European Network of Ombudsmen

Newsletter No 23

April 2015

Contributions appear in the EU's protocol order, that is, alphabetically, based on the name of each country in its own language.

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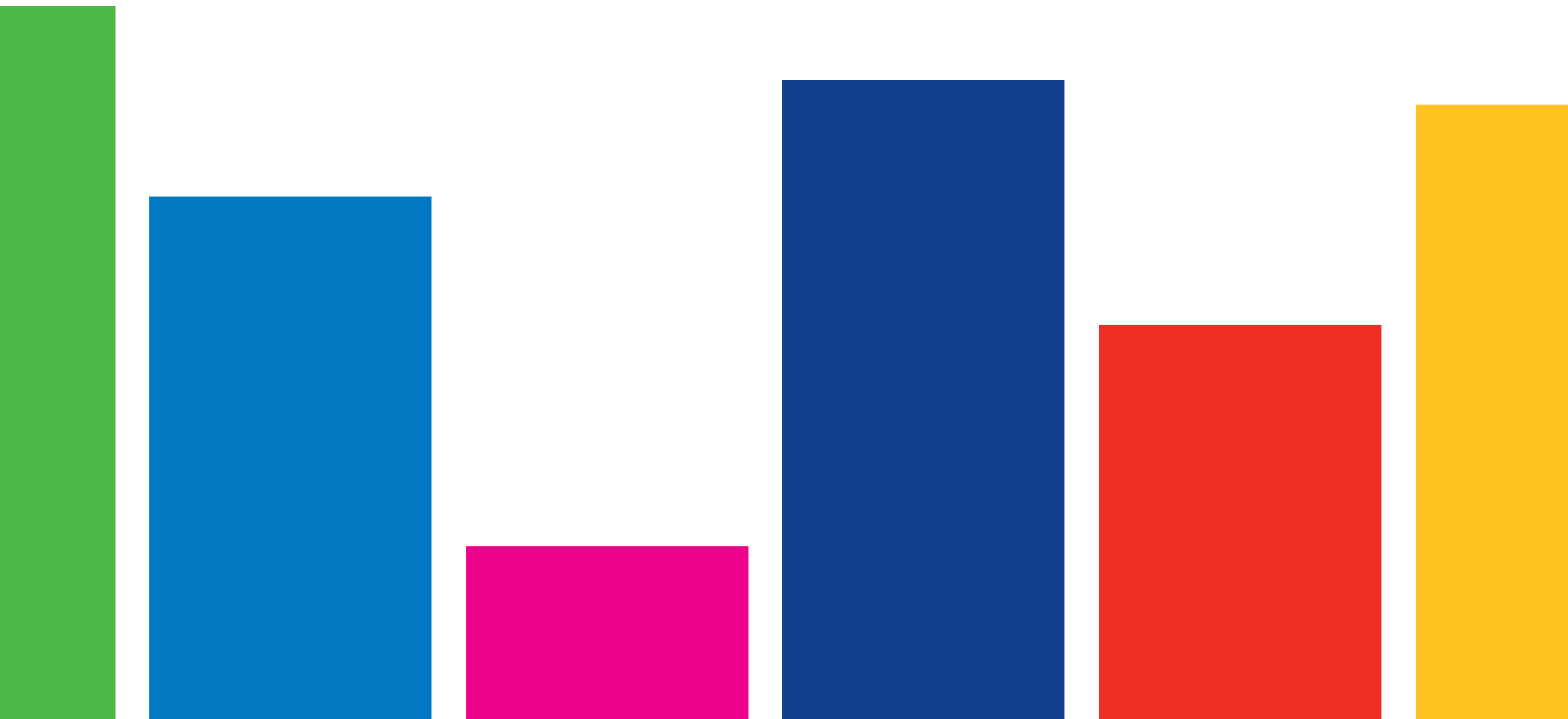

