



European Network of Ombudsmen

Network in Focus 2016

Responding to Europe's migration crisis

Promoting lobbying transparency as good administration

Challenges to the rule of law in the EU

EN



Table of content

2 Editorial

4 Responding to Europe's migration crisis

- 5 Highlights from the European Network of Ombudsmen 13-14 June 2016 conference
- 7 Cooperation on migration within the Network of European Ombudsmen
- 10 The EU's humanitarian aid is at the heart of the response to the refugee crisis
- 12 Managing the migratory crisis: what role for Frontex?
- 15 The Greek Ombudsman and the refugee-migration crisis
- 18 Responding to the migrant crisis
- 20 Refugees on the Balkans route: challenges before and after closure of humanitarian corridor
- 22 The Spanish Ombudsman's response to the migration crisis
- 24 Austria's efforts for unaccompanied minor refugees
- 26 The Hungarian NPM focuses on the rights of the child in its first year of operation
- 28 The fundamental rights of foreigners in France: report of the Defender of Rights

30 Promoting lobbying transparency as good administration

- 31 Highlights from the Network of European Ombudsmen 13-14 June 2016 conference
- 33 From expert groups to revolving doors: the European Ombudsman's work on lobbying transparency
- 36 Lobbying regulation in Ireland
- 38 Austria's Lobbying Act – a best practice example
- 41 Lobbying practices in the Netherlands nearly mapped

44 Challenges to the rule of law in the EU

- 45 Highlights from the Network of European Ombudsmen 13-14 June 2016 conference
- 47 Ensuring respect for the rule of law in the EU
- 49 The rule of law and the Constitutional Tribunal in Poland
- 51 Guaranteeing human rights in the face of current challenges
- 53 Covering the cost of cross-border healthcare
- 55 The Italian ombudsman and the Charter of Fundamental Rights of the EU
- 57 Lithuania to provide leadership in the strengthening of the Ukrainian Parliamentary Commissioner's capacities

59 Conclusion

Editorial



Dear Colleagues,

My thanks to all of you who took part in our European Network of Ombudsmen conference in June 2016 in Brussels and I hope that you found it an interesting and worthwhile experience. It was a great honour for me to host it and to be able to listen to such informed, engaged and, at times, passionate contributions.

You will recall that the conference took place just before the British referendum on EU membership. The challenges posed by migration were – and are – ongoing and the new arrangement between the EU and Turkey had just begun to operate. Terrorism across Europe also served as a tragic backdrop to our event. So it was perhaps not surprising that the debates throughout the two days were tinged with an urgency and an openness that

can be rare even at events among colleagues like this one.

It was fascinating to hear the views of EU officials on those issues and on others such as the rule of law and lobbying transparency, but for me what stood out were the contributions from the colleagues who spoke with such knowledge and such experience of how they were dealing with those issues on the ground. I sensed a real interest from the EU officials in the work and the conference's aim of getting both groups to come to appreciate each other's work was, I believe, well met.

I hope that you share with me the view that the initiative in bringing all ombudsmen – national and regional – and petitions committees, together was successful and that the Brussels venue also served to highlight the *raison d'être* of this particular Network.

I shall look forward to your feedback and continue to seek ways in which we can work even more collaboratively through parallel investigations and other initiatives. Multiple crises currently affecting the EU challenge ourselves and our institutions even more. It is my wish that our Network can support all of us in these times and that, when we meet again in Brussels next year, we will be able to speak of an even greater strengthening of our roles as ombudsmen.

My best wishes,

Emily O'Reilly
European Ombudsman

Responding to Europe's migration crisis

Highlights from the European Network of Ombudsmen 13-14 June 2016 conference

European Ombudsman

The refugee crisis: how can ombudsmen help?

The discussion on refugees took place within the overall context of the EU's attempts to deal with the unprecedented numbers of people arriving in the EU. The numbers pose major challenges to administrations and ombudsmen at the EU, national and regional levels. European Ombudsman Emily O'Reilly opened the discussion by noting that in good times, it is relatively easy to be an ombudsman as administrations are more inclined to follow ombudsman decisions but that in challenging times, they are likelier to be ignored.



Session 1: EU and Member States' efforts to help refugees

Panelists (left to right): Günther Kräuter, Ombudsman of Austria; Michael O'Flaherty, Director, European Union Agency for Fundamental Rights; Fabrice Leggeri, Executive Director, Frontex; Vassileios Karydis, Acting Ombudsman of Greece; Monique Pariat, Director-General, Humanitarian Aid and Civil Protection, European Commission; and Emily O'Reilly, European Ombudsman.

Austrian Ombudsman Günther Kräuter and his Greek counterpart Vassileios Karydis underlined the different issues faced by transit and destination countries. Both noted that most refugees are keen to head to Germany and Sweden. Frontex Director Fabrice Leggeri said that over 150 000 people have been rescued by the border agency, whose core mandate is border surveillance but whose work now includes helping Member States screen and debrief refugees and migrants. Monique Pariat, Director-General of the European Commission's Directorate-General for Humanitarian Aid and Civil Protection, put the numbers in perspective. While Europe is hosting 1 million refugees, Turkey is hosting 3 million. The EU's first focus, she said, is to try and help people in their home countries, such as Syria and Libya. Michael O'Flaherty, Director of the EU



EU FundamentalRights

.@MichaelCJT speaking at #ENO2016: EU & Member States' efforts to help #refugees - Ombudsmen on the frontline of responding to the crisis

Michael O'Flaherty, Director of the EU Agency for Fundamental Rights speaking on EU and Member States efforts to help refugees: Ombudsmen are at the frontline when it comes to responding to the crisis.



Shada Islam, Moderator; Vassileios Karydis, Acting Ombudsman of Greece; Günther Kräuter, Ombudsman of Austria; Emily O'Reilly, European Ombudsman; Michael O'Flaherty, Director, European Union Agency for Fundamental Rights; Monique Pariat, Director-General, Humanitarian Aid and Civil Protection, European Commission; and Fabrice Leggeri, Executive Director, Frontex.

Agency for Fundamental Rights highlighted that governments disagree on key issues. When it comes to the fundamental question of integration of refugees, for example, there are as many views as there are Member States.

Discussants from the floor and on the panel noted that as ombudsmen are at the frontline they can have a special role in contributing to the protection of migrants' fundamental rights by conducting investigations, monitoring forced returns, challenging myths and holding administrations to account. There were also warnings that populists are exploiting anti-immigrant sentiment and that some governments are reacting angrily in the face of ombudsman criticism of refugee policies.

“ Ombudsmen have a role in changing the tone of the debate about migration. ”

The working group discussions on the refugee crisis saw general agreement that ombudsmen have a role in changing the tone of the debate about migration. It was felt that the European Network of Ombudsmen could be used as a platform to more effectively address European, national and regional administrations on the issue. Practical suggestions included ombudsmen concentrating more on highlighting deficiencies in public services as citizens' fears about declining services could stoke anti-immigration feelings. Another proposal was to exchange best practices.



Cooperation on migration within the Network of European Ombudsmen

European Ombudsman

How it started

Around 1 800 000 migrants crossed into the European Union in 2015, according to the EU external borders agency – Frontex (now European Border and Coast Guard Agency). This flow of migrants is a challenge Europe has been facing in recent years. One of the strategic changes within the European Network of Ombudsmen (ENO) is to increase focus on parallel inquiries among interested ombudsman offices in areas of mutual interest, such as migration. This cooperation aims at ensuring that public authorities at EU level and in the Member States uphold the fundamental rights of migrants. So far, the European Ombudsman and Network members have conducted two parallel inquiries.



European Ombudsman

There are 28 different approaches to integration: Ombudsmen can be a strong force in establishing best practices [@EURightsAgency](#) [#ENO2016](#)

There are 28 different approaches to integration: Ombudsmen can be a strong force in establishing best practices.

Parallel inquiries

The first one looked into how joint return operations (JROs) uphold the fundamental rights of returnees. Frontex coordinates these operations and jointly carries them out with Member States. The operations forcibly return migrants without leave to remain on EU territory to their home or another third country. In the first half of 2016 alone, Frontex coordinated 70 JROs – it expects that figure to double by the end of the year.

In 2014, the European Ombudsman opened an inquiry into how Frontex deals with forced returns, while 19 national ombudsmen examined the situation in their Member States. She closed her inquiry in 2015 with a series of proposals to Frontex for improvement. Among others, she proposed that families with children, as well as pregnant women, be seated separately from other returnees; and that the agency promote common rules on the use of means of restraint. In an earlier inquiry, the Ombudsman recommended that the agency set up a complaints mechanism accessible to those affected by all its operations.

Frontex accepted the recommendations concerning forced returns, and rejected the one for a complaints mechanism. The European Parliament backed the Ombudsman. In June 2016, it voted in favour of a regulation that created the European Border and Coast Guard Agency that has replaced Frontex. The regulation takes into account the Ombudsman's proposal for the establishment of a complaints mechanism, and many of her detailed recommendations concerning JROs.

The second inquiry seeks to determine whether implementation of the EU Asylum, Migration and Integration Fund (AMIF) respects the fundamental rights of the beneficiaries. The Fund has a budget of EUR 3 billion, and covers the period 2014-2020.

“ The regulation takes into account the Ombudsman's proposal for the establishment of a complaints mechanism, and many of her detailed recommendations concerning JROs. ”



The European Commission and Member States co-manage the instrument, which among actions finances:

- improvement of accommodation and reception services for asylum seekers,
- education and language training for non-EU nationals, and
- assistance to vulnerable persons.

In December 2015, the Ombudsman asked the Commission and the Network if all AMIF-related information was online. She also asked the Network if use of AMIF money was in line with fundamental rights, and if any national ombudsmen had undertaken inquiries into the situation of migrants in their country. The Commission reported that after it had intervened, Member States published the details of national AMIF programmes online, and 14 Network members confirmed this. Some ombudsmen also gave details of migrant-related inquiries they had already carried out, and indicated that they were monitoring how Member States are using AMIF money.




Gundi Gadesmann

Network of EU Ombudsmen:
Investigators exchange experiences on [@FrontexEU](#) forced joint return flights [@EUombudsman](#)

European Network of Ombudsmen:
Investigators exchange experiences on joint Frontex-EU Member State forced return flights.





The Madrid Declaration

In 2015, representatives of the European Ombudsman and investigators from 11 Network ombudsman offices met in the Spanish Ombudsman's office in Madrid, to follow up on the Frontex-related inquiry. They came from the national ombudsman offices of Croatia, Denmark, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, the Netherlands, Poland and Spain.

The participants talked about their involvement and experience in the monitoring of forced returns, and their talks culminated in the issuance of the Madrid Declaration. All – except Estonia, Latvia and Poland – signed the Declaration. Its key commitments urge national ombudsman offices:

- to encourage national authorities to introduce complaints mechanisms (if they do not already exist) and to make them available to returnees;
- to play an efficient monitoring role in forced return operations under the EU Return Directive; and
- to recommend improvement of national guidelines on how to handle returns.

