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**Overview:** Ombudsman mediation is the primary internal, bifunctional instrument for conflict management in higher education institutions. The use of external mediation services remains marginal. When there is a conflict, the ombudsman comes in as a key player, and uses mediation as a tool. The following article describes the environment and the concept of conflicts in higher education institutions designed for the quick and low-threshold identification and resolution of conflicts.

**Keywords:** Ombudsman, conflict resolution in higher education, mediation.

# Conflict resolution at universities: Ombudsman mediation as a tool?

## Terminology: Who, what, when, why?

Like all other conflicts, conflicts in universities are determined by the varying concurring interests, objectives and values of individuals, groups and organisations with various reactions and behaviours. They can become public when they are no longer dealt with internally at a micro-level and are not resolved there. It only takes one post on social media for them to develop into a challenge for the entire institution. In proportion to the number of people who study and work at universities, there are relatively few public conflicts. The few existing institutionalised conflict management facilities are structured very differently. Some of them *also* carry out situational mediation.

In this article, "ombudsman" is one of many contextual terms. The German language has a confusing variety of words for the "ombudsman". There are **functional** terms like the ombudsman office, service, facility, point of contact, pool, advisory, entity or authority, and **personal** terms like ombudsman, ombudswoman, ombudsperson, ombuds agent, ombuds commissioner. All of those listed combinations contain the prefix "ombuds", a noun that originates from the old German "mandate authority".

"Ombudsman" is a masculine word in terms of gender. Since a good part of ombuds people are female, we now also have female words (ombudswoman, mediatrix, defensora, ouvidora...)<sup>2</sup>

Both of these various terminologies and assignments have recently led to a criticism of a worldwide "ombudsmania"<sup>3</sup>. The tasks oscillate between personalised administrative control, implementation of individual legal protection, and mediation between disputing parties, primarily between members of the university and the administration. In summary: It is often not clear at first sight what the function of an "ombuds" facility consists of concretely.

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1) Haas, Jutta, *The Ombudsman as an Institution of the European Administrative Law*, Tübingen 2012, p. 1.

2) Kucsko-Stadlmayer, Gabriele, *Europaen Ombudsman Institutions. A legal comparison of the various implementations of an idea*. Vienna / New York 2008, p. 7.

3) Haas, 2012, p 5.

At a closer look, it becomes apparent that not everything that is called "ombudsman" also means "mediation" is used as an tool.

Ombudsman offices at universities, i.e. permanent conflict mediation agencies, were first introduced in Canada and in the USA in the mid-1960s<sup>4</sup>. They arose as government policy on higher education, in the context of the quickly escalating on-campus conflicts of the anti-Vietnam War and the pacifist movements. In the mid-1980, in the course of the development of civil rights, a first *defensoria universitaria* was established in Mexico, and also one in post-Franco Spain (the first one in a European country).<sup>5</sup> The German-speaking countries have similar institutions today.<sup>6</sup> They were established over the last two decades with various intentions, either centrally or directly *for* or *by* the higher education institutions.

Mediation at universities is, if used in time and correctly, *one* instrument of conflict management for conflicts between members of the university, or between members of the university and external parties. In countries with older traditions of university ombudsman offices, mediation is a firmly established conflict management instrument.<sup>7</sup>

The two-part term "ombudsman mediation" used in the following comes closest to representing the bi-functionality of the mediating role of the ombudsman. As a means to deal with conflicts in higher education institutions, it serves primarily as a type of internal Conflict Positioning System (CPS). External mediation services, paid to identify conflicts and deal with them, are secondary.

#### Universities: A multifaceted environment

"Universities" include all tertiary education institutions regulated by law. The Austrian tertiary education sector<sup>8</sup> for example currently comprises 70 higher education institutions (public / private universities, universities of applied sciences, advanced technical colleges, colleges of education) with approx. 350,000 students and several tens of thousands employees.

The body of laws varies greatly between different higher education systems. In addition to them, there are equally varied decrees, curricula, study

regulations and examination regulations (if applicable vocational training contracts), house rules and terms of use etc. The degree and extent of regulation of these documents vary. They are designed to ensure that the members of the university "get along with each other". The various responsibilities are (or have been) decentralised, however, this did not necessarily create a new "culture" of dealing with each other in real life. The word "conflict", or composite nouns that contain it, exists only in traces in legal bodies of law. Standardised conflict prevention regulations only exist, if at all, abstractly, not user-related. They appear to be too little known by potential conflict parties. So how do students and university employees achieve a resolution of their conflict with the help of the ombudsman, maybe even by means of mediation?