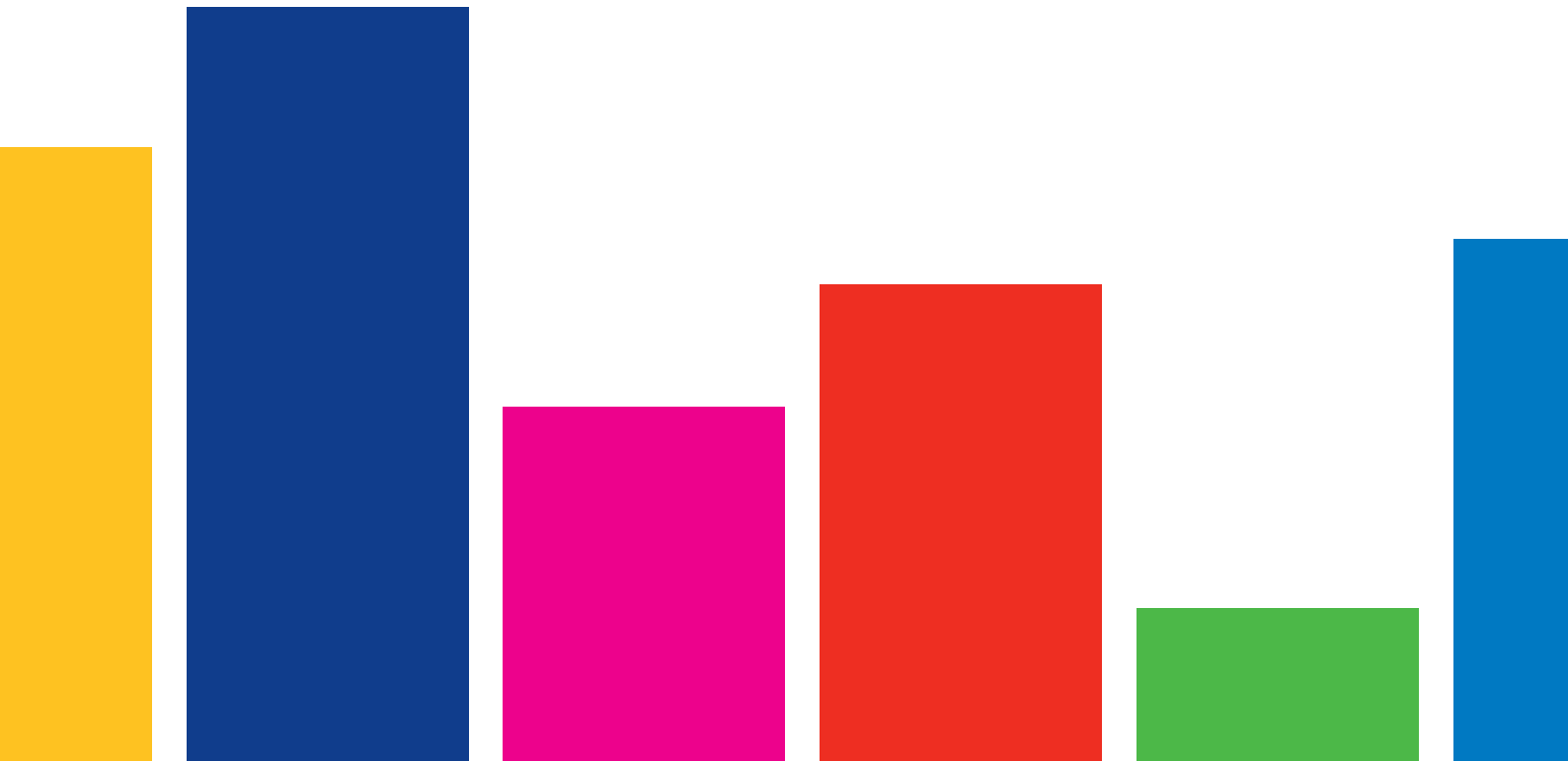

Editorial

Dear colleagues,

By the time you read this newsletter, the 10th national seminar of the European Network of Ombudsmen will be about to take place in Warsaw. I very much look forward to meeting many of you at the seminar, whose theme this year is 'Ombudsmen against discrimination'.

We will be introducing several innovations at this year's seminar. Firstly, we will reach out beyond the membership of the network by holding an open session with civil society on the Sunday afternoon. This will provide an opportunity for Polish non-governmental organisations (NGOs) active in combating discrimination to meet with ombudsmen from throughout Europe and to learn about the activities of the network. Just as importantly, it will give us all a chance to learn about their work and be inspired by their experiences during our discussions over the following two days.

Secondly, the seminar foresees the introduction of working groups to encourage more meaningful dialogue and to enable many more participants to play an active role in the discussions. I trust that this new format will help increase the effectiveness of the network by more visibly championing the best practices of our respective offices.

A third innovation will be the Tuesday morning session on the monitoring of forced return flights. This is an area in which the network has been developing in new and exciting ways in recent months. With several national ombudsman offices inquiring into this subject at the same time as my own systemic inquiry, this issue has been given prominence through the network, which could not have been achieved without such excellent cooperation. The session at the seminar will give us the opportunity to hear from several ombudsmen who have been active on this issue and to reflect on how best to coordinate our activities on similar topics in the future.

Finally, one topic that I will focus on during the network session on the Monday afternoon is the Open Government Partnership (OGP). In recent months, I have been becoming increasingly engaged with the OGP. You can read an article on the OGP and why ombudsmen should think about getting involved in this initiative in the section entitled 'Work of ombudsmen and similar bodies'. Twenty EU Member States have now signed up and I would encourage ombudsmen in those countries to become involved in the OGP processes, either as brokers of dialogue between civil society and government as part of the structures that manage the OGP, or by bringing concrete 'asks' into the action plans. In the eight EU Member States that are not part of the OGP (Austria, Belgium, Cyprus, Germany, Luxembourg, Poland, Portugal and Slovenia), the national ombudsmen or committee on petitions could be an important lever in securing participation. As regards the EU level of governance, I recently wrote to the First Vice-President of the European Commission, Frans Timmermans, to outline the added value of the EU signing up — the letter is available on my website.

I would like to thank all of the offices that have contributed articles to this issue of the newsletter and hope that you will find it interesting and useful for your work.

Emily O'Reilly
European Ombudsman
April 2015

News

European Ombudsman

Election of the European Ombudsman — where we are and where we are going!

On 16 December 2014, the European Parliament elected Emily O'Reilly to the position of European Ombudsman for a five-year term running up to 2019. The election was won by a substantial majority — 569 Members voted in favour, 66 voted against and 43 abstained — and was viewed by many as a strong endorsement of Ms O'Reilly's strategy for the institution. She was supported by all main political groups.

The Ombudsman's strategy, entitled *Towards 2019*, is centred on ensuring relevance, on increasing visibility and on achieving greater impact. It is about bringing out the most in the Ombudsman's powers and resources for the good of the greatest number of citizens possible.

During the hearing before the Committee on Petitions before the vote in Strasbourg, Ms O'Reilly outlined her work since initially taking office.

She drew the parliamentarians' attention to some of the internal reforms she had made to the office, such as the appointment of an own-initiative investigations coordinator and the enhanced focus on strategic inquiries in the broader public interest.

Ms O'Reilly also sought to place the office in its European political context and outline how the cases she had opened over the previous 12 months, on a range of issues — from the transparency of the ongoing Transatlantic Trade and Investment Partnership (TTIP) negotiations to whistleblower protection — would improve transparency and trust in the Union, as well as make the office itself more relevant to people's concerns and worries.

The Ombudsman has placed significant emphasis on the visibility of the office and on effectively communicating to the citizens on the ground about the work that she carries out. Underpinning her media strategy is the notion that the institution should communicate its work as openly and as accessibly as possible. In doing so, it should encourage people to complain if they have observed instances of alleged maladministration that they believe should be investigated.

This strategy has already paid dividends, with the Ombudsman receiving significantly higher coverage in both the print and online media. The number of Ms O'Reilly's Twitter followers has also trebled in the time since she took office.

One of the most important relationships for the Ombudsman is with Parliament. The Ombudsman has stated in the past that 'The strength of an Ombudsman in its democratic oversight role of the administration on behalf of citizens is only as strong as his or her relationship with parliament.' Since taking office, Ms O'Reilly has sought to build on the work of the previous Ombudsmen and maintain a strong working rapport with Parliament's Members and Committees in order for both to be more effective in representing citizens' interests within the institutions.

Looking forward, much of the work of the Ombudsman and her team will be focused on implementing the strategy both internally and externally and ensuring that the mission of the Ombudsman 'to serve democracy by working with the institutions of the European Union to create a more effective, accountable, transparent and ethical administration' finds a lived expression for citizens and residents of Europe.