CCRE CEMR

If we want to overcome the [#refugeecrisis](#) it will be essential to team up & to better coordinate with towns & regions | [#ENO2016](#)

If we want to overcome the refugee crisis, it will be essential to team up and to better coordinate with the towns and regions.



What next?

“Responding to Europe’s migration crisis” was one of the themes that ENO members discussed at their annual conference in Brussels in June 2016. They suggested ways of enhancing ombudsmen’s response to the crisis, so that the latter can, among others: examine the issue of unaccompanied minors; explore ways of making it easier for migrants to make complaints; and look into ways of facilitating recognition of the qualifications of migrants.



The EU's humanitarian aid is at the heart of the response to the refugee crisis

Directorate-General for Humanitarian Aid and Civil Protection, European Commission

The world is facing an unprecedented displacement crisis. According to the UN, more than 65 million people are forcibly displaced all over the world as a result of violent conflicts and natural disasters. Since January 2015 more than 1 250 000 people – refugees, other forcibly displaced persons and migrants – have made their way to the European Union, either escaping conflict in their country or in search of better economic prospects.

This flow is impacting countries, such as Greece and Turkey, sometimes overwhelming their capacities to respond to the needs of the refugees.

In April 2016, the European Commission allocated an initial EUR 83 million to support projects addressing the humanitarian needs of refugees in Greece. More funding is available if needed. Current EU funding addresses the most urgent humanitarian needs, such as food, shelter and medicine, of more than 55 000 refugees and migrants hosted in over 30 sites in Greece.

“ The EU, together with its Member States, is a leading humanitarian aid donor with regard to all the major crisis areas, many of them a major source of refugees. ”

The Commission also provides assistance to the refugees in Turkey who have fled violence in Syria, Iraq or Afghanistan. Particular attention is paid to the vulnerable people living outside of camps (as many as 90% of the refugees in the country). Since the beginning of the Syria crisis in 2011, the

Commission has provided a total assistance of EUR 445 million in Turkey, including humanitarian and longer-term aid. In November 2015, the EU set up the Refugee Facility for Turkey. The EU and its Member States committed to provide up to EUR 3 billion to be coordinated via the Facility, of which over EUR 740 million have already been allocated for humanitarian as well as non-humanitarian assistance.

The EU Civil Protection Mechanism, managed by the Commission, was activated several times in 2015 and 2016 to help cope with an increased refugee influx. Hungary, Serbia, Slovenia, Croatia and Greece have received material assistance such as winterised tents, beds and blankets from participating countries through the Mechanism, to help them better cope with the arrival of refugees and asylum seekers.

We should not forget that what we saw last year in Europe and are still witnessing in the Mediterranean this year, is only a small part of an otherwise massive global refugee crisis.

The EU, together with its Member States, is a leading humanitarian aid donor with regard to all the major crisis areas, many of them a major source of refugees. These include Syria, Iraq, Afghanistan, Pakistan, the Horn of Africa and the Sahel. In 2015, the EU spent more than EUR 1 billion in humanitarian aid – representing more than 70% of its humanitarian aid budget – on projects helping refugees and internally displaced persons and their host communities.

The EU's humanitarian aid is not a migration management tool and it does not address the root causes of displacement, such as conflict, human rights abuses, economic poverty or climate change. The EU has other mechanisms to deal with these problems, such as foreign policy and development cooperation tools. Humanitarian aid, on the other hand, provides life-saving assistance to the people caught up in or fleeing from conflict or natural disasters. While vital for the survival of millions of victims every year, humanitarian aid is only a temporary solution.



Monique Pariat,
Director-General for
Humanitarian Aid and
Civil Protection, European
Commission.

The EU and other world and regional powers need to do more in terms of diplomacy to end conflicts, alleviate economic hardship by addressing development assistance and fair trade, and assist communities become more resilient in view of the increasing number of natural disasters. Moreover, refugees and displaced people should not rely only on emergency humanitarian type assistance but receive help to become more self-reliant in the countries where they reside. This approach is well reflected in a new strategic vision entitled “Lives in Dignity: from Aid-dependence to Self-reliance”, unveiled by the Commission in April.

Taking such a new approach will prove a prerequisite for finding the right solutions for millions of people living in fragile, conflict or disaster-ridden areas.

Managing the migratory crisis: what role for Frontex?

Frontex – the European Agency for the Management of Operational Coordination at the External Borders of the Member States of the EU

In 2015, there were around 1.8 million detections of illegal border crossings at the EU's external borders. It was an all-time high figure. And while migration to Europe is, of course, not new, what is new is the recent growth both in numbers and in public visibility. EU citizens demanded the appropriate response.

The Commission reacted. In May 2015, it released the European Agenda for Migration: a package of measures aimed at tackling the migratory crisis. Frontex was highlighted as being a key actor to implement key measures in the Agenda.

The increased role for Frontex is therefore not a surprise. Since 2005, Frontex has been constantly engaged in bringing national authorities of the Member States together, through cooperation in areas ranging from training to research and development. The creation of a future European Border and Coast Guard Agency is one of the measures put forward in the Agenda for Migration. The Commission proposed strengthening Frontex's operational and budgetary resources and, most importantly, more powers, as well as more responsibilities for the future Agency.



© Frontex

Operation Triton 2015: the Icelandic vessel Tyr on a search and rescue mission.

The legislative procedure for the new European Border and Coast Guard Regulation is almost complete. We know what the future Agency will look like. Its headcount will increase from around 300 today to around 1 000 by 2020. The future Agency will also have increased financial resources.

Turning to work on the ground, the following points are worth noting:

- The fight against trafficking in human beings and smuggling is crucial to the protection of EU borders. Similarly, identification and fingerprinting are key to ensuring that adequate protection is offered to vulnerable categories of persons, that fundamental rights are respected, but also that potential threats are spotted. The



Poseidon Rapid Intervention 2016: a Portuguese vessel on a search and rescue mission off the coast of Lesbos.

future Agency has an enhanced mandate to fight cross-border crime, as well as to process the personal data of smugglers and irregular migrants.

- Frontex has a long track record of successful activities at the EU's maritime borders. The new legal mandate envisages more structured cooperation on coast guard functions, including the possibility to engage with the European Maritime Safety Agency and the European Fisheries Control Agency in multipurpose operations.
- Frontex's risk analysis will be developed. The future Agency will have a crucial role in monitoring migratory flows, developing risk analysis reports and, most importantly, becoming an information hub that can support the Member States at any time. The general obligation for Member States to share information with the future Agency will become crucial for the success of its activities. In addition, a new vulnerability assessment mechanism, aimed at identifying the capacity and readiness of Member States to face challenges at the external borders, is a significant development.
- An enhanced mandate on return and cooperation with third countries is also provided for, in full compliance with the necessary safeguards.

“ This will allow migrants to address their concerns to the Agency where they believe their fundamental rights have been violated in an Agency operation. ”

Finally, compliance with fundamental rights will continue to be at the basis of all the future Agency's activities. The Fundamental Rights Officer's role will be enhanced with a new complaints mechanism being established. This will allow migrants to address their concerns to the Agency where they believe their fundamental rights have been violated in an Agency operation. In most of the cases, the Agency will have to turn to host or contributing Member States, because their agents might be involved in the alleged violation of fundamental rights.

Of course, despite the increased powers above, the future Agency is only one part of any solution to the migratory crisis. For instance, the Smart Borders package, as well as the targeted modification of the Schengen Borders Code to oblige Member States to carry out systematic checks on persons enjoying the right of free movement under Union law, are other critical measures.



Fabrice Leggeri,
Executive Director,
Frontex.

As a concluding remark, to be most effective, the Member States need to come together and find a common approach. This is because the management of EU external borders is a long-term challenge and 'credible' external borders are needed, in order to help safeguard the internal security of the European Union and the well functioning of the Schengen free movement area.

The Greek Ombudsman and the refugee-migration crisis

Greek Ombudsman



Monitoring respect for fundamental rights during the refugee-migration crisis has been central to the Greek Ombudsman's strategy in the last 12 months. Top priorities and actions in the field included:

- visits to the islands and subsequent public interventions in early July 2015, asking for the improvement of the country's reception infrastructure and better administrative coordination both at state and local levels;
- constant monitoring of the existing safeguards of access to asylum and other fundamental rights in view of mixed migration flows;
- regular visits to pre-removal centres and refugee camps;
- prioritising the protection of unaccompanied minors and other members of vulnerable groups;
- commenting on relative draft legislation;
- following closely the development of the so-called hotspots and all issues regarding their operation; and
- participating as external monitor in return operations, including readmission from the Greek islands to Turkey, following the EU-Turkey joint statement of March 2016.

“ In 2015, the Greek Ombudsman conducted a series of visits to the islands of Lesbos, Kos and Leros that faced a dramatic increase in the number of newcomers, while lacking the necessary infrastructure for reception. ”

In 2015, the Greek Ombudsman conducted a series of visits to the islands of Lesbos, Kos and Leros that faced a dramatic increase in the number of newcomers, while lacking the necessary infrastructure for reception. Following these visits, the Ombudsman noted that there are four problems that need to be solved without further delay in public intervention in July, which also appears in the [Ombudsman's special report on returns for 2014](#):


- understaffing and limited operation of the first reception centres;
- delays in processing regarding unaccompanied minors before they are transferred to appropriate hosting facilities and absence of an age verification system during detention;
- prolonged detention of immigrants caused by police lacking due diligence in preparing and implementing the return procedure; and



ElJusticiaDeAragón

[#Refugiados](#) [#ENO2016](#) La única manera de evitar un drama absoluto es la solidaridad, dice Defensor Pueblo [#Grecia](#)

Solidarity is the only way to avoid a complete tragedy, says the Greek Ombudsman.



- poor infrastructure in detention centres that fail to address even the basic needs of the detainees, the situation being particularly desperate in the islands. In a [press release](#) (in Greek), the Ombudsman stressed the need for the government to speed up the process and issue all necessary normative acts in order to be able to use the EU Asylum, Migration and Integration Fund (AMIF) and the External Borders Fund (EBF), allocated for the improvement of detention facilities and first reception centres.

Developing synergies with EU and international organisations, NGOs and other ombudsman institutions was crucial to acquiring firsthand information and improving protection of human rights across the borders. The Greek Ombudsman together with the Ombudsman of the Former Yugoslav Republic of Macedonia (FYROM) visited the temporary refugee camps on both sides of the borders, in Eidomeni and Vinojug respectively on 11 November 2015. The fact finding visit aimed at establishing the living conditions and the level of protection of the fundamental rights of refugees.



Acting Ombudsman of Greece, Vassileios Karydis, visiting a refugee camp on the Greece-Former Yugoslav Republic of Macedonia border.

