

# Reaching Out to Citizens

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## **Plenary Session II: Developing the Working Methods and Tools of the Ombudsman**

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*An ombudsman can only be of service to citizens if the citizens know and trust him, and they will only do so if they view the Ombudsman as someone whom the government must take seriously. Meanwhile, the government will only take the Ombudsman seriously if he is viewed by the general public as a serious counterpart to the administration. As long as citizens continue to trust the media, ombudsmen cannot ignore its power. In Austria, where the Ombudsman Board produces a weekly broadcast with the national television station, public support for the Ombudsman Board is extraordinarily strong. All means for citizens to communicate with the Ombudsman should be open, and the news media and Internet are particularly important in this regard.*

Over the past 15 years, the world of ombudsmen has become highly diverse. We differ in the functions we perform, the tools we have available to us to do our jobs, the ways in which our positions are established in the laws of our respective countries and in our understanding of the office, which is generally a function of the statutory basis for our position, the history of its development and the practices of our predecessors in office.

The purpose of the ombudsman's office is to reconcile administrative efficiency and rule of law, the expectations of the citizens and the reality of their government. More than almost any other government agency, ombudsmen have the means of extending their authority, something that allows us to develop our own understanding of the office and emphasize new aspects of our work. Of course, there are limits: we cannot lose the confidence of the citizens, our national parliaments, public and published opinion and the government. Nevertheless, such extensions of our authority are almost expected, and not only in Austria.

A recent survey found that 42% of respondents believe that the Austrian Ombudsman Board has too little authority, while just 3% said that their ombudsman is too powerful. As Bruno Kreisky, one of our founding fathers, said about 30 years ago, hardly any other government agency can exceed its authority with the support of the general public more often than the Ombudsman, and we have tried to live up to his expectations. Despite the absence of an express statutory mandate, the Austrian Ombudsman Board has formed a close partnership with Austrian state television and has recently prepared its 6th Annual Report on Human Rights. We also continue to exercise review authority over formerly state-owned enterprises like the railways, postal ser-

vice and telecom, even though our formal authority to do so was lost in the course of privatization, as well as routinely proposing legislative initiatives to Parliament within the context of our reports. Our ability to formulate such innovative initiatives depends on our capacity to learn from each other and study practices in other countries.

The IOI performs and will continue to perform a unique function in this regard as an information platform. The task of the new IOI will be to compile the laws and official practices in effect in other countries and make them easily accessible to all of us, as well as offering the forums necessary to discuss them. The new IOI should bring us closer together and make it easier for each one of us to evaluate practices in other countries, and the suitability of those practices for our own countries.

But I would also like to thank our Swedish host for giving us this wonderful opportunity to exchange ideas. We are all here to acknowledge Sweden for developing the parliamentary ombudsman model. It has taken almost 200 years for this idea to spread throughout the world from its birthplace in Stockholm, and ombudsmen now serve in more than 130 of the world's 193 countries. Due in particular to developments in the world's newest democracies, the office of Ombudsman is now a standard feature of a modern constitution. Although the specific details of the original Swedish recipe have not been duplicated anywhere else, the Swedish model has demonstrated to all of us that division of powers does not preclude efficient parliamentary review over public administration in the interests of the general public. One can even say that the parliamentary ombudsman is Sweden's most successful constitutional export.

In most countries, the Ombudsman's office is designed as a parliamentary oversight agency with the authority to ask for documents, a power which is very seldom granted to the parliaments themselves. The executive cannot refuse the Ombudsman's request for documents on grounds of official secrecy. In other words, the Ombudsman bridges the gap between the executive and the legislature, and is the only parliamentary agency (including the audit offices), to which citizens can appeal directly. For this reason and others, the Ombudsman serves as the personal representative of each citizen, more than any other parliamentary body. While the Ombudsman is objectively subordinate to the public administration, its highest function from the subjective viewpoint of the individual citizen is to protect the personal rights of each and every citizen. While ombudsmen have no actual punitive authority at their disposal, unlike the courts, they do have full access to information, and this power should not be underestimated. At the end of the day, the Ombudsman has no power other than the power of his arguments, based on his unfettered access to information.