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Germany

Ombudsman of the state of Rhineland Palatinate

Walter Mallmann honoured. Former Ombudsman awarded Order of Merit of the Federal Republic of Germany

The Prime Minister, Malu Dreyer, ceremonially presented former Ombudsman Walter Mallmann with the Grand Cross of the Order of Merit of the Federal Republic of Germany on behalf of the Federal President, Joachim Gauck. The Prime Minister expressed appreciation for the dedicated service of the former Rhineland Palatinate Ombudsman and former mayor of St Goar. Walter Mallmann had held the post for eight years from 1 January 1987 to 31 December 1994 as the successor of the first Ombudsman, Dr Johann Baptist Rösler. During his term of office, Walter Mallmann strengthened the Ombudsman institution by making the right of petition more accessible to the people and institutions of Rhineland Palatinate and by succeeding in helping thousands of them. Ombudsman Dieter Burgard and his deputy, Hermann Josef Linn, congratulated Walter Mallmann on his distinguished service.

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Netherlands

House of Representatives appoints Van Zutphen as National Ombudsman

On 3 February 2015, the Dutch House of Representatives appointed Reinier van Zutphen as the National Ombudsman. The officials and the office of the National Ombudsman noted and approved this appointment. The president of the Lower House is expected to swear in Mr Van Zutphen before the end of this quarter, after which he will be able to take up his duties as National Ombudsman.

Reinier van Zutphen (Wageningen, 1960) has extensive experience as a judge in Utrecht, The Hague, Almelo, Luxembourg, Amsterdam, Curaçao and Alkmaar. He was also Chairman of the Dutch Association for the Judiciary. He has been the President of the Dutch Trade and Industry Appeals Tribunal since 2012.

Netherlands to chair the European children's rights organisation

The Dutch Children's Ombudsman, Marc Dullaert, will chair the European Network of Ombudspersons for Children (ENOC) as agreed unanimously by the members of this network, which comprises 42 ombudspersons for children from 32 countries.

The current chairman is Tam Baillie, Scotland's Commissioner for Children and Young People. The Dutch chairmanship will be launched at the end of September 2015 with an international conference in the Netherlands. Alongside his role as chairman of this European network, the Children's Ombudsman will continue to protect the rights of children in the Netherlands.

Ombudsman Forum

The National Ombudsman inaugurated the Ombudsman Forum in 2014. The Ombudsman Forum is the virtual and physical environment for obtaining information on relations between citizens and the government, submitting complaints and drawing attention to issues. The Ombudsman Forum is staffed by complaint handlers from various disciplines who work together to directly resolve citizens' issues wherever possible. The telephone service improved considerably once the Ombudsman Forum was launched, where the percentage of calls answered within 20 seconds increased from 67% to 92%. To safeguard the quality of this service, there is a knowledge bank which is kept up-to-date. Ombudsman Forum complaint handlers also work with communication advisers and information specialists so that they can respond quickly and correctly to current topics, issues and developments. Reports on current cases and other matters are placed directly on the virtual Ombudsman Forum, the Ombudsman's new website, thereby improving and speeding up the service and the provision of information for citizens.

Since the launch of the Ombudsman Forum, it no longer matters whether citizens submit their requests by telephone, in writing, in digital format or via email. All requests are processed in the same way, but this does not yet apply to registration. Oral requests are recorded in a different system from those received in writing. In 2014, a start was made on integrating the two systems. To further improve the service, registration is being modified so that citizens only need to supply the data once. Also at the end of 2014, in anticipation of the integration, the registration of telephone requests was modified so as to provide a larger amount of more up-to-date information on the type of complaints that the Ombudsman receives.

The National Ombudsman has no confidence in the Dutch NPM

In many countries, the National Ombudsman is also appointed as the National Preventive Mechanism (NPM). The Netherlands opted for a structure in which the NPM comprises four inspectorates and where the Dutch Ombudsman is a listener, not a full member. However, the latter has found that the NPM is not working satisfactorily and has expressed his concern and decided to leave the NPM. He sent a letter informing the relevant United Nations subcommittee of the unsatisfactory situation and hopes it will improve. The Subcommittee on Prevention of Torture is expected to visit the Netherlands in 2015.

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Portugal

The Ombudsman of Portugal: 40 years in defence of the people

The office of the Ombudsman of Portugal celebrates its 40th anniversary in 2015.

Decree Law No 212/75 was passed on 21 April 1975 and gave the legal framework for the office of the Ombudsman in Portugal.

Formal incorporation of the Ombudsman into the Portuguese legal system came in the wake of the upheaval caused by the revolution of April 1974 and thus played an intrinsic role in the advent of a democratic regime in Portugal, aimed at confirming the rule of law and safeguarding citizens' rights and freedoms.

The legislation set out the Ministry of Justice's action plan of 20 September 1974, in which the Ombudsman was described as 'an innovation that will undoubtedly meet the people's deep-seated desire for justice' and for 'appreciable results in our countries'.

Validated by the pre-Constitutional legal and political backdrop of the time, the office of Ombudsman was enshrined in the 1976 Constitution, which acknowledged citizens' fundamental right to lodge a claim before the Ombudsman for acts of omissions on the part of authorities and underpinned democratic legitimacy in the form of parliamentary elections.

Recognition in the Constitution led to the first Ombudsman statute, which was included in Law No 81/77 of 22 November 1977. This was followed by Law No 9/91 of 9 April 1991 which, together with the amendments arising from Laws Nos 30/96, 52-A/2005 and 17/2013[1], formally embodied the current Ombudsman statute.

With the inherent flexibility that characterises the office of Ombudsman as an independent, single-member state body with its characteristic informal and speedy approach (without decision-making powers) and the functional guarantees of autonomy, impartiality, irremovability and personal immunity vis-à-vis exercising the respective mandate, Portugal's Ombudsman has, from the outset, stood as guarantor of citizens' fundamental rights. Over a period of 40 years, the Ombudsman has consolidated his role in Portuguese society as the leading rule of law institution in a democratic Portugal.

In keeping with the core mission of this appointment, the Ombudsman has, since 1999, been recognised within the United Nations as the only Portuguese national human rights Iinstitution accredited with 'A' status (i.e. fully compliant with the 'Paris principles'). Furthermore, in the wake of the recognition of the

1 Respectively, 14 August 1996, 10 October 2005 and 18 February 2013.

Ombudsman's mission to promote and defend human rights, he was in 2013 appointed NPM to combat torture within the context of international obligations assumed by the Portuguese state, following ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[2].

According to the current Ombudsman, Professor José de Faria Costa, 'in our democratic regime, the Ombudsman is therefore a constitutional body guaranteeing fundamental rights and freedoms and defending human rights, and is a servant of justice and the law, his actions strengthening democracy and human dignity'. These were his words during his presentation of 2 January 2015 inaugurating the current commemorative events, entitled '40 years in defence of the people'[3], the Honour Commission of which includes His Excellency the President of the Republic and His Excellency the President of the Assembly of the Republic.