After the visit, a [joint statement](#) was released. It noted the main findings and recommendations to the respective government authorities. The statement, among other things, noted that it is very positive that a strong solidarity movement has developed in the two countries, whereby NGOs and individuals offered help and support to the refugees. However, "the ombudsman institutions consider that refugee movement across Europe, without prejudice to Schengen or national border provisions, presents de facto situations at the points of border entry and exit that should not be ignored by the competent governments. The ombudsman institutions consider that in any case, the state should ensure the safety of persons and their fundamental rights for access to asylum, provisional shelter, food and water, basic clothing, medical treatment, information on rights and procedures, protection of vulnerable groups such as families, pregnant women, children and unaccompanied minors, victims of trafficking, ill-treatment or torture, elderly people, persons with disabilities, etc. Special attention has to be paid to protection from smugglers and traffickers on their route, as well as to phenomena of economic exploitation. The ombudsman institutions



also consider it the state's responsibility and preemptive role to set, as an immediate priority, a cohesive contingency plan for provisional refugee sites and basic supplies to larger refugee groups, to cover any future risk of border restrictions in the refugee route across Europe."

In this light, and following a meeting hosted by the Ombudsman of Serbia in November 2015, which resulted in the joint [Belgrade Declaration](#) signed by the ombudspersons of the region on the protection of the rights of refugees and migrants, the Greek Ombudsman organised an international workshop in Thessaloniki on 19 February 2016 with ombudsmen involved in the West Balkans route. The conference concluded in an [action plan](#) and set up the necessary steps and priorities for comprehensive cooperation among ombudsman institutions to face human rights challenges arising from the management of the migration-refugee crisis in Europe.

Responding to the migrant crisis

National Ombudsman of the Former Yugoslav Republic of Macedonia

The Ombudsman monitors the conditions of places of deprivation of liberty, in particular the Centre for Foreigners and the Centre for Asylum Seekers. On several occasions since 2013, the Ombudsman has criticised the public authorities about the poor reception facilities, while warning of a possible refugee crisis in this part of Europe, since the Western Balkans is one of the main transit routes to the countries of the European Union.

“ The Ombudsman's first initiative concerning the Law on Asylum secured 72 hours of legal stay in the country for foreigners. ”

With a greater number of persons transiting through the country since the beginning of 2015, the Ombudsman has undertaken a range of concrete measures for the protection of the rights and freedoms of these persons. In its capacity as National Preventive Mechanism, the ombudsman institution closely monitors the situation in places for detention of foreigners, assessing their material and other conditions.

For the purpose of improving the relevant legislation, the Ombudsman has initiated amendments and supplements to the Law on Asylum on two occasions.

The Ombudsman's first initiative concerning the Law on Asylum secured 72 hours of legal stay in the country for foreigners. The second initiative to amend the Law on Asylum, jointly prepared with civil society organisations, was submitted in June this year. The amendments regulate the conditions and the procedure for granting the right to asylum to foreigners or stateless persons.

Furthermore, in cooperation with civil society organisations and other professional associations, the Ombudsman actively participated in all initiatives and activities that promote the protection of refugee rights.

For the purpose of raising public awareness on the situation in transit centres, the Ombudsman, together with his colleagues from Greece, Serbia, Austria, Albania and Spain, carried out several joint visits to the transit centres for refugees in the south and north of the country.



Ombudsman of the Former Yugoslav Republic of Macedonia, Idzet Memeti, visiting Tabanovce refugee camp on the border between his country and Serbia.



The Ombudsman regularly informs the public and calls upon the authorities to improve conditions in the centres and to secure dignified treatment of this category of people. His main focus is the protection of vulnerable categories such as women, children, in particular unaccompanied minors, and elderly people.

For the first time, this year, the Ombudsman's Annual Report dedicates a special section to the refugee crisis and protection of refugee rights. In the focus of the Ombudsman's work are the material conditions in transit centres, the way the authorities treat the refugees and access to the asylum procedure.

For the purpose of joining forces and working together for human rights, the Ombudsman signed a memorandum of cooperation with the UNHCR office in the Former Yugoslav Republic of Macedonia (FYROM) and started with the implementation of a 12-month project, whose goal is to improve the legal protection system related to asylum seeking and statelessness.

The Ombudsman is also active on an international level. In 2015, together with the Ombudsmen of Greece, Serbia and Austria, he initiated and drafted the first declaration on the protection of refugee rights, later adopted at a regional conference in Belgrade.

This year in Thessaloniki, the ombudsman institutions of Albania, Austria, Greece, Kosovo, the FYROM, Serbia, Slovenia and Turkey adopted an action plan for implementing joint activities in the area of protection and promotion of refugee/migrant rights.

The Ombudsman of the Former Yugoslav Republic of Macedonia remains further committed to the protection of the human rights of refugees and will continue to monitor, investigate and follow every phenomenon that threatens those rights.

Refugees on the Balkans route: challenges before and after closure of humanitarian corridor

People's Ombudsman of Croatia

In September 2015, Hungary had completed installing a barbed wire fence and closed its border with Serbia, resulting in the opening of a new route, which included Croatia. Some 658 068 refugees, mostly from Syria, Afghanistan and Iraq, crossed into Croatia between 16 September 2015 and 6 March 2016.

Consequently, Croatia and the rest of the Balkans route countries, after initially disagreeing, reached an agreement establishing a humanitarian corridor. They thus secured transit for the refugees to their countries of destination, while at the same providing them with the possibility to apply for international protection on the spot.

Strict application of part of the regulations under the Common European Asylum System, particularly the Dublin Regulation, was suspended. The aim was to provide protection of the human rights of the refugees and to exercise solidarity among the countries on the route. As the situation was fast changing on the ground, the need for ombudsman institutions to step up their engagement in the protection of the human rights of the refugees arose.



Ombudsman of Croatia,
Lora Vidović, in Tovarnik,
Croatia, with migrants
in transit.

From the very beginning, our teams paid 26 unannounced visits to 17 locations where refugees were assembled during their transit through Croatia, especially border crossings, registration centres and accommodation facilities. The objective of the visits was to monitor respect for the human rights and dignity of the refugees. The visits laid special emphasis on the monitoring of the provision of humanitarian aid, including appropriate accommodation and healthcare, the possibility to apply for international protection and police conduct. During each visit, the Ombudswoman issued a number of on-the-spot recommendations pertaining to provision of information and



accommodation to the refugees, treatment of vulnerable groups, availability and quality of healthcare, organisation of night work and night volunteer shifts, as well as to the distribution of food, clothing, blankets and other necessary items, most of which were implemented immediately.

However, following activities the EU undertook in an attempt to resolve the refugee crisis, on 8 March 2016, the Balkans route countries consensually decided to close their borders and allow entry only for either holders of valid travel documents or those applying for international protection. The border between the Former Yugoslav Republic of Macedonia and Greece was completely closed and jointly controlled, leaving several thousand persons stranded in dire conditions.

In Croatia, after the Balkans route was closed, 320 persons remained in the Winter Transit Centre in Slavonski Brod. Their status was regulated in line with the Aliens Act, i.e., all of them were issued with return decisions and banned from leaving the Centre. Our team visited the Centre three times and issued warnings and recommendations to the Ministry of the Interior regarding the legal grounds for placement in the Centre, accommodation conditions at the Centre, provision of healthcare and access to information.

With the closing of borders, the EU has placed emphasis on security over human rights, attempting to regulate the flow of refugees crossing its borders by improving relocation and resettlement programmes and providing assistance to refugees' countries of origin. In the process, the treatment of migrants is very strict and the status assigned to them (that of an applicant for international protection versus that of an irregular migrant) depends on how quickly and clearly an individual is able to communicate their request for international protection. This leaves room for violations of one of the basic rights guaranteed to refugees – that of non-refoulement.

“ With the closing of borders, the EU has placed emphasis on security over human rights. ”

The Spanish Ombudsman's response to the migration crisis

Spanish Ombudsman

In Europe, the year 2015 ended with the worst migration crisis since the end of the Second World War. The very real humanitarian crisis that Europe is experiencing requires ombudsmen to be particularly attentive.

Control of migratory flows on the one hand, and the need for people wishing to enter Europe to be able to do so in a legal and orderly manner on the other, must go hand in hand with respect for human rights and the international obligations entered into by the EU Member States.

According to the UNHCR, over a million people – both migrants and refugees – reached European coastlines by sea in 2015, compared to 200 000 in 2014.





Ombudsman of Spain, Soledad Becerril Bustamante, in Tabanovce refugee camp, Former Yugoslav Republic of Macedonia.

In Spain, 2015 ended with a record number of applications for international protection: 13 000 applications compared to 6 000 in 2014. These figures represent less than 1% of the applications made in the European Union. However, they have had a significant impact on the Spanish asylum system, overburdened by application processing and planning for applicant reception.

The main problem facing Spain, particularly given that it is the only European country with a land border with the African continent, is the need for timely identification of people who require international protection attempting to enter Europe illegally.


The response to this situation cannot only be Spanish; there must be a joint and coordinated response at the European Union level, since only a unified emergency response by Europe will make it possible to cope with the crisis.



Diana Gherasim

#RefugeeCrisis: Ombudsmen are the voice of values. They must protect human rights regardless of nationalities. #ENO2016

Ombudsmen are the voice of values. They must protect human rights regardless of nationality.



Our institution has launched an [inquiry](#) to determine the extent to which the refugee resettlement programme, accepted by Spain, has been implemented and what measures have been adopted for coordination between autonomous communities and municipalities.

Since 2013, the Ombudsman has warned about the change in the profile of those entering the national territory illegally through Ceuta and Melilla, and of the need to adopt urgent measures to adapt the Spanish reception system to this reality.

The large number of minors at the [Centre for Temporary Stay of Immigrants \(CETI\)](#) in Melilla exceeded the Centre's capacity in the first few months of 2015. There are also people with disabilities at the Centre. As a result, the Ombudsman made recommendations to [address the specific educational needs of minors arriving at the CETI](#) and to [transfer families with minors and people with disabilities to the mainland](#), in cooperation with organisations specialising in humanitarian reception.

According to a [Eurostat press release of May 2016](#), 85 000 unaccompanied foreign minors applied for international protection in Europe in 2015. This figure indicates a dramatic increase in comparison with previous years. Between 2008 and 2013, the number of applications ranged from 11 000 to 13 000. The figure increased to 23 000 in 2014 and almost quadrupled in 2015.

It is vitally important to immediately identify the presence of [potential unaccompanied minors](#) among foreigners arriving in Spain, especially when they come in groups with adults.

We have requested that measures be adopted, both at the national and European level, to launch [an EU-wide register to enable these minors to be traced](#). Progress must be made in [coordination with the autonomous authorities responsible for the protection of minors](#), particularly in cases of [minors who are potential victims of human trafficking](#) or [other types of exploitation](#).

Open borders, the movement of people – without prejudice to monitoring and controls – have led to progress in economies, the sciences, rights and freedoms. Polish, German, English, Hungarian, Arabic, Jewish and Spanish surnames have spread across the continents and helped to build admirable democracies.

Are we now going to rebuild walls, dig more modern trenches and erect stronger fences? Or perhaps we will be able to take in, as we did in days gone by, those fleeing from war or those who can no longer feel pride in belonging to a country in which they are persecuted?

