

FIFTH MEETING OF THE ASSOCIATION OF MEDITERRANEAN OMBUDSMEN

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The role of the Ombudsman in reinforcing good governance and democracy

Summing up by Dr Edward Warrington (Rapporteur)

During the past two days I have been hearing about the Ombudsman's great skill at listening. I hope that your patience does not run out now. On my part, I promise not to try your patience.

I would like to begin this summary with the third point in your programme, the plenary of yesterday afternoon – *The Ombudsman in the context of a changing economic and social environment*.

I want to summarize this changing economic and social environment by reminding you of something that you yourselves have perhaps read a long time ago, in university days or even in school.

“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, unbelief, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way It was the year of Our Lord one thousand seven hundred and seventy-five” – on the eve of the American Revolution and not long before the French Revolution.

I thought that this quotation from *A Tale of Two Cities* by Charles Dickens summarized the paradoxes, the tensions, the ambiguities and the opportunities that ordinary people in the Mediterranean are experiencing at the present time and that your institutions experience in discharging your role. The picture that I have just painted, reminds me that the challenge is not simply the challenge of change.

We are living in times of much greater uncertainty, greater exposure to risk, greater instability – social, economic, political, cultural – than perhaps my generation and yours has experienced. There is at times an atmosphere of crisis, of diminished confidence and trust. In those situations people become radicalized. Political and administrative elites can become cynical and business leaders become even more tempted to corruption. But it is also a season of hope,

a time of emancipation, with promise of ever greater possibilities of development.

This time of complex change calls for better crafted policies and better designed policy instruments. It calls for new approaches to governance – ones that rely on markets and civil society associations as much as, or perhaps more than, the State. Because we work in the public domain, you and I, it is important to be aware of the changing distribution of power in our political systems, within and across borders, among governing institutions at all levels of government.

For an institution like the Ombudsman, all of these changes, these shifts in the balance of power, may mean that the roles must be adapted, expanded; that operating procedures should be reviewed; and that you should be aware of new constraints or opportunities for your institutions.

This brings me to the principal theme of your study, of your conference: the role of the Ombudsman in promoting good governance. I thought I might summarize your discussions by reflecting on the three names by which your institutions have been referred to.

The one that I am most familiar with is the Ombudsman. This is an institution originating in Scandinavia and from the 1960's taking root in the English-speaking world. The Ombudsman is traditionally more concerned with maladministration rather than fundamental rights and freedoms. The Ombudsman traditionally works with a well-performing stable administration, an administration that is perhaps a little over mighty and impersonal but basically well disposed.

Many of your institutions are referred to as the Mediator, the *Médiateur*, the *honest broker*, to borrow a phrase used by Mr. Justice Said Pullicino. The *Médiateur* intervenes on behalf of citizens who are often helpless before arbitrary, even corrupt, public officials. The *Médiateur* is more concerned than the traditional Ombudsman with fundamental rights and freedoms, perhaps even stepping in, intervening where the Courts and others scrutineers are unable to provide remedies for one reason or another.

Yesterday, for the first time, I heard another name for your institution – the *Défenseur*, the Defender. This suggests to me a more active role, perhaps a more political role and therefore riskier, a greater identification of the Ombudsman, the *Défenseur*, the *Médiateur*, with popular grievances, complaints, concerns, demands – a concern with the concerns and complaints of groups as well as individual citizens. In practice your institutions combine all three roles. The dominant role would be determined by the facts of the case, by the political and social circumstances of a country, by the constraints and opportunities provided by the political and the administrative culture.

So much of yesterday's discussion and today's was concerned with how these changes are impinging on Ombudsmen and to me what was most significant was to listen to the experiences of individual countries that spoke about the vitality and the flexibility of this institution.

I heard, for example, of an important innovation in which different Defenders or ombudsman-type institutions are consolidated, as in France, into an Office with greater powers, greater jurisdiction.

What impressed me most, perhaps, was this. Listening to all of you makes it quite plain that the common core characteristics of the ombudsman institution are well understood and by and large respected in all the countries around this table. By that I mean independence and the personal integrity of the individual holding the office and the trust of ordinary people in the Ombudsman.

But there are then very distinctive national patterns – regional Ombudsmen in Italy instead of a single national Ombudsman; in many of the central European countries or countries in the Middle East an orientation towards human rights; a unique combination of audit and ombudsman functions in Israel; and there are many others. This interesting juxtaposition of clarity about core characteristics and great diversity and adaptability in different settings is, I think, a formula for the success and the continuing relevance of the Ombudsman.

But other things were mentioned as well – for example, the importance of adjusting the traditional patterns of communication with ordinary people to the new technologies and the new ways of communication. So many new possibilities of cooperation with other oversight institutions were mentioned, both locally and internationally – the very last intervention was precisely about that.