This same occasion saw the announcement of the logo marking the 40 years of the institution of Ombudsman, and since 5 January, the institutional website of this State body has hosted the 40th anniversary online page, dedicated exclusively to publicising the activities scheduled to commemorate the anniversary[4].

The logo chosen for the commemorations by the Ombudsman — '40 years in defence of the people' — aims to reflect the close, personal and informal relationship established between the Ombudsman and the country's citizens. Thus, as demonstrated by the said institutional message from the Ombudsman, Professor José de Faria Costa:

'This year sees the 40th anniversary of this state body in the service of democracy, the rule of law and fundamental rights. Its role has also been that of peace-maker and 'preferred representative' between the three traditional state powers.

The full support of the institutions that democratically represent citizens is an essential factor in the stability of and confidence in state bodies, particularly in such times as we are now experiencing.

I therefore see this as another instance in which the Ombudsman reinforces and unreservedly commits to his ethical undertaking to act as 'defender' and to fulfil each and every role the state has seen fit to confer on him. That undertaking must never be seen to be the result of an abstract, uninspired and powerless narrative, but first and foremost as the concrete, real and genuine manifestation of the fundamental rights of all citizens.

The celebrations that are now beginning should therefore aim to reinforce our principal goal of establishing and intensifying the unbreakable link between this state body and the citizens of Portugal'.

The various initiatives scheduled to mark this special date include a solemn state occasion on 21 April in the Assembly of the Republic, which will include the screening of an institutional film charting the 40-year history of the office of the Ombudsman by the Higher Social Communication Academy. On the same day there will be an institutional seminar on the new challenges facing the Ombudsman. Other keynote events are the launching of a commemorative seal; the publication of a monograph on the role of this state body in Portuguese society over the last 40 years; a tour of teaching establishments by the Ombudsman (relating to his role in the defence of children's rights); an institutional presentation of the Ombudsman's work on behalf of citizens, using social media and public entities (publicised, in particular, via institutional advertising slots, flyers and posters); a photographic competition entitled '40 years, 40 photographs, 40 photographers'; a cycle of films on human rights in the Portuguese cinema; and a concert given by the Lisbon Metropolitan Orchestra.

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40 ANOS COM O CIDADÃO

2 Adopted by the United Nations General Assembly on 18 December 2002.

3 The Ombudsman's Institutional Message, '40 years in defence of the people' is available in Portuguese at http://www.provedor-jus.pt/?idc=100

4 Accessible at http://www.provedor-jus.pt/?idc=100

European Union law
Cases

European Ombudsman

How to make the European Commission's expert groups more balanced and transparent

In May 2014, the European Ombudsman launched an own-initiative inquiry into the composition of European Commission expert groups[1]. The Commission oversees hundreds of expert groups that, by providing expertise to the Commission, play a crucial role in contributing to the development of EU legislation and policy across the whole range of EU activities. Organisations, individual experts and national authorities of the Member States can be appointed as members of expert groups. The aim of the own-initiative inquiry is to promote transparency and support efforts towards achieving a more balanced composition of Commission expert groups by tackling systemic deficiencies in the current system.

As a first step in her inquiry, the Ombudsman carried out a public consultation and invited interested parties to give their views on the current situation as concerns expert groups. In return, the Ombudsman received 60 replies[2]. The overall tenor of the contributions was negative. In particular, stakeholders argued that member organisations are categorised in an inconsistent manner and pointed to a perceived dominance of corporate interests in a high number of expert groups.

In January 2015, and following her own in-depth analysis of the matter, the Ombudsman sent a letter[3] to the Commission requesting an opinion in this inquiry. In her letter, the Ombudsman explained her preliminary views on the current situation and set out a catalogue of specific suggestions to the Commission in order for the composition of expert groups to be better balanced and transparent in the future.

The Ombudsman's preliminary view is that it is currently not possible to adequately and consistently review the composition of specific expert groups, i.e. which interests are represented to what extent, because of deficiencies in the framework governing such groups. In particular, the Ombudsman noted that there is no consistent labelling/categorisation of organisations appointed to expert groups and that the Commission has not yet developed general criteria for delimiting different groups of stakeholders.

However, the Ombudsman acknowledged in her letter that the goal of achieving a balanced composition of Commission expert groups is a complex and challenging task. She expressed her view that the Commission has already embraced a range of positive initiatives that, if applied across the whole spectrum of expert groups, would inject much greater transparency and ensure balance. These initiatives include the adoption of a new advantageous legal framework for a specific type of expert group hosted by the Commission's Directorate-General for Agriculture and the new Commission's commitment to coming forward with a proposal for a mandatory transparency register.

On the basis of the aforementioned considerations, the Ombudsman suggested to the Commission that it take 22 concrete measures in order to create a coherent and legally binding framework for all its expert groups, which would make the interests represented in those groups amenable to review. The Ombudsman grouped her suggestions under the following thematic headings: (i) the (legal) nature of the horizontal rules and achieving a balanced composition; (ii) calls for applications; (iii) the link to the transparency register; (iv) a conflict of interest policy for individual experts appointed in their personal capacity; and (v) improvement of data availability in the register.

Most importantly, the Ombudsman asked the Commission to consider taking the following measures:

- The Commission should adopt a legally binding decision laying down the framework for expert groups. This Commission decision should require a balanced representation of all relevant interests in each expert group, require that an individual definition of balance be set out for each individual expert group and contain general criteria for the delimitation of economic and non-economic interests.
- The Commission should publish a call for applications for every expert group with a view to helping increase the number of civil society organisations eligible for appointment to expert groups. It should also create a single portal for calls for applications and introduce a standard minimum deadline to respond to calls for applications.
- The Commission should use the transparency register's categorisation to categorise members in Commission expert groups and require registration in the transparency register for appointment to expert groups.
- The Commission should revise its conflict of interest policy for individual experts appointed in their personal capacity with a view to ensuring that no individual with any actual, potential or apparent conflict of interest be appointed to an expert group in his/her personal capacity.

1 The Ombudsman announced her intention to open an own-initiative inquiry concerning Commission expert groups in her decision closing complaint 1682/2010/(ANA)BEH.

2 The list of contributors to the Ombudsman's public consultation in this inquiry is available on the Ombudsman's website at: http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/55509/html.bookmark

3 This letter, along with other documents relating to this inquiry, is available on the Ombudsman's website at: http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/58861/html.bookmark

• The Commission should further improve the data available on its expert groups' register[4] to allow for a quick first assessment as to an expert group's balanced composition and to make the groups' work even more transparent.