“ Open borders, the movement of people have led to progress in economies, the sciences, rights and freedoms. ”

Austria's efforts for unaccompanied minor refugees

Austrian Ombudsman Board

The past year was marked by the enormous pressure many European countries felt when hundreds of thousands of refugees and migrants came to their borders. Most of these countries have done their best to handle the high number of asylum applications and to find long-term solutions and measures for integration. Nevertheless, the last year was also full of tragic scenes at borders, where people fleeing from war and terror were desperately trying to reach Europe, save their lives and offer their children a better future.

With this in mind, it became quickly clear that independent ombudsman bodies and National Human Rights Institutions have a significant role to play, both in protecting refugees and in injecting a human rights perspective into political debates.



Ombudsman of Austria, Gertrude Brinek, visiting a refugee camp at the Greece-Former Yugoslav Republic of Macedonia border.

The Austrian Ombudsman Board (AOB) was very active in raising awareness in regard of the human rights situation of refugees within the whole country. As refugees tend not to file complaints, due to their lack of information, it was clear that the AOB would have to engage proactively in finding cases of ill-treatment, exploitation and other violations of human rights within refugee centres.

In Austria, considerable focus was put on the fact that human rights institutions have to be especially dedicated to enhancing the promotion and protection of the human rights of vulnerable groups. Children, unaccompanied minors or people with disabilities need the special attention of human rights defenders.



Before the refugee crisis, around 11 000 children and teenagers lived in welfare homes in Austria. Last year, more than 6 800 unaccompanied minor refugees applied for asylum, which created enormous problems in finding adequate space for the young newcomers. The Austrian Ombudsman Board found one particular tragic example in Styria, where 300 unaccompanied minor refugees were placed in one centre, creating massive tensions between the minors.

Therefore, the AOB is continuously trying to raise awareness with the public and with the political authorities to pay more attention to these vulnerable groups. Besides numerous visits to the biggest refugee centres within the country, the AOB formulated several recommendations to the Austrian *länder* and organised several press conferences on this topic.

The social-therapeutic communities within Vienna are a very good practice example of how some of the recommendations were implemented. Here, flats are offered to unaccompanied minor refugees where they can live in small groups of 10. Furthermore, they have constant access to psychiatric services and a multi-disciplinary support team, which operates day and night.

Especially for children and teenagers, it is crucial to have the possibility to stay active and enter the educational system immediately. Only with age-based educational measures can integration within the new society work, and give these young people the chance to quickly start living a self-determined life.

This very successful example shows that special attention to vulnerable groups is essential and can help to protect the ones who need it the most. The proactive engagement of the AOB shows that all decisions, statements and papers – the entire output of not only the work of National Human Rights Institutions but also of international ombudsman bodies – are essential now, and that the mechanisms and cooperation between the different stakeholders have the power to improve the situation of refugees.

“ The social-therapeutic communities within Vienna are a very good practice example of how some of the recommendations were implemented. ”

The Hungarian NPM focuses on the rights of the child in its first year of operation

Commissioner for Fundamental Rights of Hungary

The national preventive mechanism (NPM) under the UN Optional Protocol to the Prevention against Torture (OPCAT) started its work in Hungary on 1 January 2015, after a year of preparations. The Commissioner for Fundamental Rights (Ombudsman) is responsible in Hungary – like many other national ombudsmen – for NPM duties. Eight staff members work in the department of NPM administrative matters. This staff, along with external experts, carried out 15 visits in 2015 to places of detention such as police stations, prisons, refugee camps, closed psychiatric wards, social care homes and homes for the elderly. Except for the latter, NPM visits focused specially on the rights of the child.

At the very first visit to the Debrecen Guarded Refugee Detention Centre, members of the visiting team explored the institution's good practice of feeding the children in accordance with their religion, age and special diet. However, there were some concerns at the centre. Families exclusively from Kosovo were placed together with other families in large buildings for eight or ten people – making it difficult for families to have privacy – although there were empty rooms on the upper level of the building. Parents were forced to strip during medical examinations in the view of their children, including those of the opposite sex. There were no special toilets or sinks designed for children in the facility. Uniformed staff supervised the poor leisure programmes for the children, and mostly they could not communicate with them due to lack of training and a language barrier. The centre was closed down shortly after the publication of the NPM's report. The Ministry of the Interior recognised the problem and is trying to employ more female staff.



László Székely,
Commissioner for
Fundamental Rights;
Elisabeth Sándor-Szalay,
Deputy Commissioner
for Fundamental Rights
and Ombudsman for
the Rights of National
Minorities; and Marcel
Szabó, Ombudsman
for Future Generations,
Hungary.

The NPM also visited care homes for children across the country in Debrecen, Fót and Kaposvár. The major issue at two of the places of detention was child prostitution and inter-child violence. Children sent on leave or to school or those who had escaped reported that they were marginalised, or got involved in crime, drug abuse



and prostitution. In some cases, fellow minor residents organised the sex work. In all the facilities, the practice of and the legal framework for isolating children was disharmonised and arbitrary. Following the NPM reports, the Ministry of Human Capacities set up working groups to remedy these situations.

In a juvenile prison in Tököl, the NPM detected inter-prisoner violence amongst juveniles under 18 years of age. Some inmates also alleged sexual violence and degrading admission rituals committed by fellow prisoners. Some staff members used sexist and racist language targeting the Roma minority juveniles and the exclusively female psychologists working in the facility. The Director-General of the Hungarian prison service conducted a targeted supervisory visit to the Tököl prison, and said in his reply letter to the Ombudsman that he would stop the ill-treatment in the prison.

**“ After publication of the NPM’s report,
the Ministry of Justice earmarked a 2 billion Hungarian
forint budget for the renovation of the hospital. ”**

In Hungary’s single prison hospital, the NPM visited the mother-baby unit where detainees did not have a constant supply of warm water. The official 6m² of living space per mother was also not respected. After publication of the NPM’s report, the Ministry of Justice earmarked a 2 billion Hungarian forint budget for the renovation of the hospital.

In a closed psychiatric unit, the NPM found a 17 year-old boy diagnosed with autism placed together with adults (mostly patients with dementia and drug users). This practice is not allowed under Hungarian legislation. The report on this case was widely disseminated and received huge media attention resulting in higher awareness on the rights of the child in psychiatric settings nationwide.

The NPM also visited a care home for children with disabilities in Fót. In this facility, the children were not properly involved in the drawing up of their education and development plan or not satisfactorily so. The report on this visit was published mid-June 2016. The authorities could not reply on the detected problem.

The NPM plans to organise a workshop on the total banning of child ill-treatment, the experience of its visits and on follow-up dialogue with the authorities at the end of 2016.

The fundamental rights of foreigners in France: report of the Defender of Rights

Defender of Rights of France

The Defender of Rights takes the view that upholding the fundamental rights of foreigners is an essential marker of the degree of protection of rights and freedoms in a given country.

The legal analysis only concerns those rights actually granted in practice by positive law and are intended to highlight the discernible difference between the theoretical proclamation of these rights and how they work in practice.

By way of a preliminary, it should be pointed out that:

- Concerning entry, residence and expulsion, positive law authorises, a priori, differences in treatment based specifically on the distinction between the legal categories of “national” and “foreigner”.

In these areas the discretionary power of the state is considerable. It is not unlimited, however, and may not under any circumstances be discriminatory. It is the duty of the Defender of Rights to point out that even in such a sovereign area, respect of fundamental rights must be guaranteed.

- Conversely, in the majority of areas of daily life, social welfare, child welfare, health, housing, etc., the law in theory prohibits the establishment of any differential treatment. However, in addition to those illegal practices that contravene this prohibition, such as the refusal of school registration, or of access to care, for example, the legal rules themselves, in sometimes appearing to establish neutral criteria, in fact limit full access of foreigners to their fundamental rights.

Far from being natural and immutable, legal rules specifically for foreigners or applying principally to them, be these foreigners who have not been in France very long or on the contrary those who have been in the country a long time, are choices made by the legislature and the regulatory authorities based on considerations that fluctuate over time. It is in this context that preconceived ideas develop, frequently fuelled by an irrational fear of foreigners.

No period in the history of immigration, no matter how intense it may have been, has altered the foundation of common republican values. Neither the million returnees and Harkis in the early 60s, nor the many Portuguese, Spanish, Italians, Algerians, Moroccans and Tunisians, who came – to work – in the 60s and 70s. Nor the sub-Saharan immigrants who were brought to Europe after the independence of African states. Nor the 200 000 “boat people” at the beginning of the 70s, when the economic situation in France was beginning to deteriorate when the government suspended immigration for workers and the “control of migratory flows” was already a factor in the political discourse.

The language used in this field is a vehicle for ideas and stereotypes and is not neutral or without consequence. Migrants, refugees, illegals, undocumented workers, immigrants and exiles are all words that are rarely used casually. Recently, however,



Jacques Toubon,
Defender of Rights
of France.



the word “migrant” has tended to be used to disqualify individuals, denying them a right to protection by likening them to “economic” migrants whose migratory goal is deemed to be utilitarian and therefore less legitimate than that of an individual fleeing war or persecution, a refugee. So, despite the good intentions that tend to highlight the context in which these individuals fled their country, the designation “refugee” is a double-edged sword in that it can lead to a distinction being drawn once again between “good” refugees, those entitled to asylum protection, and “bad” so-called economic migrants, which makes no sense.

The distinction leads to discredit and suspicion being cast upon exiles in respect of whom one seeks to determine whether their decision to come to Europe is noble, or “moral” rather than simply utilitarian. This carries the risk, in turn, of depriving of protection individuals who are entitled to it. This logic of suspicion runs through all French law applicable to foreigners – whether they arrived recently or have been in the country for a long time – and has even spilled over into child protection and healthcare law. The fact that the law views individuals as “foreigners” before seeing them as people, children, patients, workers or public service users, significantly impairs their access to fundamental rights.

Here is the [summary of the Defender of Rights’ report: *The fundamental rights of foreigners*](#), May 2016.

“ The fact that the law views individuals as “foreigners” before seeing them as people, children, patients, workers or public service users, significantly impairs their access to fundamental rights. ”

Promoting lobbying
transparency as good
administration



Highlights from the Network of European Ombudsmen 13-14 June 2016 conference

European Ombudsman

The punitive effects of undue lobbying

The discussion focussed on the fact that lobbying is a legitimate way for stakeholders to get their views across to policy-makers but that it should be carried out in as transparent a manner as possible.

European Ombudsman Emily O'Reilly said lobbying transparency had improved since she took office in 2013 although further steps could be taken. She urged the Commission, represented by Deputy Secretary-General, Paraskevi Michou, to overhaul the Transparency Register in a way that best serves public interest.



Session 2: Promoting lobbying transparency as good administration

Panelists (left to right): Christof-Sebastian Klitz, Head of EU office, Volkswagen; Reinier van Zutphen, National Ombudsman of the Netherlands; Paraskevi Michou, Deputy Secretary-General, European Commission; Peter Tyndall, Ombudsman of Ireland; and Emily O'Reilly, European Ombudsman.

