

Association des Ombudsmans de la Méditerranée ●

جمعية الأمبودسمان المتوسطيين ●

Asociación de Ombudsman del Mediterráneo ●

Association of Mediterranean Ombudsmen ●



Second Meeting of the Mediterranean Ombudsmen Network Marseille, 18-19 December 2008

“Mediterranean Ombudsmen: the challenges of a common area”.

GENERAL REPORT

Opening ceremony

The second meeting of the Mediterranean Ombudsmen illustrated the participants' desire for cooperation, joint reflections, coordination and understanding between the different countries, institutions and authorities that make up the Mediterranean network.

This desire was clearly expressed by all the speakers at the opening ceremony.

This was manifest in the call to promote dialogue and good governance in favour of peace, to create an ethical momentum through equitable application of legal standards, and to restore confidence in public institutions – as was affirmed by the Mediator of the French Republic; in the commitment to help improve civil service in accordance with Human rights imperatives, as was underlined by the Wali Al Madhalim of Morocco; in the important role played by the institutions in the implementation of innovative ideas, as was pointed out by the Spanish People's Defender, quoting Jean Monnet; in the importance of the Paris Principles in the improvement of Human rights as a source of each country's specificity, according to the representative of the United Nations High Commissioner for Human rights; in the promotion of the common objectives pursued with determination in the different processes – objectives which are almost utopian but bring hope, as was observed by the representative of the League of Arab States; in the synergy possibilities offered by cooperation between different Human rights organisations and associations, as was pointed out by the representative of the Association of African Ombudsmen.

All these points, coupled with the concomitance of the different events organised around Human rights and Justice, mentioned by the French ambassador at Large for the Union for the Mediterranean, as well as the undeniable multiplicity of civilisations in the Mediterranean basin, plus the role of Marseille as a departure and arrival point for migrants, were the main issues handled at the opening ceremony and in the later part of the meeting. These topics were discussed in detail during round tables, characterised by heated, and stimulating debates, which were moderated, for this second meeting of the network, by the Mediator of the French Republic, Mr Jean-Paul Delevoye.

First round table

What position for the Ombudsman on the institutional scene?

Speakers

- ➔ *Dr. Yorgos KAMINIS, Greek Ombudsman*
- ➔ *Judge Micha LINDENSTRAUSS, State Comptroller and Ombudsman of Israel*

The first round table was an opportunity to describe and look into the members' positions regarding the situation of the institution in their countries.

The first speaker, the Greek Ombudsman, Dr. Yorgos Kaminis, started by recounting, with real teaching skills, a brief history of the institution of Ombudsman since its creation in Sweden up till the present day, in three basic phases:

1. The creation of Ombudsman, together with the emergence of the modern State
2. The development of the institution, enhanced by the expansion of public administration
3. Recognition, wide acceptance thanks to the disappearance of authoritarian regimes in Europe

This recognition phase boosted the development of the institution of the Mediator, defined by a set of complex relations with the traditional powers of the State, the widely growing administration and social players in general, especially those in charge of promoting and protecting Human rights. The activity of Ombudsmen is organised around two basic functions: monitoring the activity of administrations and assisting these same administrations to correct their malfunctions.

In a particularly remarkable and pertinent speech, the Israeli Ombudsman and State Comptroller, Mr. Micha Lindenstrauss, presented the elements without which it would be difficult for an Ombudsman to exercise his or her function. This hotbed, which enables the institution to work well, has the following ingredients, among others: the existence of a democratic context, total independence from all the powers that make up the rule of law, especially in terms of budget, trust from the general public, which depends to a great extent on the personality of the Ombudsman, his or her civil service background, as well as his or her method of appointment and results in the handling of citizens' complaints.

Mr Lindenstrauss concluded his intervention by proposing a personal and institutional agenda, and with an ambitious message: YES WE CAN.