The Commission is expected to send its opinion on the Ombudsman's suggestions by 30 April 2015. In particular, it will have to reply to the Ombudsman's request to consider: (i) adopting a decision in 2015 laying down the general framework for expert groups; and (ii) reviewing the composition of expert groups which are active or on hold once this decision has been adopted. The Ombudsman will publish the Commission's reply on her website.

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4 The Commission's register on expert groups can be accessed at: http://ec.europa.eu/transparency/regexpert/index.cfm

Spain

Collaboration between the Ombudsman of Spain and the European Ombudsman on repatriation flights coordinated by the European Agency for the Management of Operational Coordination at the External Borders of the Member States of the European Union (Frontex)

In October 2014, the European Ombudsman sent a letter to the Spanish Ombudsman[5] requesting the cooperation of the institution in case OI/9/2014/MHZ[6] concerning Frontex in order to ascertain how joint return operations (JRO) involving irregular third-country migrants, coordinated and funded by Frontex and with the participation of Member States, are being carried out.

In response to her request for cooperation, the Ombudsman of Spain informed the European Ombudsman, Emily O'Reilly, on 6 November 2014, of the following.

• The Ombudsman has been monitoring the procedures for repatriation of third-country nationals since 2007.

• Between 2012 and 2015, in its capacity as national mechanism for the prevention of torture (NMPT), it monitored seven operations to return third-country nationals that Frontex coordinated and in which Spain took part from the start and until the third-country national arrived in the destination country.

• The Ombudsman takes the view that medical assistance, the use of means of restraint and the mandate of the NPMs and the return directive[7] are issues which should be examined in depth.

Subsequently, in February 2015, a new letter was sent to the European Ombudsman providing information on the conclusions drawn from the monitoring of return flights that directly affect Frontex's competencies and, in particular, its Code of Conduct. In addition to other issues, the following was stated.

• Frontex's Code of Conduct, which is positive in certain respects, is, in the opinion of this institution, a code of minimum standards. Its standards of protection of the fundamental rights of the persons who are subject to forced returns are lower than those upheld by this institution and the European Committee for the

5 The European Ombudsman has requested the cooperation of the national ombudsmen.

6 Press release published by the European Ombudsman on the issue: http://www.ombudsman.europa.eu/en/press/release.faces/en/58136/html.bookmark

7 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348 of 24 December 2008) http://www.boe.es/buscar/doc.php?id=DOUE-L-2008-82607

Prevention of Torture (CPT), which makes particular reference to this issue in its 13th General Report (CPT/Inf (2003) 35)[8].

- 'Fit to fly' medical examination before all returns and the need to regularise medical assistance throughout the process.
- A system for video recording the return operations has not been established, in accordance with the possibility provided for in Article 10(1) of the Code of Conduct, in particular when the deportation is considered problematic, and in line with paragraph 44 of the 13th General Report of the CPT.
- Returnees are not informed of the existence of a complaints mechanism in the event that they feel that their fundamental rights have been violated.
- There were no interpreters on some of the flights, despite the provisions of Article 11(2) of the Code of Conduct.
- The way in which pregnant women and minors are driven to the plane and seated should be established so that they do not come into contact with other third-country nationals who are not from their own family.
- The obligation for escorts to be identified with a professional number should be laid down in the Code of Conduct so that they may be identified in the event that the returnees wish to lodge a complaint.

Finally, it is stated that the NMPT visits are normally unannounced visits, a fundamental aspect in monitoring the deprivation of liberty. However, to date it has not been possible to monitor Frontex flights without giving prior notice, which in the view of this institution reduces the effectiveness of the forced return monitoring system.

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Italy

Ombudsman of Lazio

Intervention by the Ombudsman of Lazio concerning transparency and the right to environmental access

A non-profit organisation registered in the list of environmental protection associations recognised under Article 13 of Law No 349/86, as amended, asked to inspect and obtain copies of the forestry management and organisation plan (PAGF) for woodland owned by a municipality in the region of Lazio within the timeframe established by the municipality's public notice but was unable to gain access to all of the documentation.

When contacted by the above non-profit organisation, the Ombudsman of Lazio immediately sent a letter to the competent authorities involved, including the person responsible for transparency in the municipality and the National Anticorruption Authority (ANAC), since the organisation's request to arrange for an extension or re-publication of the PAGF, complete with all documents and/or annexes, together with a postponement of the deadline for submitting any observations, was completely understandable.

This office emphasised the following points in support of the reasons behind the request.

- The right of access to environmental information enshrined in the Arhus Convention and Decision 2005/370/EC of 17 February 2005, transposed into Italian legislation by means of Law No 108 of 16 March 2001 concerning 'Ratification and implementation of the Convention on Access to Information', guarantees public participation in decisions affecting communities that concern environmental matters, allowing observations to be submitted that the local authorities are bound to take into account with the aim of seeking solutions through consultation with the local area. The Aarhus Convention was signed by the Community and then approved by Decision 2005/370/EC. According to settled case-law, its provisions now therefore form an integral part of Union law and are binding on Member States (see European Court of Justice, case C-344/04 of 10 January 2006 and case C-459/03 of 30 May 2006).
- The public notice in which the municipality announced that the documents regarding approval of the PAGF had been filed clearly states that the 15 days allowed for the submission of observations included the Christmas and New Year holiday period, thus significantly reducing the time available for viewing and preparing observations. This procedure does not seem fully compliant with the underlying principle of Article 5(a) of Annex 2 to Regional Government Decision No 126 of 14 February

8 http://www.cpt.coe.int/en/annual/rep-13.htm

2005, which orders that documents should be published on the official noticeboard of the entity and/or of the municipality for a period of at least 15 days and that all citizens should be given an opportunity to submit observations from the first day of publication until at least the 30th day.

• Under the terms of Article 39 of Legislative Decree 33 of 2013, the authority's obligation to transparency for local government documents also extends to draft provisions and technical annexes (see Friuli Venezia Giulia TAR (Regional Administrative Court) No 175 of 24 April 2014).

A citizen who complained that only part of the documentation concerning the strategic environmental assessment (SEA) of a general municipal town plan of a municipality in Lazio had been published and only on certain websites filed an application for this Ombudsman to intervene. More specifically, the complaint stated that the documentation had not been published on the website of the region acting as the competent authority in this case and that the notice published on the municipal website and in the BUR (regional official gazette) had not mentioned the option of submitting observations or specified the locations where they could be sent. Even the documentation published on the municipality's website was not complete since it lacked some important studies, such as a vegetation survey.