Ireland's lobbying register, being the most far-reaching in Europe, was a regular reference point in the discussion. Irish Ombudsman Peter Tyndall presented the main aspects of the register, including that it is mandatory, broad in scope and will, from 2017, include penalties for those breaching the rules.

The National Ombudsman of the Netherlands, Reinier van Zutphen, noted that his country had also recently introduced important changes with regard to transparency. It recently adopted a law on access to open government – covering correspondence and documents. Christof-Sebastian Klitz, Head of Volkswagen's EU office, gave a stakeholder's view on lobbying. He suggested that lobbying in Brussels had evolved over recent years from a 'winning and dining' basis to a more formal process. He fielded a technical question from the floor concerning revelations that VW had manipulated



Gundi Gadesmann

After [#Diesel](#) scandal, increased [#lobbying](#) transparency helps to re-establish trust, says Head of EU Volkswagen office Klitz [#ENO2016](#)

After the diesel scandal, increased transparency can help to re-establish trust, says Head of EU Volkswagen office, Christof-Sebastian Klitz.





Paraskevi Michou Commission leading by example wants other institutions to join transparency discussions #ENO2016

Paraskevi Michou, Deputy Secretary-General at the European Commission, leading by example, wants other institutions to join transparency discussions.



emissions tests so that their cars appear more environmentally friendly than they are. Emily O'Reilly noted that the question went to the heart of the matter: that citizens ultimately pay the price for undue lobbying and lax rules.

“ Emily O'Reilly noted that the question went to the heart of the matter: that citizens ultimately pay the price for undue lobbying and lax rules. ”

Several questions and statements from the floor picked up on the differences between Member States on what is considered lobbying. Some participants also pointed out that lobbying is in some countries viewed as an intrinsically corrupt activity.

Emily O'Reilly made the wider point that lobbying transparency has a human rights element. Referring to the financial crisis, the European Ombudsman said that it led to widespread economic and financial suffering and largely occurred because business and political interests were too closely intertwined.

The working group discussions that followed illustrated the varying attitudes across Member States to how lobbying should be regulated. However, there was general consensus about the importance of promoting a culture of service and transparency in public administrations.



Shada Islam, Moderator; Christof-Sebastian Klitz, Head of EU office, Volkswagen; Reinier van Zutphen, National Ombudsman of the Netherlands; Emily O'Reilly, European Ombudsman; Paraskevi Michou, Deputy Secretary-General, European Commission; and Peter Tyndall, Ombudsman of Ireland.



From expert groups to revolving doors: the European Ombudsman's work on lobbying transparency

European Ombudsman

The EU agrees laws that affect virtually every aspect of citizens' lives, ranging from what chemicals are in household products, to how much a mobile roaming bill will cost, to working hours per week. This makes Brussels a focal point for businesses, associations and lobbyists trying to influence what those laws will look like.

While lobbying is a legitimate activity, it is important that it be carried out in a transparent manner. Citizens should know what influence is being brought to bear – and how – on EU policy-making. To ensure this, Emily O'Reilly, the European Ombudsman, has conducted a series of inquiries with the aim of making the EU administration's approach to lobbying more robust.

In response to the Ombudsman's interventions, the European Commission has agreed to make meetings of expert groups – over 800 of them advise the Commission on policies – more transparent by publishing meaningful minutes. It has also started publishing the names of certain senior officials who leave their posts to take up new jobs. This can help to shine a light on the so-called revolving door phenomenon where ex-senior EU officials can end up lobbying their former colleagues as part of their new job. The Ombudsman has called on all other EU institutions and agencies to implement the same transparency measures.

Emily O'Reilly has also asked the Commission to proactively publish online records of all meetings its staff has with tobacco lobbyists. The case arose after an NGO complained that the Commission was in breach of its obligations under the UN's Framework Convention on Tobacco Control (FCTC), which governs transparency and tobacco lobbying. The Ombudsman agreed, pointing out that as EU policies are drawn up with the help of several Commission departments, it is not enough that only the Directorate-General for Health and Safety is transparent about its meetings with tobacco representatives.

To increase citizens' trust in the EU public administration, it is important to counter any impression that undue lobbying could occur. This was part of the rationale behind the Ombudsman's decision in May 2016 to open an inquiry into how the Commission carries out conflict of interest assessments for its special advisers: people who provide particular expertise, as it is needed, directly to a Commissioner. The aim of the inquiry is to ensure that the rules are sufficiently robust in order to avoid inappropriate influence on policy-making.

At times, the European Ombudsman chooses to react to events as they emerge. This was the case when the former President of the Commission, José Manuel Barroso,

“ In response to the Ombudsman's interventions, the European Commission has agreed to make meetings of expert groups more transparent by publishing meaningful minutes. ”



.@EUombudsman “majority of complaints lodged is about #transparency and #lobbying “#ENO2016

The majority of complaints lodged are about transparency and lobbying.



Christof-Sebastian Klitz, Head of EU office, Volkswagen; Reinier van Zutphen, National Ombudsman of the Netherlands; Paraskevi Michou, Deputy Secretary-General, European Commission; Peter Tyndall, Ombudsman of Ireland; and Emily O'Reilly, European Ombudsman.

took up an advisory post with Goldman Sachs shortly after the ‘cooling-off period’ stipulated in the Code of Conduct for Commissioners. This prompted the Ombudsman to question whether the Code is sufficient to protect the public interest. In a separate case concerning a former EU Commissioner, the Ombudsman made suggestions to strengthen the Code, including by introducing sanctions.

The European Ombudsman has also made several proposals to reform the EU’s Transparency Register, turning it into a “central transparency hub”. The aim is to make it possible to see at a glance exactly how an organisation has lobbied an EU institution by detailing what expert groups it has sat on; which senior officials it has met and



  **Yannik Bendel**

.@EUombudsman: “It is in industry interest to have an equal playing field in #EU #lobbying” #ENO2016 @TI_EU @BUSINESSEUROPE @vwgroup_en

It is in industry’s interest to have a level playing field in EU lobbying.

which hearings it has attended.

Lobbying does not only take place at the EU level, it is also part of the national scene. With this in mind, the European Ombudsman in late 2015 reached out to colleagues in the European Network of Ombudsmen to find out what national rules are in place to regulate lobbying. The aim of the consultation was to sensitise members of the

  **European Ombudsman**

Commission staff at all levels should be more in tune on how #lobbying works and how it affects their work #ENO2016 #eulobbying #euombudsman

Commission staff at all levels should be more in tune with how lobbying works and how it affects their work.



Network to the issue of lobbying at all levels (local, regional, national as well as European) and to see if it would be useful for the European Ombudsman to draft guidelines in the area. Fifteen national ombudsmen offices (or similar bodies) responded to the consultation. Of these, only Austria and Ireland had registers similar to the EU's Transparency Register for monitoring the activities of lobbyists. The results of the consultation indicated that there is room across Europe for more practical guidance or rules for public officials on contacts with lobbyists.



Lobbying regulation in Ireland

Ombudsman of Ireland

Lobbying, when done transparently, is a legitimate part of the policy-making process, helping to ensure that public officials have access to the information necessary to make evidence-based decisions. Given its importance, the public has a vested interest in understanding who is lobbying whom, and about what.

On 1 September 2015, Ireland's Regulation of Lobbying Act 2015 commenced. For the first time, those lobbying must register and submit returns of their lobbying activities to an online register. The introduction of this system has provided the public with greater access to information about how decisions on policy, legislation and funding are informed and made.



Peter Tyndall,
Ombudsman of Ireland
and Second Vice-Chair
of the International
Ombudsman Institute.

What counts as lobbying is not based solely on the identity of the person communicating, but the content and target of the communication as well. The Act casts the net quite wide, and many who might never consider themselves to be lobbyists could be required to register if they meet the Act's criteria:

- The person communicating must be an "employer with more than 10 employees, a representative or advocacy body" with at least one paid employee, a "third party" communicating on behalf of a client who fits within one of the above categories in return for payment, or "anyone communicating about the development or zoning of land."
- The communication must be with a "designated public official", namely Ministers and Ministers of State, Members of the Dáil and the Seanad, Irish Members of the European Parliament, members of local authorities, special advisors and senior civil servants.
- It must be about a "relevant matter", including the initiation, development or modification of policy, programme or legislation, or the awarding of any grant, loan, contract, or of any licence or other authorisation involving public funds, or any matter involving the development or zoning of land.



If the test is met, the person must register and file returns of lobbying activities every four months in the online registry, including nil returns for periods in which no lobbying took place. Information disclosed in the return includes who was lobbied, the subject matter, the method and frequency of communication, and the intended result.

An interesting feature of the legislation is the inclusion of Irish Members of the European Parliament as designated public officials. The explicit inclusion of MEPs in the Act reflects the reality that MEPs are regularly lobbied to influence the policy position of the state on European matters.

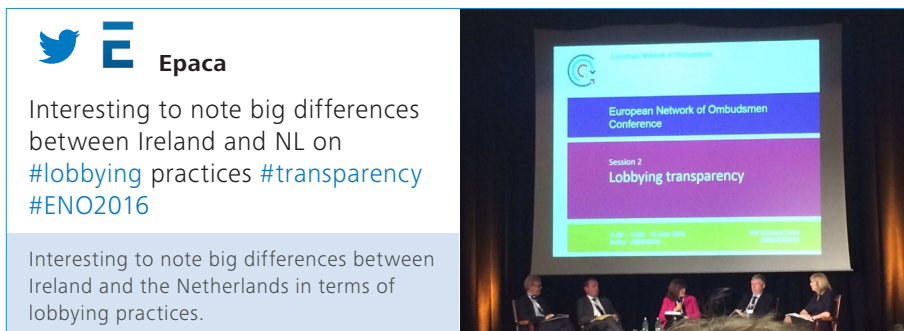
“ The explicit inclusion of MEPs in the Act reflects the reality that MEPs are regularly lobbied to influence the policy position of the state on European matters. ”

The Act’s implementation has been undertaken in an incremental fashion, with the focus this first year on education and encouraging compliance. The website and register were launched four months prior to the Act’s commencement in order to allow stakeholders to trial the system. An extensive communications strategy was implemented to raise awareness of the Act’s obligations among both lobbyists and lobbied, and a number of guidelines and information tools have been published.

Most of the Act’s provisions, including the requirement to register and submit returns, commenced last September. Enforcement provisions contained in the Act, including the authority for the regulator to investigate and prosecute contraventions of the Act and to levy fixed payments for filing late returns, will commence early in 2017. Finally, a legislative review is scheduled at the one-year mark to assess how the Act is operating.

Early results have been positive, with more than 1 300 persons and organisations registered to date, and more than 4 500 returns on the system. The broad spectrum of registrants includes businesses from all sectors of the economy, non-profits, representative and advocacy bodies, third party consultants and individuals lobbying on zoning and development.

The regulation of lobbying is an important component of a robust ethics framework. Making lobbying transparent has a multi-pronged impact on governance. It allows for the open exchange of information while ensuring a level playing field, and encourages engagement by a wide range of stakeholders. Perhaps most importantly, it provides the public with access to information about how decisions are informed and made on matters of public interest, helping build confidence in public institutions and processes.