The Ombudsman's daily routine is to act as an intermediary between citizens and their government, and he must build up a certain amount of trust with both sides if he is to be successful. The Ombudsman must convince the government that it will be treated fairly and objectively, and that it will prevail if it can furnish arguments to support its position. Citizens, on the other hand, are concerned less about objectivity than about the pursuit of their sub-

jective interests, and legitimately so. They do not seek justice so much as the protection of their rights. If the Ombudsman is to be successful over a long period of time, he must satisfy the demands of both sides, rather than work exclusively for one or the other.

In line with the topic of this discussion, I will focus on the relationship between citizens and the Ombudsman. First, it would appear necessary to eliminate as many of the barriers as possible between citizens and their ombudsman. Some legal systems do not exactly help matters when they require, for example, that all complaints have to be made in writing. These requirements should not prevent the Ombudsman and his staff from receiving complaints by meeting personally with the complainant. All means for citizens to communicate with the Ombudsman should be open. It is already hard and complicated enough for many complainants to contact the Ombudsman; it makes little sense to make things even harder for them by requiring them to use unfamiliar forms of communications. The option of meeting personally with the Ombudsman's staff, or with the Ombudsman himself if possible, is therefore of particular importance. I am personally convinced that an ombudsman who never even sees his complainants is not really doing his job. Open houses in all parts of the country, decentralized offices or a network of agents on the model of the *Médiateur de France* are suitable tools towards this end. But whatever accomplished, our goal must be to bring ombudsmen as close to the public as possible.

Complaints about administrative defects will not reach us unless citizens know that the Ombudsman exists, what they can expect from us, more or less, and how to find us. Seemingly trivial things like toll-free telephone numbers and a well designed website are therefore of fundamental importance.

Unless the function and identity of the Ombudsman are publicized to a certain extent, utilization of the Ombudsman's services will be left to chance and, in the worst case, would effectively be available only to select segments of society. If he is to perform his intended function on behalf of the citizenry, the Ombudsman must become a public figure whether he likes it or not. In fact, some ombudsman statutes expressly require him to do so.

We should refer in this context to the relevant provisions in the ombudsman statutes of the Russian Federation, Croatia, Slovenia, Lithuania and the Czech Republic. However, a right to engage in public relations work can also be inferred indirectly from our duty to report to our respective parliaments. After all, it is our responsibility to ensure that the reports we submit to parliament do not simply gather dust in parliamentary files, but instead find their way to the consciousness of the general public. Clearly, the Ombudsman's interests are not identical to those of the government in this regard. For the Ombudsman's criticism is more bearable for the government the less the general public knows about it, and the case is not fundamentally different for the parliaments themselves. In fact, the only ones who are truly interested in our reports criticizing the government's ministers and administrative agencies are the opposition, but the opposition does not determine the agenda of parliamentary deliberations. In any case, ombudsmen must avoid becoming nothing more than star witnesses for the opposition: yet another reason why om-

budsmen should ensure that the public at large is acquainted with the content of their reports.

Making the Ombudsman's work public affects his relationship with the executive, with parliament and with the general public. In many cases, citizens do not know who the Ombudsman is, what he does, and how he can help them until he appears in the media spotlight. Seen in this light, the media can be a vital means of spreading knowledge about the Ombudsman and his constitutional function. But the political utility of publicizing the Ombudsman and his work goes even further; it convinces citizens that it makes sense to take advantage of the statutory means available to them for enforcing their rights, including the Ombudsman. By hearing some examples of the Ombudsman's work, citizens find out that they are not alone and helpless in the bureaucratic jungle.