During the entire meeting, very interesting contributions were made by the Mediator of the French Republic, the representative of the League of Arab States, the representative of the Egyptian national council for Human rights, the representative of the Palestinian Authority, the Wali Al Madhalim of Morocco, the representative of the Algerian national consultative commission for the promotion and protection of Human rights, the Mediator of the Republic of Mauritania, the Chairman of the Consultative Council for Human rights in Morocco, and the Tunisian administrative Mediator.

In particular, the following points emerged from the numerous debates:

- The necessary distance between the Ombudsman and State authorities and the need to maintain his or her independence as a major concern
- The importance of communication and constant relations with the media
- The role and experiences of the different ombudsmen in the field of mediation
- The need for ombudsmen to work in an environment in which the rule of law prevails, and not force and violence.

- The need to make preventive recommendations to public authorities, in order to prevent the excesses caused by desperate situations
- Territorial and local organisation of the institution of Ombudsman – a point that has resulted in some extremely interesting developments
- The need to remain permanently independent of the judicial authority
- The application of laws in exceptional circumstances
- The reviewing of and constant reference to international Human rights principles
- Transparency of relations with the mass media
- The need for a minimum of professionalism in the action of Ombudsmen and the repercussions of external factors and circumstances (such as globalisation or economic crisis) in the handling of citizens' questions and complaints.

These major contributions were completed by those of the conference moderator. It is noteworthy that this is a real inventory of questions that may serve as a guide for designing a programme during the next AOM meetings.

As a temporary conclusion and summary, this round table has been an opportunity to present a sufficient number of points of analysis, to encourage an in-depth reflection on the basic problem of the role of justice in political decisions, a role that determines to a great extent the function of the ombudsman. In their day-to-day activities, Ombudsmen must also handle existing alternatives or dilemmas, as well as the elements or reference criteria that must be taken into consideration in order to solve the problems posed by the territoriality of standards.

Second round table

Which levers to promote democracy and Human rights?

Speakers

- ➔ *Mr Enrique MÚGICA HERZOG, Spanish People's Defender*
- ➔ *Dr. Mounir FAKHRI ABDELNOUR, member of the Egyptian national Human rights council*
- ➔ *Mr Markus JAEGER, office of Council of Europe's Human rights commissioner*

A triple convergence emerged on this topic at the end of the three introductory presentations.

Firstly, although violence may be used to subdue the truth, truth can sometimes prevail over violence. It is precisely one of the main missions of Ombudsmen to maintain dialogue in the face of threatening conflicts.

Secondly, since injustices generate tensions, Ombudsmen can contribute to their eradication by acting as "control towers" in national societies.

Thirdly, relations between Ombudsmen and political leaders are special. In fact, Ombudsmen are not and should not be political decision-makers; their actual role is to help political decision-takers by making suggestions and recommendations that reflect the cases they handle. But how? The paradox is that politicians give important powers to independent Ombudsmen whom they decide to create, knowing that its administration will end up being criticised. Why then do politicians give out "sticks to be beaten with"? One of the virtuous answers is that politicians wish to comply with the criteria for democracy. Making criticisms where needed, Ombudsmen are not silent in all cases. In fact, one of the basic principles of democracy is that every citizen must know his or her rights so as to claim them and, possibly,

seek the Ombudsman's help in the exercise thereof. This shows the importance of the information campaigns that Ombudsmen must carry out to make citizens aware of their rights, and the support they may offer said citizens.

It is an established fact that the promotion of democracy goes hand in hand with Human rights. This applies especially in countries in transition to democracy. However, the Ombudsman is not the only player in the fight against regimes that violate Human rights. The historic origin and nature of the mediation institutions in Spain and Portugal have clearly illustrated this problem of transition without violence from dictatorship to modern democracy.

The role of a mediation institution in this democratic transition may be very wide, from monitoring elections to proposing laws directly to the Parliament or participating actively in constitutional reforms, and, of course, to condemning Human rights violations, as is the case in Egypt for instance.

