

**THE OMBUDSMAN AND THE CITIZENS – lessons  
to be learned from the Scandinavian experience**

**by Chief Parliamentary Ombudsman Mats Melin,  
Sweden, at the Doha Democratic Forum 2006**

The original recipe for how to make an Ombudsman is Swedish. So is the word itself. Since 1810, when the first Swedish Ombudsman took office, different cooks all around the globe have added some new ingredients to the original recipe and, indeed, excluded some of its original components. Thus, “the Ombudsman cake” does not taste exactly the same in different countries with different political and cultural traditions.

Even if the first of Ombudsmen was elected by the Swedish Parliament, the very essence of the idea of an Ombudsman – an independent official with the power to investigate complaints from members of the public and who can criticize illegal, unfair or improper actions by public authorities and make recommendations – is not unknown in other, even older, cultures.

Within the Islamic legal system, for example, during the era of the Abbasids, complaint handling agencies called “Diwan al Mazalim” were established. Their function was to examine grievances brought by the public against government officials. These institutions seem to have been headed by a senior judge. Under Turkish rule the “Qadi al Quadat”, the “judge of judges”, exercised a similar function. Indeed, it has been suggested that the idea of establishing an ombudsman occurred to the Swedish King Charles XII when he – having suffered defeat at the hands of the Russian army at Poltava – for a number of years was the guest of the Sultan in Turkey in the early 1700s. The Islamic tradition has been taken up in, for example, Morocco where a complaint handling institution “Diwan al Madhalim”, led by the Wali al Madhalim, was established in December 2001. In Pakistan, the term used for its complaint handling institution is both Ombudsman and Wafaqi Mohtasib, a term with roots in the time of the Second Caliph, Omar.

This being said, it is clear that the concept of Ombudsman applied today originated in Scandinavia and spread around the world, primarily during the second half of the 1900s, to now some 120 countries. This rapid spread of the Ombudsman institution in recent years is, I think, associated with two main developments. The first is the continuous growth of public administration in many countries. This growth has led to demands not only that the administration should be subject to the rule of law, but also for recognition that public administration exists to serve citizens, not *vice versa*. The second development is the spread of aspirations to democracy and human rights. Many countries have in recent years established an ombudsman as a part of their process of transition to democracy.

The over-all objective of the work of an Ombudsman is to promote the rule of law, human rights and good public administration.

What, then, is, more precisely, an Ombudsman?

The meaning of the word as such is simply, in the Swedish language, a person representing the interests of another person or a group of individuals. Thus, typically, the office of an Ombudsman is normally a *personal* mandate given to an individual in a state – or sometimes, as in my country, to a limited number of individuals.

This person is in most states elected by Parliament. In some countries the Ombudsman is appointed by the Executive on a suggestion by Parliament or as an act of confirmation of a decision by Parliament. For the legislature to be actively and intimately involved in the selection procedure is widely regarded as important in order for the Ombudsman to ultimately derive his or her authority from the representatives of the people and thus,

indirectly, from the citizens themselves.

In many countries, but certainly not in all, the Ombudsman is elected among members of the judiciary, and is normally a high-ranking judge. This is the case in the Nordic states. There are at least three good reasons for choosing a judge as Ombudsman.

Firstly, it is of crucial importance that the Ombudsman is a widely respected person who cannot be associated with a particular political party or movement or with a specific interest of any other kind. In my country, a person needs to be at least acceptable to all parties in Parliament in order for him or her to be elected Ombudsman. Such a person is, of course, more easily found within the judiciary.

Secondly, the Ombudsman is certainly not a court of law but nevertheless he or she will have to deal with points of law, interpret specific provisions of law and must be prepared to criticize public authorities for failure to observe the law. Such decisions by the Ombudsman are, of course, more readily accepted if he or she is a judge by profession.

Thirdly, in my country and in a few – admittedly very few – others, the Ombudsman supervises even the courts of law. It goes almost without saying that in order to have your decisions respected by members of the judiciary you must be a judge yourself.

In some states, however, the Ombudsman is, for example, a professor of law or political science. To conclude this point, whatever the professional background of the Ombudsman, and however the election procedure is constructed, it is of fundamental importance that the Ombudsman is – and is perceived to be – independent.

What, then, is the duty or task of the Ombudsman?

His or her fundamental mission is to protect the rights of individuals who believe themselves to be victim of unjust or unlawful acts on the part of the public administration. In order to fulfill this mission, the Ombudsman receives complaints from members of the public. It is important that any individual may address the Ombudsman directly, without any specific formalities and free of charge. In some countries you need to be personally concerned by the matter, in others, like mine, there is no such condition.

The complaints filed with my office, for example, may concern a wide range of issues: one individual claims to have been subject to an unlawful house search by the police, another that while in prison he has been deprived of his right to speak in private with his lawyer, yet another that a public school has subjected its pupils to unlawful drug testing. A son complains that his elderly father is denied adequate treatment in a public nursing home and a father complains that his son has been placed in an institution for juveniles without a proper investigation having been conducted. In fact, my office receives complaints against taxation authorities, social welfare offices, environmental agencies and many other public authorities with allegations that their decisions are unlawful, unclear or ill-founded – or with claims that those authorities are either slow in handling applications or unwilling to reach a decision at all.