Making the Ombudsman a public figure makes him the equal of the administration in the public's eye. Like all of us, the government does not like to be criticized and its sensitivity to criticism grows the more people know about it. In democracies, this is reinforced by the natural interest of every politician, from mayor to minister, not to lose even a single vote due to lax administration and bureaucratic red tape, an interest, which they can be sure to explain to the administrative apparatus in no uncertain terms. Accordingly, media pressure on the administration and its leadership makes them more likely to hear the Ombudsman's arguments and the media's role in supporting the Ombudsman's work should not be underestimated.

Administrations are seldom malicious. In most cases, though, they are overworked, lethargic and loathe abandoning their accustomed practices. In Austria and elsewhere, there are two fundamental arguments the administration makes time and time again: "This is how we've always done it," and "anyone could just come and say that." Generally speaking, the Ombudsman must call upon the administration to abandon its old ways of doing things and accept the risk that always comes with doing something new. Ultimately, what the Ombudsman is asking of the administration is nothing other than to subordinate its own interests to those of the citizenry, to the extent possible under the law. Naturally, this cannot be done without a certain amount of pressure.

This is also true, to a certain extent, of parliaments: Legislators will take you more seriously if they believe that your arguments will resonate with the general public.

But now that we have discussed the positive aspects of publicizing the Ombudsman's work, let us not overlook the dangers. After all, entering the media universe means having to obey the rules that prevail in that sphere. The Ombudsman must be conscious of the fact that he is leaving his familiar territory, and that the media universe has its own unique logic.

First of all, the Ombudsman must learn not to publicize cases that cannot be explained through the media, as the danger of over-simplification cannot be avoided. After all, the mainstream media, like many of us, is accustomed to seeing the world in black and white. When presenting his findings to the media, the Ombudsman must learn to choose the simplest cases possible, and

to choose cases that elicit an emotional response and cause media consumers to identify with the complainants. He must learn that, while the administration can be appeased with balanced formulations, excessive caution and the need for harmony can detract from the effectiveness of his message. Ideally, media consumers will identify with the complainant, and will expect the Ombudsman to defend the complainant's interests energetically.

Above all, the Ombudsman must be cognizant of a fundamental journalistic principle: "Only bad news is good news." This means that cases reported in the media will only be of interest to the general public if the Ombudsman's report details administrative misconduct and explains how that misconduct was rectified. The latter is particularly important: If the initial report does not include a resolution, the Ombudsman should issue a follow-up report making clear that he has not given up on resolving the cases and that, in most cases, a solution will ultimately be found. If he fails to do so, he runs the risk of being attacked as just a "paper tiger."

While this way of selecting cases from the Ombudsman's files may seem unfair to the administration, this is not actually the case. In fact, the public administration benefits in another way.

In our general experience, only 10-20% of complaints reported to us end in a finding of maladministration. What about the other 80-90%? In all of those cases, we have to contend with deeply unhappy citizens convinced that an injustice was done to them, as well as an administration that acted properly but failed to communicate this state of affairs to the persons involved. Such a situation is not entirely devoid of danger politically, as it undermines the citizen's trust in the state and its administration. In effect, only the Ombudsman can resolve this conflict. As an objective and independent public advocate, he can make the citizen understand, through careful review, that the administration could not have acted any differently under the existing laws. In other words, it is the task of the Ombudsman to help citizens understand and accept their system of laws and the administration charged with enforcing them. We do this by publicly identifying and rectifying administrative abuses and by explaining to citizens when and if such abuses do not exist. If the Ombudsman concludes that the administration acted in accordance with the law, but the law itself is the problem, he will generally inform Parliament of this view and propose new legislative initiatives to remedy the situation.