But, perhaps even more important, is that the legal frameworks that empower oversight institutions like the Ombudsman, are becoming more robust, more diversified. They now include provisions to protect human rights; against corruption; new administrative codes; freedom of information and its counterpart data protection; protection for whistleblowers; and the appearance of market regulators. Above all, perhaps, ordinary people – even the poor and the marginalized – are ever more aware of their rights and ever more ready to assert them.

There is a tissue of institutions, a robust network of institutions and instruments, which scale up the efforts of the Ombudsman. But your question was about how to promote good governance in the distinctive circumstances of the Mediterranean – so permit me a few reflections about this.

The ombudsman institution is one of the few political institutions of the modern world that was not invented in the Mediterranean. But I think that there is a key

feature of the Ombudsman that is especially relevant to the Mediterranean – and that is the Ombudsman’s role as the Mediator, the honest broker.

The Mediterranean, regardless of culture or religion or whether East or West or North or South, is traditionally a zone in which individuals use Mediators to approach public authorities. It is a pervasive feature of Mediterranean life from the very start of civilization in this area. Traditionally the Mediator is a trusted person who embodies the influence of moral authority not of power, not the crude realities of power, and this is, I think, precisely the Ombudsman’s position in public administration.

The Ombudsman uses the influence that comes from the institution’s moral standing authority and not the power that comes from legal authority. However, and this I think is very important, there is a fundamental difference between the Ombudsman and the traditional Mediterranean broker. Because the traditional Mediterranean broker’s role subverts state institutions and processes; it corrupts them; it weakens them whereas the Ombudsman reinforces the institutions and processes of the State. To borrow a religious phrase – the Ombudsman could be regarded as a sign of contradiction.

The Ombudsman works informally, behind the scenes, quietly, using persuasion instead of laying down the law or undermining the rule of law. The Ombudsman is a trusted broker in an environment that is too often characterized by mistrust or cynicism. The Ombudsman’s day-to-day work generally addresses maladministration, petty complaints but cumulatively over time creates conditions that are more favorable to the enjoyment of rights and freedoms. The Ombudsman exists in the eyes of complainants to resolve grievances but the way the Ombudsman works – using the law instead of subverting it – also has a pedagogical effect. It shows ordinary people and officials the benefits of the rule of law, the benefits of personal integrity and the possibility of operating legally to resolve grievances.

The Ombudsman is an example of stability and regularity but it is also an extraordinarily flexible, adaptable and innovative institution. The Ombudsman investigates complaints but works without adversarial procedures – which would be the job of the Courts – and without raising scandals which is often what the media does.

I conclude by reminding you of the key resources which you mentioned. It is a short list but a significant one. You laid great emphasis on the institutional independence and the personal integrity of the Ombudsman. You spoke about operating capacity and the role of your Association in enhancing operating capabilities especially in developing countries.

Another resource is the credibility of the investigations, the reasoning and the recommendations of the Ombudsman. All of these produce the trust that is a defining characteristic of the Ombudsman. There are new resources: for

example, more and more possibilities of networking with other institutions in a country and across borders and perhaps the political awareness of all of you which is a subtle combination of boldness and prudence in the way that you address profoundly political issues.

May I suggest some risks that come with your role.

As I heard you speak, particularly yesterday, I thought of the risk of over extending your mandate; the risk of politicizing your institutions, particularly in countries where a democratic transition is underway. You yourselves mentioned the risk of becoming isolated not only from the public that you serve but also perhaps from other oversight institutions. In view of these risks, I commend to you another important resource which is periodic self appraisal and self criticism.

I am going to close by reminding you of some issues that you are already dealing with, which perhaps deserve greater thought and study.

The first is your social concern or orientation. More and more the Ombudsman is coming to deal with the effects of poverty, vulnerability and exclusion from social, economic and political life. What attitude will you adopt towards this set of issues?

Perhaps you need to think harder about the Ombudsman's role in situations of democratic transition or political crisis and disturbance. You may need to think about emerging rights issues such as rights to access key resources like water or rights issues associated with emerging lifestyles and, a particular concern of mine, the new security apparatus which is taking hold under the cry of protection against terrorism.

Your last thoughts, and mine too, concern the role of this Association. I am not going to remind you of the discussion which you have just had. The Ombudsman, as I said, was not invented in the Mediterranean but is an institution particularly adapted to Mediterranean culture. So your last question would be – what more can the Association do to enhance the role, the capabilities and the adaptation of this institution to the challenge of fostering good governance and human dignity in one of the world's most creative and also most problematic regions?

Thank you.