Although it is still early in the life of Ireland’s new regulatory regime, the high level of compliance to date is a positive indicator of the acceptance of the need for transparency in lobbying.



Austria's Lobbying Act – a best practice example

Austrian Ombudsman Board

To start with, it should be pointed out that the Austrian Ombudsman Board (AOB) has no competence regarding the Austrian Lobbying Act, nor for the [Lobbying and Advocacy Register](#). Furthermore, there are no cases pending at the AOB regarding this matter. Therefore, this is an overview of the legal framework in Austria.

Austria was one of Europe's first countries to put into force a "federal law to ensure transparency in the exercise of political and economic interests" on 1 January 2013. It is known as the "Lobbying and advocacy of representation – transparency law" or [LobbyG](#).

The LobbyG is an act consisting of only 18 articles dealing with lobbying and its framework in Austria.



@EUombudsman says ombudsman role is not about creating balance in representation but about protecting the public interest at [#ENO2016](#)

The European Ombudsman says that ombudsmen's role is not about creating balance in representation but about protecting public interest.

The Act

By definition, the LobbyG regulates the "behavioral and registration obligations of activities that determine decision-making processes in the legislation or execution of the federal state, local governments and community organizations" (Article 1/1 LobbyG).



Günther Kräuter,
Ombudsman of Austria
and Secretary-General
of the International
Ombudsman Institute.



The Lobbying and Advocacy Register

The creation of a Lobbying and Advocacy Register, to which all lobbyists and lobbying companies must sign up, forms the core of the new legislation. To date, 272 lobbyists and lobbying companies have registered. According to Article 9 LobbyG, the following groups are subject to mandatory registration:

- Lobbying companies (category a1) and their areas of responsibility (category a2)
- Companies that employ lobbyists (category b)
- Self-governing bodies (category c) and
- Interest groups (category d).

When making entries in the Register and code of conduct, lobbying companies and corporate lobbyists must specify the name of lobbyists, contracts, clients and specific responsibilities, in addition to basic data. These data consist of the name of the lobbying company, registration number and specific registration department (categories a, b, c or d) and the names of the lobbyists (categories a and b). Self-governing bodies and stakeholders have to provide only the number of salaried lobbyists and the estimated expenditure in addition to the basic data.

The general public can only access the basic data in the register. All other data are available only to authorised persons such as clients, contractors and officials. For the public, there is therefore no possibility to obtain information about who is lobbying, at what time and on whose behalf for a given issue.

Although the LobbyG provides for penalties for violation of the registration requirement, a clear enforcement mechanism does not exist. The district administrative authorities are responsible for monitoring. Categories c and d are not punished for violating the obligation to register. However, the LobbyG prescribes administrative fines of up to EUR 60 000 and a removal from the Register for categories a and b. Initiating prosecution, according to the LobbyG, requires an official accusation by the civil servant that a lobbyist has contacted.

“ Although the LobbyG provides for penalties for violation of the registration requirement, a clear enforcement mechanism does not exist. ”

Pros and cons of the Austrian LobbyG

Even though the LobbyG is a major step forward, there is plenty of room for improvement.

Pros:

- Establishment of the Lobbying and Advocacy Register.
- Obligation to register for lobbyists and lobbying companies.
- Possibility for the general public to access the basic data in the Register.

Cons:

- Article 12 LobbyG excludes advocacy by social partners and collective agreements by corporate bodies from the applicability of the law, with the exception of the registration requirements under Article 9.
- The activities of law firms are excluded from the application of the law according to Article 2 LobbyG.
- Although the LobbyG foresees penalties for violation of the registration requirement, a clear enforcement mechanism does not exist.
- The general public can access only the basic data in the register. This means that the public can obtain information only about who has registered as a lobbyist, but



not which civil servants the lobbyist will have contacted and what the content of the conversations would have been.

- No mandatory cooling-off period for politicians and civil servants when they switch from their public or political position to the private sector. Therefore, companies can recruit civil servants, senior officials or even ministers.
- Public officials are under no obligation to disclose with which lobbyists they have spoken on a particular issue.
- In Austria, there are no guidelines for public office holders with respect to their interaction with lobbyists.
- Lobbying firms and lobbyists do not have to disclose donations to political parties and candidates. It is the parties which, as recipients, are required to disclose donations.



Lobbying practices in the Netherlands nearly mapped

National Ombudsman of the Netherlands

As National Ombudsman, I receive very few to no complaints about lobbying at government level. My institution does not conduct investigations into lobbying practices during policy and legislation preparation. The complaints that I receive are about integrity, often at the local level, and concern actions against individual citizens. That is not to say that lobbying is a matter that has escaped my attention – quite the contrary. A transparent government that is held accountable, is fundamentally important for a well functioning democracy. Insights into the actions of public and private officials is an important part therein. I hereby briefly illustrate the current state of affairs in my country, and how I perceive them.



European Ombudsman

In the Netherlands citizens can use a series of complaints to urge government into being more transparent @nat_ombudsman #opengov #ENO2016

In the Netherlands, citizens can use a series of complaints to urge the government to be more transparent.

Balanced stakeholding and transparency

In the Netherlands, national and municipal civil servants prepare policy and legislation before these go to parliament. Various stakeholders including companies, community organisations, overarching organisations and (sometimes) individual citizens participate in this preparatory work. It is a way of testing concepts against citizens' perspective. That in itself is a positive thing. It increases the involvement of stakeholding parties in rule-making. Nonetheless, it is important to be alert. One party can use professional lobbying agencies, while others cannot afford them. Therefore, in practice, there is an inequality of arms. This means that policy-developers must remain alert to the disproportionate influence of certain parties, which is detrimental to other parties. To my knowledge, however, there are no special mechanisms to counter disproportionate influence from certain lobbying parties. Global organisations such as Transparency International have confirmed this. This lack could lead to imbalanced stakeholding and weighing during the preparatory policy and legislative process.

It is for this reason that our parliament recently adopted a motion to add a more elaborate paragraph: "opinions of those involved" to legislative proposals (comparable to a legislative footprint). This paragraph provides insights into how stakeholders participate in the preparatory legislative process.

Lobbying register

The Netherlands does not have a compulsory lobbying register such as the one Ireland has. Parliament has been using a public register of stakeholders/lobbyists who have a permanent access pass to its premises since 2012. When applying for a pass, the applicant must declare the purpose and on behalf of which institution or organisation the applicant will be acting. Parliament issues no more than one pass per organisation/institution, and the public register mentions these data. The register is publicly



Reinier van Zutphen,
National Ombudsman
of the Netherlands.

accessible. The Foundation for Public Affairs maintains a voluntary lobbying register in order to provide insights into the number of lobbyists who are members of the Foundation.

Revolving door

People working in the public sector could also work in the private sector and vice versa. Take the example of a former politician who now works as a lobbyist. His/her participation could create an imbalance in the stakeholding process, if areas well known to him/her come up during policy and legislation preparations. It means that some parties could exert more influence on a proposal or way of thinking, than others. Transparency International has pointed this out. The Ombudsman has not conducted any investigations into the matter.

“ It is clear that the Dutch government pays attention to this matter because recently, a motion introducing a lobbying paragraph to legislative proposals was adopted. ”

Concluding observations

In the Netherlands, there are no proper insights into the disproportionate influence of certain private parties on policy and legislative processes. We do not have special mechanisms to map such influences. It is clear however that the Dutch government pays attention to this matter because recently, a motion introducing a lobbying paragraph to legislative proposals was adopted. With this, more insights could be provided into what influence private parties have on the adoption of legislation.

Challenges to the rule of law in the EU

Highlights from the Network of European Ombudsmen 13-14 June 2016 conference

European Ombudsman

Upholding the rule of law in the EU

The European Union is currently facing several rule of law challenges from within its Member States. The main tool for dealing with such challenges is Article 7 in the Treaty, which allows for the suspension of certain rights (such as voting rights) for Member States considered to be persistently in breach of EU values. The article, often referred to as the “nuclear option”, has never been used, although it has come up in political discussion several times.

The ENO discussion came as the European Commission had raised concerns about changes Poland’s government had made to the country’s Constitutional Court and state media. Sophie in’t Veld, Member of the European Parliament, said the EU had very few means to uphold the values laid out in the EU Treaty. She said the Parliament favoured a permanent monitoring of Member States on how they are upholding EU values. This would have the benefit of being a more transparent system and

one that does not single out one country. Polish Member of the European Parliament, Róża Thun, noted that people often only realise the importance of the rule of law when it is endangered. A positive result of the political controversy in Poland, she said, was that many Poles have begun noticing that the country has an ombudsman.

Professor Dr Jan Wouters, University of Leuven (Belgium), said the EU has enough instruments to uphold EU values, but that they are not used, while the Dutch Foreign Ministry’s Tony Agotha cautioned against absolutisms in the debate, pointing out that no country has a monopoly on either vice or virtue. Sophie in’t Veld, by contrast, said that the EU cannot be a community of values, if its values are negotiable. The discussion with the floor saw several calls for ombudsmen to become more visible in this area by speaking up on rule of law issues and democracy. Emily O’Reilly, European Ombudsman, underlined that ombudsmen have a special role in transmitting citizens’

“ The ENO discussion came as the European Commission had raised concerns about changes Poland’s government had made to the country’s Constitutional Court and state media. ”



Session 3: Respect for the rule of law in the EU
Panelists (left to right): Jan Wouters, Professor of International Law at KU Leuven (Belgium); Róża Thun, Member of the European Parliament; Tony Agotha, Dutch EU Presidency, Ministry of Foreign Affairs, the Netherlands; Sophie in’t Veld, Member of the European Parliament; and Emily O’Reilly, European Ombudsman.



Jan Wouters, Professor of International Law at KU Leuven (Belgium); Shada Islam, Moderator; Tony Agotha, Dutch EU Presidency, Ministry of Foreign Affairs, the Netherlands; Sophie in 't Veld, Member of the European Parliament; Róza Thun, Member of the European Parliament; and Emily O'Reilly, European Ombudsman.

feelings to administrations. Drawing on the wider political context of the rise of populist leaders in both the US and EU, Emily O'Reilly noted that societal mores on what is considered acceptable public discourse are changing. This in turn makes the role of ombudsmen both more important and more challenging.



Gundi Gadesmann

Democracy is not about majorities, it's about protecting minorities, EU is currently failing at that, says [@SophieintVeld](#) #ENO2016

Democracy is not about majorities, it is about protecting minorities, and the EU is failing at that, says Sophie in 't Veld, Member of the European Parliament.



ElJusticiaDeAragón

Defensores del Pueblo Europeos debaten hoy en Bruselas sobre el respeto al Estado de Derecho #ENO2016 @EUombudsman

Members of the European Network of Ombudsmen debating on the rule of law in Brussels today.