#### Ombudsman tasks: From administrative control to self empowerment

University ombudsman offices are, as far as their field of work is concerned, either subsidiaries of the entire higher education system, as for example in Austria the **Ombuds Office for Students** of the Federal Department of Science, Research and the Economy, or they act on behalf of faculties, like the **ombuds commissioners** at the Faculty of Education Sciences of the University of Innsbruck (since 2013), or on behalf of a particular sector of the students' services, such as the **Ombudswoman** for international student programmes at the University of Vienna (since 2013), or the **Ombudsman** for all international students at the Technical University of Darmstadt, or they act on

4) For Canada see Martine Conway, Celebrating Ombuds in Higher Education, ACCUO 1983-2013, [http://www.uwo.ca/ombuds/accuo\\_aoucc/english/ACCUO30En.pdf](http://www.uwo.ca/ombuds/accuo_aoucc/english/ACCUO30En.pdf); for the USA see The Ombudsman Handbook, Berkeley, 2005.

5) For Mexico: Carmona Tinoco, Jorge Ulises (coordinator), La vinculacion entre los derechos universitarios y los derechos humanos, Ciudad de Mexico 2013; for Spain: Recarey, Luis Espada, The Ombudsman for Spanish Higher Education Institutions, Vigo 2005.

6) For Austria:

[www.hochschulombudsmann.at/partner](http://www.hochschulombudsmann.at/partner).

7) Alcover, Carlos-Maria, Ombudsing in Higher Education: A Contingent Model for Mediation in University Dispute Resolution Processes, in: The Spanish Journal of Psychology 2009, Vol. 12, No. 1, p. 275-287.

8) [www.hochschulplan.at](http://www.hochschulplan.at).

behalf of particular academic areas of higher education institutions, such as the **Ombudsman offices for good scientific practice** for researchers (in Germany since the late 1990s, in Austria since 2003). Due to the highly diverse nature of the target groups, their functions vary greatly.

Consequently, university ombudsmen don't have a standardised job description. Anglo-Saxon countries have had a general ombudsman description since 1974 thanks to the definition of the International Bar Association.<sup>9</sup> Subsequent definitions of university ombudsmen of North-American networks such as the *Association of Canadian College and University Ombudsmen ACCUO* in Canada (since 1979) and the *University and Colleges Ombudsmen Association* in the United States (since 1984) were based on this. In Europe, fundamental work is currently under way to establish such a clear definition.<sup>10</sup> The range of factual assignments that are yet to be defined more closely extends from classic administrative control to the self empowerment of the conflict parties<sup>11</sup>.

**Focus: Types of (university) conflicts**

In his book *Conflict Management*, Friedrich Glasl argues that for a variety of reasons, the term "conflict" has become inflated across the entire society<sup>12</sup>:

» As for universities, it must be noted that (the most) different conflicts are a daily reality on all levels of conflict.

(and remain so and will become rather more common). Conflicts at universities can roughly be categorised into three categories based on their basic patterns: interpersonal conflicts, strictly legal conflicts (mainly relating to study regulations and organisational law), and conflicts with both elements. The first one may be determined by social interactions, by "social conflicts" (Friedrich Glasl)<sup>13</sup>. The second one arises from laws and their various or situational interpretations, as applicable, objective conflicts (or sometimes not so objective!). They are often based on regulations whose content is ambiguous or impracticable. The third category consists of conflicts that are a mixture of both social and objective conflicts (intentional and/or structural).

There are multiple constellations of conflict. According to Eyer and Quinting, there are six types which can be applied to the context of tertiary education institutions<sup>14</sup>:

Type I comprises conflicts between equals on the same hierarchical level (e.g. insufficient information transfer, or a personal dispute about the allocation of responsibilities between two "equal" members of the university).

Type II conflicts are conflicts between members of two different hierarchical levels (employee - manager conflicts).

Type III conflicts take place between individuals and collectives on the same hierarchical level; the collective can be a formally established body of the university structure, or a body that has been created spontaneously and only exist for the duration of the conflict.

Type IV, conflicts between managers and collectives of different hierarchical levels, for example arise from

9) It says: "The Ombudsman is an office provided for by the constitution or by action of the legislation or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action and issue reports." Quoted from: Haas, Ombudsmann, p. 29.

10) Within the framework of the European Network of Ombudsmen in Higher Education ENOHE, www.enohe.net.

11) See the ENOHE Annual Conference 2014: Higher Education Ombudsmen and Empowerment: How to Make it Work; <http://www.enohe.net/wp-content/uploads/2013/10/Final-programme-with-biographies1.pdf>.

12) Glasl, Friedrich, *Conflict Management. A guide for managers and consultants*. Bern/ Stuttgart/ Vienna 2011, p. 13f.

13) Glasl, 2011, S. 14f.