Most Ombudsmen may also take up cases on their own initiative. I do that fairly frequently when, for example, allegations concerning cases of maladministration or other unfair procedures are made in newspaper articles or by other media. It is also

important to note that some of our citizens have difficulties to complain to the Ombudsman or even are unable to do so. This could be the case with prisoners, people deprived of their liberty due to psychiatric disorders and the mentally retarded. Especially in those situations, it is extremely valuable if the Ombudsman, like in Sweden and some other countries, has the possibility to carry out inspections at the spot, *sur place*. The Ombudsman and members of his staff then spend a few days at, for example, a police station, a social security office or a prison, going through the files in a systematic manner and interviewing the personnel. When inspecting a prison the inmates are always given a possibility to talk, and put forward their grievances, to the Ombudsman.

The Ombudsman must, of course, be given sufficient means to investigate the complaints received. He or she must have the possibility to hire competent staff and be given other adequate resources. In order for the Ombudsman's work to be credible in the eyes of the general public, he or she must also be given wide powers of investigation. In my country, every public authority and every public official is, according to a specific constitutional provision, obliged to assist the Ombudsman and to provide any information that he or she may ask for. It should not be possible to hide anything from the Ombudsman.

When conducting the investigation, it is important for the Ombudsman to apply normal procedural rules, such as the right for all parties to be heard and to be able to comment on any allegation or evidence which is relevant for closing the case.

When the investigation is completed, the Ombudsman takes his or her final decision. Where the more classical concept of the institution is applied, like in the Scandinavian countries, the Ombudsman adjudicates the case impartially with a fairly strict legalistic approach. He or she may criticize what has taken place from a legal point of view and, even more important, state how the situation or case should be correctly handled. Such a critical statement gives the complainant the satisfaction of having a respected authority conclude in his or her favor and provides the public authorities with guidelines for the future handling of similar cases. In some countries, emphasis is put more on solving the actual dispute. The Ombudsman then may give a proposal for a friendly settlement between the individual and the public authority. In some of those states the task of the Ombudsman is more that of a spokesman for the individual than of an impartial judge. The institution may then be called for example the Defender of the People, as in most Spanish-speaking states, or the People's Advocate, like in Albania.

Most Ombudsmen may also suggest amendments to, or changes in, existing legislation.

In any case, the Ombudsman's decision is no more than a recommendation. It does not carry the legal binding force of a court judgment. It only has the force of good arguments, of a convincing reasoning, supported by, hopefully, the respect for the Ombudsman institution and for the person holding that office.

All Ombudsmen, which I am familiar with, publish an annual report to Parliament on their work. The report contains the most important decisions of the passed year. I find it essential, however, that the decisions are made public as soon as the Ombudsman has signed them.

To summarize, it is of crucial importance that an Ombudsman  
– is independent,

- is easily accessible to the citizens and provides his services without charge,
- has a wide mandate comprising all public authorities the work of which may affect the rights of individuals,
- is given adequate resources and investigatory powers to conduct his work properly, especially the right to have access to all information needed and,
- in a reasoned decision, have the possibility to publicly state his findings and recommendations.

Our experience is that an institution of this kind may actively and substantively contribute to the rule of law, to the respect for human rights and to good, accountable and uncorrupt administration.

Of course, in a state governed by the rule of law – as opposed to a state governed by the whim of a ruler – there should be courts to uphold the law. The same is true with regard to human rights. However, in many disputes between the citizens and public administration, to go to court may prove to be too laborious, too slow or too costly. In those cases, the Ombudsman may be a good, extra-judicial alternative. At least, the citizen is given the opportunity to choose between two options: initiating judicial proceedings where he may have to be represented by counsel and which may cost a lot (especially if he loses) but where he eventually may arrive at a definite legally binding judgment, or, as another option, filing a complaint with the Ombudsman which is free of charge, where the case is dealt with in a more informal manner but where the result is a pure recommendation which the administration should follow but is not obliged to follow.

There are also numerous actions and omissions by the public authorities which constitute bad administration but which are not possible to appeal against before a court of law. The most obvious example is that of slow handling of cases. If a local public agency simply refuses to decide on your application for a building permit or if your dispute with the taxation authorities just drags on year after year without any decision, then you normally do not have any possibility to take your opponent to court. The same is often true if you get a favorable decision from a public body but only after having been subjected to degrading treatment by the officials of that body.

Every citizen should have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the public authorities. If the citizen is denied this right there should be a remedy, regardless of whether or not the ultimate decision by the public authority is in favor of the citizen. In those cases, the ombudsman certainly is a relevant and effective remedy and in some cases frankly the only conceivable remedy.

Last, but not least, according to our experience, the existence of an Ombudsman institution contributes to the stability of society. The citizens know that, if treated wrongly or unfairly by a public official, they may turn to the Ombudsman to have their grievances investigated. This possibility tends to make them more willing to trust the work of the public authorities in general.

To conclude, the origin of the Ombudsman institution may be Swedish, but the idea that the individual has a right to be treated lawfully and fairly by State and local authorities and that it should be possible to hold those authorities accountable for misuse of public office, that idea is, or at least should be, universal.