Ensuring respect for the rule of law in the EU

Prof Dr Jan Wouters and Dr Kolja Raube, University of Leuven (Belgium)

Turbulence rocks Europe all too frequently. We may need to fasten our seatbelts, yet again, but are we sure the machine is piloted adequately and even properly maintained? Is the pilot using all available tools to navigate safely? We ought to ask these questions about current challenges for the rule of law in the EU. Far from exhaustive, we would like to make three inter-related points critically reflecting on, in turn, the current state, importance and a potential development of the rule of law.

Firstly, despite recent efforts, the rule of law is plainly under duress. For example, Article 2 of the Treaty on European Union (TEU) proclaims beautifully that “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities...” That proclamation is in jeopardy. The European Commission communication of spring 2014 (A New EU Framework to Strengthen the Rule of Law) finds that: “Recent events in some Member States have demonstrated that a lack of respect for the rule of law and [...] the fundamental values which the rule of law aims to protect, can become a matter of serious concern.” The situation in a number of Member States has only strengthened the impression that respect for the EU’s rule of law system can be and has been eroded. Is the Union able to overcome differences between Member States in their understanding and application of the rule of law? The answer remains uncertain.



“ The rule of law implies coherent application and implementation of the EU’s foundational values, particularly democracy and human rights, which are intimately intertwined. ”

Secondly, as hinted above, the rule of law implies coherent application and implementation of the EU’s foundational values, particularly democracy and human rights, which are intimately intertwined. Within a particular Member State, inconsistent adherence to the rule of law inevitably vitiates all other core values. Between them, without the rule of law, Member States will fail to mutually recognise one another’s legal systems – a key prerequisite for the functioning of the Union – breaking down, in



Professor Dr Jan Wouters,
University of Leuven.


turn, the single market and the EU's area of freedom, security and justice. Furthermore, undermining the rule of law subverts legitimacy: public opinion will perceive the EU as abandoning the principles on which it is based. Like a single match quickly causing a conflagration, loss of respect for the rule of law will lead to systemic failure. Furthermore, the EU's neighbours will witness this self-immolation. Without reaching internal consensus on what rule of law means, the EU will not persuade international partners on the seriousness of its own commitment to its foundational values.





Eija Salonen

Prof. Wouters: we have a wide range of instruments - the problem is the lack of political will
[#ruleoflaw](#) [#ENO2016](#)

Prof Dr Jan Wouters: we have a wide range of instruments: the problem is the lack of political will.



Thirdly, while the Commission introduced the new Rule of Law Mechanism to move forward, it can only function well in an atmosphere of cooperation. The Mechanism consists of different stages, including “a dialogue with the Member State concerned” and “indicating swift and concrete actions”. For a genuine dialogue to take place, all (formal and informal) communication channels between the Commission and the Member State in question need to be opened wide and used actively and creatively. The Mechanism has been put to the test by Poland. In June 2016, the Commission issued a negative assessment of Poland's rule of law situation. At the end of July, following Warsaw's response to the assessment, the Commission issued a rule of law recommendation with a three-month time limit for the Polish government to make the changes requested by the Commission. The next step in the process would be to open Article 7 TEU procedures. To facilitate dialogue, it would be wise for EU institutions and the Member State in question to tap the expertise of independent, third party organisations, such as the Council of Europe's Venice Commission. Reference can be made in this respect to the latter's opinion 833/2015 of 11 March 2016, and to the European Parliament's resolution of 13 April 2016 endorsing that opinion.



Shada Islam

[#ENO2016](#) passionate but sobering discussion today on [#EU](#) rule of law - and what to do with countries that violate them

A passionate but sobering discussion today on the rule of law in the EU, and what to do with the countries that violate it.

The rule of law and the Constitutional Tribunal in Poland

Commissioner for Human Rights of Poland

In November and December 2015, amendments to the Law on the Constitutional Tribunal were adopted. There were, among others, the following changes:

- adjudications by a full bench must involve the participation of at least 13 judges of the Tribunal (instead of nine);
- these adjudications require a two-thirds majority (instead of a simple majority);
- hearings may not take place earlier than three months from the day of the notification of their date;
- cases should be heard in the order of submission;
- early expiration of a judge's mandate would be declared by the *Sejm* (lower house of the Polish parliament) after a motion by the Tribunal's General Assembly (instead of by the latter only); and
- disciplinary proceedings relating to constitutional judges and their dismissal are initiated upon application by the President of Poland or the Minister of Justice.

The Tribunal itself ruled that most of these amendments were unconstitutional. The Prime Minister has not yet published the judgement of 9 March 2016 in the Official Journal. Many other Polish institutions and organisations, including the Supreme Court, the National Council of the Judiciary, the Helsinki Foundation, and the Supreme Bar Association in Poland presented negative opinions on the amendments that lead to the paralysis of the Constitutional Tribunal. The situation has also caused concern among international institutions. The Commissioner for Human Rights of the Council of Europe has underlined that the Constitutional Tribunal plays a crucial role in the institutional framework for the protection and promotion of human rights, and "is deeply concerned about the crisis regarding the Tribunal, which has resulted in the current paralysis of this fundamental institution". As the [Commissioner stated at the end of his visit to Poland](#) in February 2016, there could be no real human rights protection without mechanisms guaranteeing the rule of law. The [European Commission for Democracy through Law](#) (Venice Commission) indicated that "as long as the constitutional crisis related to the Constitutional Tribunal remains unresolved, and as long as the Constitutional Tribunal cannot carry out its work efficiently, not only the rule of law is in danger, but so are democracy and human rights".



Adam Bodnar,
Commissioner for
Human Rights of
Poland.



Sylvia Spurek,
Deputy Commissioner for
Human Rights of Poland.

The **fundamental competence of the Constitutional Tribunal** is the review of norms, i.e., adjudicating on the hierarchical (vertical) conformity of normative acts to the Constitution, and eliminating unconstitutional provisions from the system of law. From the **Commissioner for Human Rights' perspective**, protecting the independence of the Constitutional Court and its judges, as well as proper procedural guarantees related to the proceedings carried out before the Constitutional Tribunal secures the protection

“ From the Commissioner for Human Rights' perspective, protecting the independence of the Constitutional Court and its judges secures the protection of human rights. ”

of human rights. Since the Constitutional Tribunal is a crucial body responsible for adjudicating to determine whether a particular limitation on the rights and freedoms was correctly introduced, and whether it is proportional to the achieved goal, the Tribunal uphold the rights and freedoms of individuals.

The Commissioner for Human Rights has submitted several dozen cases to the Constitutional Court. Most of them are urgent and important for people's everyday life. Nowadays the cases are not progressing. Under the new provisions, the Tribunal will not be able to assess the laws within a reasonable length of time, even if they harm the rights and freedoms of individuals.

On 23 July, parliament passed a new law on the Constitutional Tribunal. However, part of this new Law aims at further paralysing the Tribunal, once again causing controversy.



OME ASSC OmbudsmanAssociation

@OfficeOmbudsman: rise in xenophobia linked to concerns over public services. Role of Omb to advocate for better public services #eno2016

The rise in xenophobia is linked to concerns over public services. The role of ombudsmen is to advocate better public services.

Guaranteeing human rights in the face of current challenges

Regional Ombudsman of Catalonia

The duty of ombudsman or public defender institutions is to ensure that there are effective guarantees for respecting the human rights that are under serious threat in the current economic, social and institutional crisis.

This is the main conclusion of the seminar held last April in Barcelona, which brought together ombudsmen from around the world, the majority being from Europe. The event, which the *Síndic de Greuges* (Regional Ombudsman of Catalonia) organised, as President of the European Chapter of the International Ombudsman Institute (IOI), also addressed the threats facing ombudsman institutions and the latter's capacity to guarantee respect for rights.

In times such as the present, against the backdrop of mass migration and collective fear of Islamic terrorism, the democratic state and the rule of law must strike a balance between the need for security and the right to freedom – these are not opposites, they are complementary. The judiciary and other bodies, such as the ombudsman, also have a crucial role to play in this aspect of external control.

Some governments, in the name of security, seek to justify infringements of generally recognised human rights, through:

- disproportionate punitive responses to 'criminal offenders';
- suppression or curtailment of guarantees under the criminal system, contrary to the principles of 'due process';
- prosecution of delinquent crime on the basis of ethnic profiling; and
- invasion of privacy with new technologies for which there is no legal control.

“ The democratic state and the rule of law must strike a balance between the need for security and the right to freedom. ”



Rafael Ribó i Massó,
Regional Ombudsman
of Catalonia (Spain)
and International
Ombudsman Institute,
President of Europe
region.



In the most extreme cases, legal loopholes (such as secret prisons or CIA rendition flights) are created, or there is a greater tolerance of torture and mistreatment of people accused of serious breaches of security, all against a backdrop of unrestricted increase in the powers of secret services.

In addition, ombudsmen have the task of ensuring that refugees' individual or collective rights are respected in the official or improvised camps, wherever they find themselves. This is a task that should be carried out jointly through a holistic and humanitarian approach, as in the case of ombudsmen or public defenders in Mexico and Central America, or in the Eastern Balkans in the wake of the Belgrade Declaration, or along the lines of the European Network of Ombudsmen for Children (ENOC).

We ombudsmen must demand that the EU and its Member States respond with the utmost generosity in admitting refugees without delay, at the very least, in the terms of the European Commission's proposal of September 2015. At the same time, the human rights of all refugees have to be acknowledged in full, from the very moment that they apply for refugee status.

This calls for:

- prohibition of mistreatment and collective or "hot returns";
- full and prompt access to health and other services on equal terms;
- humane and respectful treatment by law enforcement officers and the courts;
- rigorous justification of restrictions on free movement; and
- comprehensive support to have migrants and refugees accompanied, etc.

In addition, during the seminar, it was acknowledged that restrictive budgetary policies adopted because of the economic crisis have had a major impact on social rights, including access to public health systems, social security and pensions, provision of unemployment benefits, etc. All these realities are in breach of the European Social Charter, which is a fundamental instrument on which we ombudsmen must base our decisions and publicise as part of our public duties.

Lastly, some countries have used austerity to justify closure of public defender institutions or drastic reduction of their resources, thereby limiting their capacity to act effectively. The situation in Poland is an example of a threat to such institutions. Such a situation calls for a firm collective stance to be adopted, if rights are to be guaranteed.

An independent ombudsman with sufficient human and material resources is a key instrument for the proper functioning of a democratic state. An ombudsman must be strong and rigorous and maintain high standards in monitoring public policies in the area of human rights. An ombudsman must persevere, cooperate, and win the trust of the public. In sum, with these standards, the ombudsman is the guarantee and proof of the existence of a political system that respects the rule of law and fundamental human rights.

Covering the cost of cross-border healthcare

National Ombudsman of Luxembourg

The Luxembourg Ombudsman has received several complaints from people who had to undergo emergency hospital treatment abroad and who have been billed for additional costs that were not covered by their own health insurance. The factual basis for these complaints is almost always identical.

A Luxembourg doctor had diagnosed a malignant tumour, which could not be operated on in Luxembourg. All the formalities to obtain authorisation for the patient to be referred abroad for treatment by a surgeon specialising in that type of operation were completed, and the patient was issued with a Form S2 – Entitlement to planned medical treatment. According to that form, the foreign healthcare organisation will cover medical and hospital costs directly, based on its public healthcare rates.