14) Eyer, E. /Quinting, R, *In-House Mediators as Conflict Resolution Agents in Companies*, p. 222, in Eyer, E. (Eds.), *Special report of mediation in the economy*, Düsseldorf 2004. The cited examples are based on true cases from universities: Leidenfrost, Josef, *Extra-hierarchical conflict management at universities: In-house mediation as an instrument*, MA Thesis, Vienna 2012, p. 14f.

disputes about the allocation of funds within a faculty.

An example for type V, conflicts between two collectives of the same level, would be competition between two teams.

In type VI, in conflicts between two collectives of different hierarchical levels with large intra-organisational distances, the conflict parties are two groups with completely different goals (e.g. student representative vs. senate).

Consequently, suitable conflict management instruments vary, ranging from information to moderation to mediation.

#### **People involved: From the caretaker to the vice-chancellor**

All members of a university can potentially be involved in university conflicts, from the caretaker, administration staff and students up to the academic staff, including the vice-chancellor and the chancellor. In terms of numbers, students make up the majority of the people most frequently involved in local conflicts.

#### **» Conflict constellations across the hierarchy are inexhaustible.**

One of the core issues is how and from what point an aggrieved person at a university is involved (unconsciously?) in a conflict as a party, or becomes aware that they have been involved in a conflict, and who they can turn to within the hierarchy after this realisation. Another core issue is how existing conflict management instruments or special interest groups act and function, and especially, how easily accessible they are.

#### **Conflict themes, better: concerns!**

This article intentionally uses the term "**concerns**" for issues that give rise to conflicts, instead of the words complaint, grievance, system fault, or inadequacy.<sup>15</sup> This corresponds to a current semantic paradigm shift in the Anglo-Saxon language area from "complaints" to "issues".

Conflict themes at universities vary greatly. For employees, they can include issues regarding job descriptions, temporary work contracts, allocation of positions in committees, holiday replacements,

secondary employments or replacement rulings. For students, the list ranges from application procedures and entry-level tests, to bullying, waiting lists and admission procedures.<sup>16</sup> In the context of the mentioned types of hierarchy constellations, such topics need to be dealt with completely differently.

#### **Voicing concerns: Is hierarchy a stumbling block?**

As mentioned, there are only very few expressly known conflict management facilities at universities. The existing ombudsmen, as conflict resolution agents, all have in common that members of the university can (and should) contact them with their perceived or actual conflicts at a reasonably low threshold. They are ideally mediators (mediation!), informal, act outside of hierarchies and independently of decision makers (like the vice-chancellors, dean, head of faculty, directors of courses of studies, lecturers, courses of studies managers, bodies of university law). Hierarchy is a strict ranking system of super- and subordination, in which the most important communication lines and decision making powers run from the top down. Universities are outwardly hierarchical, with ostentative hierarchy symbols like robes and vice-chancellor regalia etc. In addition to such symbols, they are also hierarchically organised. Hierarchy means standardised, often documented processes, and consequently, greater conflict potential. In contrast to Martina Pruckner's suggestion in the *pm Focus* edition 3/2013 regarding the question "Quo vadis, mediation?", namely that hierarchies were flattening themselves,<sup>17</sup> such a virtual self-abolition of

15) This is the term that emerged as the lowest common denominator from the parliamentary evaluation procedure that statutorily defined the function of the ministerial ombudsman for students in the Higher Education Quality Assurance Act 2011. Statements from the evaluation procedure can be found under [http://www.parlament.gv.at/PAKT/VHG/XXIV/BNR/BNR\\_00388/fnameo-rig\\_225174.html](http://www.parlament.gv.at/PAKT/VHG/XXIV/BNR/BNR_00388/fnameo-rig_225174.html).

16) Leidenfrost, 2012, p 42.

17) Montada, Leo / Pruckner, Martina / Zanolli, Noa / Metzger, Tilman / Zumühl, Sabine, Central Theme: Statements of the editors of *pm*, in: *perspective mediation* 3/2013, p. 132–133, here p. 133.

hierarchy, as implied by her use of the reflexive pronoun, does **not** apply, definitely not in the context of higher education.

In his article "Conflict management systems at Austrian universities: The need for road mapping"<sup>18</sup>, Sascha Ferz analyses the *status quo* and outlines important elements for a future course of action. He notes that there are existing models to deal with conflict that are agreement-oriented, but lack a suitable positioning. The situation could be improved by a systematic assessment of the entire conflict arena. Any legal freedoms should be made use of. A low-threshold access to conflict management facilities needs to be ensured, and a positive "conflict climate" needs to be created. Presumably, this also applies to other parts of the German speaking area.