When requesting information from the landscape authorisations and strategic environmental assessment area of the regional department of land, town-planning, mobility and waste and from the mayor of the relevant municipal authority with regard to the legitimate request in the application to arrange for a second publication of the SEA and of the plan, complete with its essential elements, as well as an extension of the deadline for the submission of any observations, the Ombudsman emphasised the following points:

• The procedure laid down by Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment is divided into the following stages: a check that a plan/programme requires an SEA (screening); a definition of the scope of the investigations required for the assessment (scoping); an assessment of the likely significant environmental effects, which may also be expressed through environmental indicators; information and consultation with the public and the various stakeholders in the decision-making process (see Council of State, Section IV, No 4926 of 17 September 2012), as well as on the basis of all the environmental assessments carried out; the decision must then be made public, reporting how and to what extent the environmental report, the opinions obtained, the result of consultations and the monitoring of the environmental effects of the plan/programme have been taken into account.

• The guiding principle of the SEA is precautionary, which means that environmental interests must be integrated with other interests (typically socioeconomic interests), determining plans and policies and essentially being a constructive, appraising, controlling and monitoring element. The precautionary principle constitutes one of the pillars of European Union and Italian state policy with regard to the environment, along with the principles of precaution, preventive action and the priority of correcting damage caused to the environment at source (see Council of State No 1281, Section III, 4 March 2013 and Court of Justice, Section II, 15 January 2009, C-383/07).

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The work of ombudsmen and similar bodies

European Ombudsman

The Open Government Partnership: what's in it for ombudsmen?

'I have no doubt that the Open Government Partnership (OGP) is the most promising 21st century global development towards making a living reality of open government and good government'. Emily O'Reilly, European Ombudsman, Dublin, May 2014.

What is the OGP?

The OGP is an international initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption and harness new technologies to strengthen governance. The OGP was inaugurated by eight countries in 2011[1]. In only 3 years, membership has grown to an impressive 65 countries[2].

In all of these countries, the OGP brings together domestic reformers to develop and implement ambitious open government reforms. The OGP's rapid growth indicates that there is a groundswell of popular demand for more honest and responsive government.

What do member countries need to do?

In order to participate in the OGP, governments must exhibit a demonstrated commitment to open government in four key areas: fiscal transparency, access to information, public officials' asset disclosure and citizen engagement. Once eligible, a country seeking to join the OGP is required to develop an 'action plan', meaning a set of ambitious, concrete and measurable commitments towards reform in any or all of five areas: improving public services, increasing public integrity, managing public resources in a more effective way, creating safer communities and increasing corporate accountability. Each country has its own context and starting point and the OGP provides space for that.

What role do civil society and accountability institutions play?

There are four elements that make it worthwhile for civil society and accountability institutions to participate in the OGP. First of all, the action plan should be developed through a consultation — or dialogue — between the government and society. Secondly, countries must develop an ambitious action plan with concrete commitments that go beyond existing plans and stretch the country. Thirdly, progress on process and commitment delivery is assessed by independent researchers that use the same monitoring methodology in all countries. Finally, the OGP provides a platform for actors to be connected across borders, creating ample opportunity for peer learning and mutual support in shaping and implementing commitments and therefore facilitating a race to the top.

The early results are positive. The OGP provided the impetus for a number of governments to enact politically difficult — but extremely important — policy reforms, for which civil society had been advocating for years. Other countries have implemented landmark policy reforms in order to meet the eligibility criteria. For example, the Greek authorities will publish a list of all foreign offshore companies with taxpayer ID numbers, while the UK authorities will require companies to publish information on who owns, controls and profits from them. Lithuania will strengthen legal provisions that mandate public participation in government.

What specific role will ombudsmen play?

After the action plan has been developed, commitments must be implemented and their completion monitored. In this context, the OGP-participating countries are to identify a forum to enable continued and regular multi-stakeholder consultation on the implementation of the action plan.

Having a platform for permanent dialogue can help build trust and understanding, exchange expertise and monitor progress. Many countries have made progress in setting up dialogue mechanisms that allow for this continued engagement. Accountability institutions sit on some of these dialogue mechanisms. In Peru, for example, the Ombudsman Office sits as an observer in the OGP Executive Committee.

1 Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom, United States.

2 European members: Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Malta, Moldova, Montenegro, Netherlands, Norway, Romania, Serbia, Slovakia, Spain, Sweden, Ukraine, United Kingdom.

Why is it important for ombudsmen to be at the table?

The OGP provides an additional opportunity for public sector ombudsmen to meaningfully engage in dialogue with government and domestic reformers to advance concrete reforms in their areas of work — be it service delivery, freedom of information or anti-corruption. It also provides a platform to promote the strengthening of national accountability frameworks and institutions. Where challenges exist to the performance of their duties, the OGP can provide independent institutions with an avenue to surmount these challenges by getting commitments to reform any legislative or structural constraints that may need addressing. The OGP therefore provides these institutions with the opportunity to get concrete 'asks' into the action plan, help them become more effective in their work and, in so doing, advance open governance.

Why is it important for the OGP to have ombudsmen at the table?

Accountability institutions have, as a matter of course, a lot of useful data on the performance of various governance agencies, which they obtain through the investigations they carry out. This information is important, as it can be used to identify priority areas for reform in the country in question. These institutions are also, in some cases, better placed to convince government on the importance of the OGP in advancing reform and public participation in governance processes. Where government–civil society relations could be improved, an institution such as the Ombudsman, a trusted party for both, may help to break down these walls and broker dialogue and trust. Furthermore, ombudsmen can help keep the pressure on government to actually deliver what it has promised.

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Belgium

Cross-border family benefits

The international dimension of family benefits and the difficulties this creates occupied much of the Ombudsman's time during 2014.

Increasing numbers of children have a parent who lives or works abroad. Some accompany their parents on this international experience, while others remain in Belgium with the other parent. For the latter, determining which country is responsible for paying family benefits depends on a number of factors and has to be considered on a case-by-case basis.

Family benefit cases are often complex and, over the years, complaints have shown that cross-border cooperation does not always come naturally in this regard. A well structured exchange of data is essential between the different agencies — Belgian and foreign — but this is often precisely where the problem lies.

The Ombudsman has, of course, dealt with these cases alongside the Belgian family benefit agencies, and as far as possible, these agencies have taken the measures needed to resolve the difficulties, regardless of whether they were at the origin of the problem or not.