The shared conviction is that Ombudsmen are a lever for promoting Human-rights and democratic values. In situations of crisis or internal conflict, Ombudsmen can defuse debates, given their influence and powers of persuasion. In fact, it is by arguing rationally that rights can be improved with impartiality and moderation, especially pertaining to peaceful coexistence in the Mediterranean basin. The Ombudsman then plays an additional, but not necessarily jurisdictional role. A question was raised at the round table as to whether seeking the help of an Ombudsman is a sign of failure of State authorities.

The fact is that society is asking the Ombudsman to make up for malfunctions in collective regulations in the face growing individualism. The institution of Ombudsman becomes a place where citizens are listened to. The citizen needs to have confidence in something just, and not in something legal. Therefore, the Ombudsman helps the government in its mid-term and long-term political views and not just in the electoral calendar.

This debate has shown that a new opportunity for reflection has been opened up by the extension of Ombudsmen's activity fields: initially (and still in many countries), the role of the Ombudsman was solely to correct administrative malfunctions. Today, the Ombudsman is also asked to denounce and correct all Human rights violations and, thus, contribute to the reinforcement of democracy.

Finally, a strong idea emerged from this debate: by creating an association, Ombudsmen and Mediators owe themselves mutual assistance and support, especially if any of them is destabilised or threatened in his or her independence or even existence. This is an obligation of solidarity resulting from the new association.

Third round table

Ombudsmen and migration in the Mediterranean area

Speakers

- ➔ *Mr Jean-Paul DELEVOYE, Mediator of the French Republic*
- ➔ *Mr Riza PODA, Deputy Ombudsman, Albanian People's Advocate*
- ➔ *Mrs Louiza CHAALAL, member of the Algerian National Consultative Commission for the Promotion and Protection of Human rights*

During the third round table entitled "Ombudsmen and migration in the Mediterranean area", the Mediator of the French Republic asked some key questions concerning the

general situation in this area, with as backdrop, the European Pact on Immigration and Asylum.

The Ombudsmen discussed among themselves the problems of professional migration, social integration, border control, the situation of isolated families (especially the case of minors), development partnerships and, of course, the so-called "illegal immigration".

For all these problems, the action of the Ombudsman and the AOM consists in opening up a general debate, giving priority to fundamental Human rights issues, being permanently in contact with non-governmental organisations and making reform proposals in various fields - especially family rights, for which compliance with laws or their spirit must be ensured during asylum requests and expulsion processes. Therefore, the Ombudsman must avoid both emotional reactions and rigid application of the standard, which sometimes reveal a certain form of xenophobia.

Mr Riza Poda, Deputy Ombudsman of Albania, also delimited qualitatively and quantitatively the questions raised by the immigration phenomenon in his country, by particularly highlighting the Ombudsman's relations with his European neighbours, as well as the defence and respect abroad of international agreement.

The contribution of Mrs Louiza Chaalal, member of the Algerian National Consultative Commission on Human rights, focused basically on the problems of relations with emigrants, mediation and Human rights, integration and development, through a series of recommendations intended for the AOM, which will take account of them.

Discussions at this round table were marked, among others, by the intervention of representatives from the Council of Europe, United Nations High Commissioner for Human rights, the Greek Ombudsman, officials of the Moroccan Diwan Al Madhalim, the Spanish People's Defender, the Ombudsman of the Maltese Republic, the Mauritanian Counsellor, the Chairman of the Moroccan consultative council on Human rights, the Raonador of Andorra, representatives of the European Ombudsman, Palestinian Authority and Lebanon.

Of course, immigration issues were presented from several angles: normative, social, economic, anthropological and even moral. This led to a lot of suggestions and recommendations submitted to the Ombudsmen of the Mediterranean network.

In summary, one can commend the interest shown by all the participants in the countless problems posed by immigration. This last phenomenon may be a good departure point for the development of profound cooperation between Mediterranean Ombudsmen, directed to concrete cases and situations which are sometimes tragic for Human life and dignity.

Recording secretaries: Mr Manuel Ángel GARCÍA VISO, Director of Cabinet of the Spanish People's Defender, and Mr Gérard FELLOUS, Expert.