**"Ombuds mediation": Identification and management of concerns in a (more) differentiated way**

In view of Ferz's analysis of the status quo, "ombudsman mediation" as a model seems to be particularly well suited to achieving a timely and permanent way of conflict management.

"Ombudsman mediation" has been defined and described by Rolf Steiner and Andreas Nabholz in the context of the work of Swiss parliamentary ombudsmen.<sup>19</sup> The term includes both components of the higher education conflict management culture: ombudsman function (as an activity) and mediation (as an instrument).

According to Steiner, one of the experiences or insights gained from "ombudsman mediation" is that ombudsmen in some ways possess ideal requirements for mediation, as they have "a position of trust from the beginning".<sup>20</sup> The ombudsperson has to be aware of their role in each case (consultant, supervisor or mediator). Experiences with administrative controls and mediation processes are two different competencies. Swiss [note: public] ombudsmen continue to carry out mediation-type processes, less often also actual mediation, without explicitly calling them that. Different qualities and styles of the officeholder impact on the different uses of mediation.

In addition, not all concerns have material and formal mediation requirements. People bringing forward concerns [note: called "complainants" by Steiner] need to be made aware of the mediation used by the ombudsman. And lastly: People that manage processes should have solid mediation training.<sup>21</sup>

**Ombudsman mediation at universities: a niche business?**

Universities present themselves as "official" to their members in legal relationships between the institution and its members. In that way, the administrative control, in other words the classic function of the ombudsman is at the forefront when dealing with formal conflicts ("objective conflicts").

In view of the branched structures, especially of (very) large universities with partially very hierarchical organisations, the intervention in formal, sovereign conflicts in the form of mediation is a, if not the conflict resolution method.

For "mixed situations", conflicts that are objective and interpersonal at the same time, university ombudsmen offer both, classic ombudsman function, and mediation. As a bifunctional instrument, ombudsman mediation can help to determine what appears to be the ideal process for the correct assessment of the conflict on a preferably low-threshold level - so to speak as a preferably internal Conflict Positioning System (CPS) that firstly makes use of its own options. Like a Geographic Positioning System (GPS), the first step is to determine as early as possible where exactly one is situated within the geography - read hierarchy - of the institution, and how one can achieve the target or a solution from there, as applicable. Thereafter it can be decided whether an internal or external mediator should be appointed to deal with the conflict.

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18) Published in: Mediation at Universities: A conflict mediation tool for students and junior researchers, Vienna 2013, p. 22-31.

19) Steiner, Rolf/Nabholz, Andreas, Ombuds Mediation. Mediation in the public administration, in particular by parliamentary ombudsmen in Switzerland, Zurich/ Basel/ Geneva 2003.

20) Steiner/ Nabholz, 2003, p. 76.

21) Steiner, Nabholz, 2003, p. 77-78.

What does all of this mean for mediators in university conflicts? Is mediation a niche business at universities, and does it remain one?

»» **Some universities have been offering paid external mediation services for years.**

For example, the University of Innsbruck, as part of the personal development of its employees.<sup>22</sup> The student representation of the same university recently officially decided to give access to paid mediation to student representatives and students.<sup>23</sup>

It cannot be expected that more and more university sponsors will establish permanent conflict resolution centres. However, there is a growing trend - especially in the USA - to "economise" conflicts, i.e. to perform cost-benefit calculations, and consequently to increase institutionalised conflict prevention<sup>24</sup>.

Given the tertiary education landscape in the German speaking area which offers plenty of mediation training opportunities, what is stopping the stakeholders of conflict resolution at universities from better connecting and positioning themselves in their awareness-raising and accomplishment of the ombudsman's function AND mediation as a concept?



## Contact

Josef Leidenfrost has over 20 years professional experience in conflict management in tertiary education institutions, firstly as the head of the national Austrian SOKRATES agency, then as the head of the student advocacy, or ombudsman office for students, as applicable, of the Austrian Department of Science. In 2002, he co-founded the *European Network of Ombudsmen in Higher Education (ENOHE)*, which he has been the coordinator of since 2013. His Master's thesis „Extra-hierarchical conflict management at universities: In-house mediation as an instrument“ will be published in 2015.

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22) Göschl, Isabella, Mediation as part of the conflict management at the University of Innsbruck, in: Mediation at universities, Ombudsman for students, Workshop report No. 9, Vienna 2013.

23) [http://oeh.cc/uploads/media/ProtUV\\_1.o.WS14\\_15.pdf](http://oeh.cc/uploads/media/ProtUV_1.o.WS14_15.pdf).

24) Freres, Martin, Financial Costs of Workplace Conflict, in: Journal of the International Ombudsman Association, volume 6, number 2, 2013.