One example is that of a mother and her daughter who moved from Belgium to the United Kingdom to join the partner and father who had been working there for six months. The Belgian family benefit agency was informed of the family's move to the United Kingdom and so stopped making payments in November 2011. The family no longer received any family benefits and the father has been trying to sort out the matter since May 2013. The Belgian family benefit agency had issued the father with the appropriate forms, which he had taken to the UK benefit office, then to the Belgian Ambassador…

In March 2014, the father got in touch with the Ombudsman as he was tired of being sent from pillar to post. In fact, although he had finally — and after great difficulty — managed to fill out the forms properly, his case still did not seem to have been resolved.

The Belgian family benefit agency told the Ombudsman that the father had in fact recently returned all of the forms and necessary information. Following this, the files that were open in Belgium and the United Kingdom still had to be agreed in order to establish which country had primary responsibility for paying the benefit and which should pick up any difference. The form sent by the Belgian family benefit agency to the United Kingdom was unfortunately incomplete when it was returned. Given the exceptional situation and the already excessive processing delays, the Belgian family benefit agency therefore decided to unblock the case and notify the United Kingdom that it would begin paying family benefit under the priority rules until the case could be sorted out with the UK benefit office.

In another case, a Portuguese woman asked to receive guaranteed family benefits from Famifed, the Belgian family benefit agency. Famifed's guaranteed family benefit department referred the case to its international agreements service.

Following intervention by the Ombudsman, part of the problem was immediately resolved. Backdated family benefits were paid for a certain period. In fact, this right seemed to be available in Belgium on the basis of either the benefits of the mother or her new partner. For other periods, the guaranteed family benefit department ruled against the request as an investigation into concurrent drawing was still underway in Portugal. Famifed wrote several times to the Portuguese liaison body for family benefit in order to obtain a form for the father, who was still living and working in Portugal. Without this form, no right to Belgian family benefits could be established.

Famifed received no reply from the Portuguese body, despite Solvit already having taken steps via its Portuguese counterpart.

In November 2014, Solvit informed the Ombudsman that Portugal had finally looked into the case and that it would have to pay the benefits for the remaining periods in accordance with European regulations, which set out priority rules in the event of overlapping. The anticipated contact with the Portuguese Ombudsman was therefore no longer necessary.

It is now emerging from a number of other cases submitted to the Ombudsman that the exchange of information between family benefit agencies in Poland and France is not without its problems either.

In these cases, the Ombudsman intervenes primarily as a mediator. There are rarely any justified complaints against the Belgian family benefit agencies. Information exchange on cross-border family benefit cases often seems slow and arduous because the forms are either not understood or are filled out differently. The Ombudsman's intervention when necessary, along with that of other national mediators or Solvit, generally enables a situation to be resolved.

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Czech Republic

The Czech Ombudsman has discovered serious failings in the treatment of senior citizens in unregistered facilities

This year, Ombudsman Anna Šabatová has investigated four cases involving the ill treatment of senior citizens in unregistered facilities. In two of these, her findings were so serious that the Ombudsman contacted the Czech Public Prosecutor with a request to verify whether any crime had been committed.

In formal terms, the facilities for senior citizens served solely as accommodation facilities, yet still provided care as a social service (such as those provided in a retirement home). This constitutes a breach of the social services act[3]. This act stipulates that social services may only be provided on the basis of a licence. The process imposes a number of obligations upon applicants, such as compliance with quality standards, the appropriate professional qualifications on the part of staff and adherence to certain hygiene-related and technical conditions. Failure to comply with these obligations not only meant that the facilities did not necessarily comply with these criteria, but that they also bypassed any of the inspections that are routinely carried out in social services facilities.

To varying degrees, the facilities were guilty of the unlawful restriction of personal freedom, infringement on privacy and the hazardous and non-transparent use of medication. Residents were served unsatisfactory meals, including those clients on special diets. Many senior citizens were at risk of malnutrition and dehydration. 'There was no respect for human dignity or, sometimes, even basic hygiene standards', claimed Ombudsman Šabatová.

The facilities she visited are specifically aimed at senior citizens and people suffering from mental disorders who are dependent on the assistance of others. Staffing was inadequate at the facilities and employees did not have the requisite professional qualifications. In some cases, the facility residence fees were higher than the average pension. In all cases, clients paid the facilities part or all of the contribution towards their care, although according to the law, this contribution cannot be given to unregistered facilities.

3 Act No 108/2006 Coll., social services act, dated 14 March 2006.

The facilities also restricted the free movement of clients. The management prevented them from leaving the facility and, in certain cases, even locked them in their rooms against their will. Several facilities used restraints and side bars in a manner that also restricted free movement. 'Unregistered accommodation-type facilities must not restrict the free movement of persons accommodated there', emphasised Ombudsman Anna Šabatová.

During the last 3 years, the Ombudsman has visited nine unregistered facilities, and in each case has found that clients' rights were being violated. The Ombudsman clearly informed all the facilities that their services must comply with the standards stipulated by the law and must be registered for the provision of social services in accordance with the law or must cease engaging in this form of business. She warned the public not to place their relatives or loved ones in such facilities.

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Germany

Ombudsman of the state of Mecklenburg-Western Pomerania

Child benefit

Child benefit payments are an increasingly European issue. Normally, parents in Germany are entitled to child benefit so long as their child is a minor. Grandparents or foster parents may also receive child benefit if the child lives with them. Persons entitled to child benefit — including (adult) children — applied to the Ombudsman because they had questions about the payment of child benefit for children who were unemployed or seeking training.

Child benefit is usually paid until the age of 18 years. It is payable up to the age of 21 years for children who are not employed but have registered for work with an employment agency or job centre. Child benefit is paid up to the age of 25 years if the child is pursuing or seeking education or training. However, a child seeking training must also formally register with the employment authority as a job seeker. The Ombudsman's office provided advice on this.

Child benefit in Europe

The Ombudsman received many inquiries from EU citizens living in Mecklenburg-Western Pomerania on questions relating to child benefit in cross-border cases. The main complaint from citizens concerned the time taken by family benefit offices to process their applications, in some cases more than a year.

There is a specific allocation of responsibility in cross-border cases. For instance, the South Bavaria family benefits office is responsible for Austrian cases. The Saxony family benefits office deals with cases concerning Poland or the Czech Republic. The Ombudsman contacted the relevant family benefits offices and notified the Federal Central Tax Office as the authority responsible for supervising the family benefits offices.

Here are some examples of petitions on this subject.

• In April 2013, grandparents who had previously collected the child benefit for their grandchildren living with them were informed that the entitlement to German child benefit had to be reviewed because the parents were working in Austria. Pending the final decision, the grandparents initially received only part of the child benefit amounting to EUR 71.30 per month. That was the balance following deduction of the benefit payable in Austria (EUR 112.70).

