, applicants must be informed of the final outcome attained in the initiatives that the ombudsman has taken following a complaint (principle 22, CLRACE Resolution 80 [1999]).

On another note, in certain texts the "authority to give opinions on proposed legislative or regulatory reforms and motu proprio to make such proposals with a view to improving administrative standards" is included as another element that makes up the functions of the institution (s. 7.XIII, Recommendation 1615 [2003]). Further, and more specifically, it is recommended "so that the function of promotion may be successful, the ombudsman should be able to approach the organ of the local authority responsible for adopting the relevant provisions regarding administrative action, the organization of services, regulations, procedures, etc. in order to suggest any ways (repeal, amendment of measures in force, proposal for fresh provisions, etc.) in which the authority's effective observance of individual rights might be improved" (principle 30, CLRACE Resolution 80 [1999]).

6. Attention to citizen queries

Aside from the functions of processing individuals' complaints, if they are suitable to be allowed for processing, it is understood in some documents of the Council of Europe that the ombudsman must attend to the requests for information and queries addressed to them by individuals entitled to file complaints on matters of their competency (s. 7.X PACE Recommendation 1615 [2003], principle 18.I CLRACE Resolution 80 [1999]).

On another note, the international framework of the institution ignores the possibility of conducting general studies on the working of the administrations that are the object of the ombudsman's supervision, or more specific reports on matters of their competency. Nor does the international framework here under discussion say anything about the possibility of the ombudsman carrying out duties of reconciliation, mediation or dispute resolution among the administrations and persons who are the object of investigation and affected parties.

7. Actions as Authority for the Prevention of Torture

As said in the section 1.5 of part V , several countries have appointed the ombudman as national authority for the prevention of torture. In these cases, according to article 19 of the Optional Protocol to the UN Convention against Torture, the ombudsman may carry out the following actions:

"a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

c) To submit proposals and observations concerning existing or draft legislation."

In the same way, Article 20 of the aforementioned protocol states that in order for the national or territorially decentralized prevention mechanisms to "fulfill their mandate, the States Parties to the present Protocol undertake to grant them:

a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

c) Access to all detention sites, their facilities and services;

d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

e) The liberty to choose the places they want to visit and the persons they want to interview;

f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it."

8. Actions as national institution for the promotion and protection of human rights

It must be made clear that, logically, this section is only applicable to those ombudsmen who exercise, and have been accredited as national institutions for the promotion and protection of human rights, or if they are empowered to do so at other territorial levels.

As stated in section 1.6 of part V, the principles relative to the status of national institutions for the promotion and protection of human rights are taken up by the General Assembly of the United Nations in Resolution A/RES/48/134, of 20 December 1993 (also known as the "Paris Principles"). Furthermore, this resolution grants states the power to choose the legal and institutional framework they consider most appropriate for their needs.

In the principles adopted by the United Nations, a broad range of powers are granted to such institutions to:

"a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas."

What is more, the General Assembly's resolution sets out certain additional principles relative to the status of the commissions that have "quasi-jurisdictional" competencies, by virtue of which they are empowered to receive and examine complaints and queries on specific situations. In this category, a number of principles are listed that could serve as inspiration: seeking out amicable solutions through reconciliation, or within the limits established by law, through binding decisions or if necessary, conducting confidential proceedings; informing the applicant of their rights, especially the available resources, and facilitating access to them; being aware of all the complaints or queries and conveying them to any other authority; and last, making recommendations to the competent public authorities, especially proposing adaptations

or regulatory and administrative reforms (especially when they have been the source of difficulties that the applicants have to fully exercise their rights).

9. Actions as authority for the access to information

As with the foregoing section, it is necessary to state that this section is only applicable to those ombudsmen who exercise this duty.

Pursuant to the content of section 1.4 of part V, the ombudsman may exercise the power of hearing and resolving the appeals in the proceedings to review denials of access to official documents (Article 8 of the Council of Europe Convention on Access to Official Documents of 2008).

10. Competency to lodge appeals with jurisdictional bodies

Most texts of the Council of Europe –except for those proceeding from the Congress of Local and Regional Authorities– address the ombudsman's power of legitimization before ordinary jurisdictional bodies and the Constitutional Court.

In PACE Recommendation 1615 (2003), on one hand, it is considered that ombudsman's access to "administrative and constitutional courts should be limited to applications for interpretative judgments on legal questions relating to the mandate or particular investigations, unless representing an individual complainant with no direct access to such courts. It is preferable, however, that individuals with otherwise sufficient locus standi should be able to apply directly to such courts." (s. 5). On another note, it is categorically recommended to "exclude from the mandate of this institution the power to enter into litigation against either the administration or individual officials, whether before criminal or administrative courts, but to consider allowing the ombudsman to apply to the constitutional court for interpretative judgments" (s. 10.IV).

On this matter, the parliamentary assembly seems to have recently modulated its restrictive criteria established in 2003, given that in the last Resolution 1959 (2013), it only pronounced its recommendation of facilitating the institution's access to the Constitutional Court with the purpose of challenging the constitutionality of deficient legislation (s. 4.1.5).