But let us return to the unique features of the media universe: When the Ombudsman speaks to the press, he must remember that he is not dealing with people who slavishly write down his every word, but with skeptical journalists who are jealous of their right to question everything and everyone, including the Ombudsman himself. Many of us are unprepared to face such questioning. When ombudsmen work together with the press, it is inevitable that both sides will become irritated at some point. Journalists don't want to be turned into instruments of someone else's agenda any more than we do. But irritations are also inevitable because our roles in the context of the media are so similar; we are both in acting as intermediaries for the general public, a position that calls upon us to rectify administrative abuses. Accordingly, ombudsmen and journalists must find a reasonable division of labor to distin-

guish our respective roles. If we try to outdo one another instead of working together, it will only hurt us in the end. In Austria, we have already seen a partnership with the national television station fail.

We in Austria have gone especially far in publicizing our activities. With interruptions, and in various forms, the Ombudsman Board has maintained a close partnership with Austria's national television station, ORF, for the 33 years of its existence and we work together to produce a weekly television broadcast which present one or two cases a week, in detail. Through this weekly broadcast, the Ombudsman Board now has a name recognition rate of around 75%, along with extraordinarily strong public support. But ORF has benefited as well. It has developed an investigative journalism format which involves practically no risk of subsequent litigation, since it does not have to rely on the truth of the complainant's statements. Through its access to the Ombudsman Board's findings, it knows the whole story. These broadcasts are also relatively cheap for ORF to produce, in addition to being increasingly popular, since the Ombudsman Board has already researched and processed the cases. This has the added benefit of keeping down editing costs, which are typically high for this format.

In such broadcasts, it is especially important to feature an actual confrontation between the Ombudsman, or the complainant, and a representative of the administration, as this is what it takes to bring the discussion home for viewers and make it real. In this way, citizens will get the message that, with the Ombudsman's help, they have a real chance of prevailing against the administration. Meanwhile, the administration will learn that it will be held responsible for its misconduct in public. It has tried repeatedly to evade this process, but in the end has learned that this course inevitably leads to confrontation. The administration has found that refusing to answer questions does not solve their problems; it only makes them worse. The media's view of the world can be summarized by the Roman legal principle *Qui tacet, consentire videtur*, or "silence is agreement." Some administrative offices have sent out real PR professionals for these broadcasts, who begin by uttering sincere apologies and then, as fast as possible, offer solutions that are both lawful and acceptable to the complainant.

These broadcasts have raised few, if any, privacy issues. No more than once a year, we get complainants who would like to see their problems solved but elect not to take their cases to the media. The Ombudsman is generally responsible for ensuring that no one is forced to disclose details of their personal and family life against their wishes.

Using the media only makes sense if the Ombudsman can control the timing and the topic itself. It is important for the Ombudsman to retain his objectivity and non-partisan status, which is difficult to do if he wades too deep into day-to-day politics.

But we must remember that using the media can't solve all of our problems. Our difficulties reaching teenagers are only partially explained by the broadcast time, late Saturday afternoon; after all, sports programs broadcasting at the same time have no shortage of young viewers. The size of our viewing audience, which is one-quarter to one-third of all households, does not

really solve this problem either. Special efforts are necessary to reach some groups, such as specially designed educational material.

Efforts to publicize the Ombudsman's activities must go beyond the print and electronic media. An interesting website geared towards younger Internet users is increasingly important these days, and this website should be informative, helpful and entertaining. The website should make people want to contact the Ombudsman and take advantage of his services.

Anyway you look at it, an ombudsman can only be of service to citizens if the citizens know and trust him, and they will only do so if they view the Ombudsman as someone whom the government and parliament have to take seriously. Meanwhile, the government and parliament will only take the Ombudsman seriously if he is viewed by the general public as a serious counterpart to the administration.

Politicians need citizens to vote for them in order to stay in office. Ombudsmen do not run for office, but they have to make citizens believe that their criticism of the government's policy and administration can decide elections. To many citizens, ombudsmen are the touchstone for each candidate's receptiveness to citizens' concerns.

Like it or not, our society has become a media-driven society. The success of our businesses, careers and political ideas depends on their presentation in the media. As long as citizens continue to trust the media, ombudsmen cannot ignore its power.