“ The admission form was completed by the hospital according to the surgeon’s instructions and was given to the patient to sign. ”

At the pre-operative consultation, the specialist surgeon told the patient that, for that type of operation, it was normal for patients to choose to stay in a single room. Since she had additional insurance, which would partly cover the extra costs, she agreed to this, particularly since the surgeon assured her that all the medical expenses would be covered by her health insurance. The admission form was completed by the hospital according to the surgeon’s instructions and was given to the patient to sign.

On her return to Luxembourg, the hospital sent a bill of around EUR 4000, payable by the patient, for the doctors’ fees in excess of the public healthcare rates. In other cases, the supplementary charges were as high as EUR 11 000. The patient then contacted the surgeon, who told her that, in cases referred from abroad, it was out of the question for him to perform that surgical treatment at the public healthcare rates.

The woman complained to the Ombudsman, stating that she had in fact had no option other than to have an emergency operation carried out by the surgeon designated in the referral authorisation issued by the Luxembourg organisation. That organisation also refused to reimburse those additional fees in excess of the public healthcare rates



Lydie Err,
National Ombudsman
of Luxembourg.



and drew the patient's attention to a clause in the foreign hospital admission form permitting hospital doctors to bill for additional charges where a patient chooses to stay in a single room.

The patients in question were in a vulnerable position. Having travelled abroad, they had no option but to accept the terms contained in the admission form and felt obliged to sign it. In fact, it would have been difficult for them to return home and ask for another appointment with their doctor so that s/he could submit a new application for authorisation for referral abroad. After such delays, they would perhaps be able to find a surgeon prepared to work at public healthcare rates, but his/her waiting list would be excessively long.

In fact, the effect of provisions of foreign law that permit the medical profession to bill for additional charges over and above the public healthcare rates, thereby creating 'two-speed medical care', is to invalidate the rights of persons with health insurance cover introduced by the European regulations on the coordination of social security systems.

The Ombudsman frequently receives complaints from Luxembourg nationals with health insurance cover who have received medical treatment from doctors practising abroad, and who have applied to the Luxembourg health insurance fund for reimbursement of the cost of outpatient treatment on the basis of the principles established by the Court of Justice of the EU judgment of 28 April 1998 in *Decker and Kohll*. Difficulties arise from the fact that certain treatments are not covered either by the Luxembourg official lists of treatments or by the relevant Luxembourg statutes. In cases of this kind, the statutes of the *Caisse nationale de santé* – CNS (National Health Insurance Fund) provide that the *Contrôle médical de la sécurité sociale* – CMSS (Social Security Medical Inspectorate) will determine the costs to be covered by treating cross-border healthcare as equivalent to similar healthcare provided in Luxembourg. If the CMSS does not find any equivalent, the costs will not be covered. For example, a person with health insurance cover who had received dermatological treatment was reimbursed with only EUR 65 out of a total cost of EUR 700. In that case, that complainant was even criticised for not having consulted a specialist dermatology department at a Luxembourg hospital, which would have been able to treat him.

It is not surprising that these complainants complain that the European Union is not working when it comes to healthcare. In most cases, the problems are caused, not by European regulations, but rather by unwillingness on the part of Member States, which are failing to adopt the measures necessary to ensure that the system works properly.

The Italian ombudsman and the Charter of Fundamental Rights of the EU

National Coordination of Italian Ombudsmen

The Charter of Fundamental Rights of the EU rarely takes on primary importance in the day-to-day work of the Italian ombudsman because in dealings between public administrative offices and the ombudsman, national laws and regulations – often secondary – are used to substantiate actions.

However, since the Coordination has taken part in the Charterclick study and been prompted to reflect further on the issue by researchers involved in the project, we are delighted to discover that our work, both at national and regional levels, is linked to fundamental rights and the European rule of law to a far greater extent than it would first appear.

The right to good administration, set out under Article 41 of the Charter, is one of the key benchmarks in the ombudsman's work. It is also one of the factors that legitimises the ombudsman as an institution entrusted with protecting fundamental rights, transcending any arguments relating to the role of the ombudsman in protecting and promoting fundamental rights depending on whether a relevant mandate exists in the regulation that institutes it. In actual fact, the regulation in Tuscany and the national draft regulations on the ombudsman make explicit reference to that right.

In addition, as regards gender equality and the general principle of non-discrimination, the President of the National Coordination of Ombudsmen and the President of the Committee of Equality Bodies recently signed a memorandum of understanding, which makes explicit reference to the Charter of Fundamental Rights of the EU.

Furthermore, when it comes to protecting people with disabilities, various initiatives carried out by ombudsmen have emerged. These include, for example, fighting to make buildings accessible to persons with disabilities, pursuing harmonised criteria for assessing disability, protecting the rights of persons with disabilities to have access

“ We are delighted to discover that our work, both at national and regional levels, is linked to fundamental rights and the European rule of law to a far greater extent than it would first appear. ”



Lucia Franchini,
President of the National
Coordination of Italian
Ombudsmen, and
Vittorio Gasparrini,
Liaison Officer.

to specific healthcare and treatments, and removing any inequalities in accessing education, thanks to special needs teachers. Various critical situations have come to light, which, it is hoped, can be adequately overcome and governed by legislation, through careful monitoring that will closely involve the areas covered by ombudsmen (town planning, health and social affairs, education and training, for instance). A special mandate for the ombudsman in this respect would undoubtedly help to make our actions more effective.



It is worth recalling that a legislative decree recently approved in Italy gave special powers to the regional ombudsman in matters relating to the protection of the right to healthcare. In fact, the Ombudsman of Tuscany has already been tasked with helping users in proceedings of alleged technical and professional liability, which the region has chosen to manage directly instead of relying on insurance policies. This is an area which it would also be important for the European Ombudsman to assess, both as regards the protection of user rights in the medical sector, and concerning the need to devise minimum harmonised parameters for accessing health services throughout Europe, in view of the different national regulations.

The public service sector is an area in which the Italian ombudsman has made some progress, particularly in terms of Tuscany's actions in the water services sector, and also thanks to the work carried out by every regional ombudsman, often ignored both nationally and internationally. This is an area of EU law to which the European Ombudsman could give serious thought, since the services sector is all too often regarded as a private sector (even if the service provider is a private entity, the service is still public). This means that the protection of citizens is far too often placed under the sole charge of consumer groups or special national authorities. These are all too frequently responsible for providing protection and carrying out regulatory tasks, without having the necessary levels of impartiality and autonomy, something that the ombudsman is able to guarantee.

Lithuania to provide leadership in the strengthening of the Ukrainian Parliamentary Commissioner's capacities

Seimas Ombudsmen's Office

Lithuania, as a senior partner together with Austria, has won the European Union's twinning project that aims at enhancing the capacities of the Ukrainian Parliamentary Commissioner for Human Rights.

The two-year project will provide legal and practical support focusing on revision, development, and preparation of legislation that the Commissioner needs to fulfill his/her duties. Enhancement of the capacities of the Commissioner's personnel through a variety of training will also be at the centre of the project.

Altogether, several study visits, including a visit to the European Court of Human Rights, will be conducted to advance the Commissioner's personnel's knowledge about observance of human rights in different European countries. Moreover, officers of the Commissioner will have the possibility to become familiar with the broad range of activities on the protection of human rights in various EU Member States.



Augustinas Normantas, Lithuania Head Ombudsman, and Raimondas Šukys, Lithuania Ombudsman.

Furthermore, data protection, anti-discrimination, investigation of complaints regarding abuse or bureaucratic behaviour of officials, and public awareness of human rights are also within the project's scope.

Under the leadership of the *Seimas* (Parliamentary) Ombudsman, Augustinas Normantas, a consortium of well-known Lithuanian and Austrian law and human rights experts will implement the project.

Representatives of the Law Institute of Lithuania, the *Seimas* Ombudsmen's Office of Lithuania, the Office of Equal Opportunities Ombudsperson, the State Data Protection Inspectorate, the Law Faculty of Vilnius University, and the Ludwig Boltzmann Institute will contribute to the implementation of the project. The European Commission is providing EUR 1.5 million towards the project.



The project aims to ensure the effective prevention and response to violations of human rights by strengthening the effectiveness of the ombudsman institution.

“ The project aims to ensure the effective prevention and response to violations of human rights by strengthening the effectiveness of the ombudsman institution. ”

“It should serve as an efficient mechanism of the observance of human rights and freedoms in Ukraine taking into account the best European practices,” noted *Seimas* Ombudsman, Augustinas Normantas.

Lithuania is actively involved in the EU twinning programme in Ukraine. Since 2010, Lithuanian authorities, together with partners from other EU countries, have been sharing their experience concerning judicial reform. This EU twinning project in Ukraine is the third to be won this year. Lithuania, together with Germany and Poland, is also starting a project to improve state border management this year.

The EU twinning programme, which the Commission is funding, supports the cooperation of related institutions of different countries, strengthens the administrative capacity of beneficiary countries, and helps them to implement necessary reforms. Lithuania has been providing expertise to the EU twinning programme since 2004 and has won 66 twinning project selections, amounting to nearly EUR 55.5 million so far. Lithuania’s experience in the EU twinning programme is ahead of that of many EU Member States. Moreover, beneficiary countries and partners increasingly value the credibility, experience, and expertise of Lithuanian institutions.

Conclusion

My thanks to all of you who contributed to this very first issue of *Network in Focus*. The contributions are of a very high quality and variety, and I hope that members of our Network, as well as other readers, will find the issue interesting and helpful for their work.

I also wish to thank all of you who attended our 2016 European Network of Ombudsmen conference in Brussels in June. I hope that you found the experience interesting and worthwhile. For my part, it was a great honour to host the conference and to have the opportunity to hear such informed and often passionate contributions.

I look forward to your feedback, contributions to our next issue of *Network in Focus*, and seeing you at our 2017 conference.



Emily O'Reilly



Participants in the 2016 annual conference of the European Network of Ombudsmen, which took place in Brussels on 13-14 June.

© European Union and the authors, 2016

All photographs © European Union unless otherwise indicated. Cover (© Bulent Kilic/AFP).
Reproduction for educational and non-commercial purposes is authorised, provided the source is acknowledged.
Set in FrutigerNext.

Print	ISBN 978-92-9212-892-0	ISSN 2467-4052	doi:10.2869/01719	QK-AE-16-001-EN-C
PDF	ISBN 978-92-9212-897-5	ISSN 2467-4052	doi:10.2869/98848	QK-AE-16-001-EN-N

If you require a large print version of this publication, please contact the European Ombudsman's office.



Red Europea de Defensores del Pueblo
Europäisches Verbindungsnetz der Bürgerbeauftragten
European Network of Ombudsmen
Réseau européen des Médiateurs
Rete europea dei difensori civici

1 avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex

T. + 33 (0)3 88 17 23 13
F. + 33 (0)3 88 17 90 62
www.ombudsman.europa.eu
eo@ombudsman.europa.eu