The Venice Commission has made a different sort of pronouncement in addressing in its consultative opinions the possibility to apply to the Constitutional Court, though delimited to its object being matters related with violations of human rights and freedoms (s. 7.4 CDL [2011]079).

11. Dissemination and publication of actions and decisions

Dissemination of the ombudsman institution's activity is explored by the international texts as one of the essential elements to take into account in its principles, and that must include a broad and effective dissemination with the proper resources for the publication of information on the institution's activities, investigations, opinions, decisions, proposals, recommendations and reports (s.7.X Recommendation 1615 [2003], principle 29 of CLRACE Resolution 80 [1999] and s. 9 CDL[2011]079).

VII. RELATIONS WITH PARLIAMENT

The only tool for relations between the ombudsman institution and the parliament referred to in the international framework is that relative to the presentation of annual or monographic reports on its activity (s. 4.1.2 PACE Resolution 1959 [2013]. s. 7.XV PACE Recommendation 1615 [2003], s. 7.3 CDL [2011]079). Inexplicably, the principles of the Congress of Local and Regional Authorities do not establish such a parliamentary association for reports on activities (principle 29, CLRACE Resolution 80 [1999]).

The public presentation and debate on the reports are therefore the channel through which the ombudsman is held accountable for their activity to Parliament. This information could have special usefulness for the exercise of parliamentary functions

to guide and control the Executive and the Administration that depend on it, while also making it possible to detect the areas in which a specific legislative intervention is needed to amend regulations that are obsolete or generate negative results.

VIII. INTERNATIONAL COOPERATION

1. Relations of ombudsmen with international organizations

Around the world, a close relationship has always been developed between ombudsmen institutions and all of the international bodies of a universal, regional or specialized nature.

Cooperation relationships with regard to international bodies are firstly articulated with the United Nations. On one hand, when the ombudsman has been designated national authority for the prevention of torture, or has been accredited as a national institution for the promotion and protection of human rights and participates institutionally as a member of the Sub-committee on Prevention of Torture and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, respectively. On another note, generalist ombudsmen can participate in meetings of other bodies, or maintain informal contact with officers and civil servants of the organization.

Further, the ombudsman institution cooperates intensely with the Council of Europe, especially the Commissioner for Human Rights of the Council of Europe, as has been explained in section 1.2 of part V.

2. International ombudsmen's organizations and associations

There have been created a number of international organizations and associations that group together ombudsmen, of which the following can be listed: on one hand, the International Ombudsman Institute, which is the only organization that is worldwide. It is worth highlighting in this study that on 13 November 2012, this body adopted what is known as the "Wellington Declaration" which expresses the relevance of the ombudsman as a mechanism essential and necessary for the strengthening of democracy and the guarantee of rights, especially in times of economic crisis.

On another note, there are a number of bodies territorially based on continents or in countries with common characteristics, such as: the European Ombudsman Institute, the Federación Iberoamericana del Ombudsman, the Asian Ombudsman Association, the African Ombudsman and Mediators Association, the Association des Ombudsmans et Médiateurs de la Francophonie, Association of Mediterranean Ombudsmen, the British and Irish Ombudsman Association and the European Network of Ombudsmen (European Union). Lately, specialized associations have been created, like the European Network of Ombudspersons for Children, the National Energy Ombudsmen Network (NEON) or the International Association of Language Commissioners (IALC).

IX. CONCLUSIONS

First and foremost, one key conclusion can be drawn from the study of the international framework for the ombudsman institution: there is international consensus around the need for its creation at the national, regional and local levels as a magistrate of persuasion endowed with the auctoritas necessary to protect the rights and freedoms of citizens and promote good administration.

The model of ombudsman that the United Nations and Council of Europe propose in their pronouncements is characterized by the traits of independence of the person holding the office as well as the exercise of their functions. From there onward, only the Council of Europe is profusely developing the legal status of the office, which must be of a purely parliamentary extraction, strengthened with a broadly-voted majority and unique prerogatives.

Likewise, the functions of the institution at hand have as their main objective the protection and defense of rights and freedoms, in addition to the conventional supervisory function over the administration. This notwithstanding, in recent years new duties have been added, which the ombudsman has assumed or has the power to assume, which are closely related with the main functions, such as that related with the Authority for the prevention of torture, becoming a national institution for the promotion and protection of human rights, the guarantee of access to information and transparency, and the promotion of good governance and good administration.

On another note, there is increasing relevance of the area relative to supervision of private entities that manage public services or provide services of general interest to guarantee citizens' rights regardless of the management format and ownership.

As for the organization and legal status of the ombudsman institution, the Council of Europe has proposed that it be endowed with independence; that is why there is an establishment of general principles of organizational autonomy, and with less intensity, budgetary autonomy, which must be specified in internal legal systems.

Last, it must be noted that, at present the perspective of the international framework examined is focused above all on strengthening the mechanism which is the object of this study, and that it is indispensable to maintain the ombudsman even before possible temptations to do away with it or reduce its staffing or material resources, despite the financial crisis.

X. NOTE ON THE AUTHORS

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