In cross-border cases, the provisions of European law must be respected. Those coordinating provisions determine which country is responsible for paying child benefit. Verification is a lengthy procedure because it involves authorities from more than one state.

The Ombudsman contacted the family benefits office repeatedly by letter and by telephone requesting a decision. It was not until 31 July 2014 that a decision finally determined the child benefit. The grandparents received a back payment of EUR 1 690.50. Since August 2014, they have again received the full child benefit from the family benefits office amounting to EUR 184 per month.

The case took a long time to process because of the documentation required, but errors on the part of the authorities concerned were also a factor. However, the Federal Central Tax Office also told the Ombudsman that the long response times were due to a restructuration of the organisation. Owing to the many child benefit cases affected, it would be some time before improvements were apparent.

• In June 2013, a Polish citizen living and working in Germany applied for the first time for child benefit for her son who was undergoing training. The family benefits office responded by telling her that it had not received the documentation. She reapplied in December 2013. In November 2014, she contacted the Ombudsman because there had still been no decision on the application.

Nationals of European Union Member States who have the right of freedom of movement are normally entitled to German child benefit if they live or work in Germany. Child benefit is granted on the same terms as it is to German nationals. Despite reminders by the Ombudsman, the Saxony family benefits office responsible in this case had still not issued a decision at the time of going to press. The supervisory authority which was likewise contacted again referred in this case to the organisational restructuring.

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Greece

The Greek Ombudsman in defence of the legal rights of the Roma

The Greek Ombudsman, as the authority responsible for combatting maladministration and ensuring equal treatment for the promotion and protection of citizens against discrimination, among other things, investigates cases pertaining to Roma people and recommends measures and means to eliminate their social exclusion.

The cases investigated by the authority relate to all sectors of social life. However, the most serious and complex problems in which the independent authority intervenes relate to the provision of adequate and appropriate housing for the Roma, as well as access to and participation in the educational process by the members of this socially vulnerable group.

Two cases in which the Greek Ombudsman intervened are cited below and relate to the exclusion and unequal treatment of the Roma, highlighting the difficulty of resolving the complex problems faced by these people.

The first case pertains to the so-called relocation of Roma to the Kamilovrysi area, which was carried out by the Municipality of Lamia without the necessary legal provisions being met.

Officers of the Greek Ombudsman carried out an on-site inspection in the area concerned and identified the following.

Roma settlement in Kamilovrysi in the Prefecture of Phthiotis

The mountainous area of Kamilovrysi, Phthiotis, is located adjacent to the regional road connecting Lamia to Domokos, at a distance of approximately 11 km from the town of Lamia. There, at an altitude of 400 m, right below the regional road on a site owned by the Municipality of Lamia, a newly-constructed extensive ‘settlement’ of more than 60 shacks stands on a slope cut into four terraces, housing hundreds of Roma men, women and children.

The shacks are made of cheap material, nylon, wood, used door and window frames, metal sheets, sacking, etc. Lighting is provided by two lines of street lamps installed by the municipality, but only on two of the levels on the site. Installing these shacks, as shown in the photo below, poses the risk of fire, a short circuit, electrocution, etc.

The Roma settlement site in Kamilovrysi in the prefecture of Phthiotis: electricity connections

The settlement is supplied with water by communal taps, but no sanitary facilities (toilets, showers, facilities for washing appliances, etc.) have been found. The roads passing through the site are not paved and are dirt roads. No rubbish bins were found or used. According to the Roma, bins had been supplied at first but have since been stolen.

The shacks are makeshift and obviously provide only partial protection against the weather. Moreover, given that they have been made of highly flammable materials, they constitute a major fire risk, mainly due to the fires lit by the Roma for cooking or heating or due to the risk of short circuiting. Furthermore, there are major sources of infection, high levels of pollution and unsightly conditions.

It was found that several of the children living in the 'settlement' were in bad shape in terms of hygiene; they were barefoot, some were suffering from skin rashes, were filthy and/or presenting symptoms of illness (severe catarrh), while some younger children were walking around wearing extremely filthy and worn clothes or were even half-naked.

In conclusion, it was determined that the Roma children and many of the adults are living in the specific 'settlement' in conditions of poverty and misery that are unusual by Greek standards and that this specific site not only fails to meet the conditions for decent living but also poses a threat to the life of the residents because of (a) the unsuitability of the settlement site, and (b) the inappropriate way in which it was built.

Please note that given the great distance from Lamia or the closest urban centre, the residents' access to services is highly difficult and no child attends school.

To deal with the issue of the Kamilovrysi 'settlement', the Greek Ombudsman has already made recommendations and cooperated with the new municipal authority and the central administration services involved in an effort to contribute, in every possible way, to the resolution of the problems so that the residents of the settlement are effectively housed, have access to education and to the goods and services that, under the Constitution and applicable law, are enjoyed by Greek citizens.

The second case relates to an intervention of the authority in the matter of the education of the Roma. The Greek Ombudsman's view is that the Roma's lack of access to and inclusion in the educational process, together with the absence of effective housing, is the main contributor to the perpetuation of the social exclusion of the Roma.

Following a complaint, officers of the Greek Ombudsman visited, inter alia, the 4th primary school located inside the old settlement of Sofades. Sofades is a small town in the centre of Greece in the prefecture of Karditsa.

Even though 525 students are enrolled in the school of the old settlement, only 100 children attend classes, i.e. approximately 20%, which corresponds to the actual capacity of the school.

Unfortunately, this proves that the school attendance of Roma children is 'virtual reality' since, despite the judgments against Greece, the state still has not managed to resolve the problems faced by the most vulnerable members of the Roma community, namely the children.

The Greek Ombudsman has repeatedly stressed that the educational problems of Roma are mainly in the following areas:

- access to, enrollment in and attendance of school programmes;
- proper implementation of preparatory programmes in order to avoid school ghettos or leakage of Roma people from education;
- leakage of Roma people from school attendance;
- lack of sufficient buildings for all the children to go to school, thus creating the impression of degraded educational provision through the operation of separate, racially-based schools that do not, ultimately, promote social inclusion and ensure harmonious co-existence between vulnerable groups;
- proper planning of the educational process based on the needs and desires of the population in a specific area.

The Greek Ombudsman has repeatedly underlined the need for the continuous participation of Roma children in the educational process, since this is a prerequisite for the active participation of these individuals in everyday life.

It is obvious that the existence of two or more generations of illiterate Roma is, on its own, capable of scuppering any efforts currently being made to include these individuals in Greek society.

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France

Representatives of the French 'rights defender' (*Défenseur des droits*): a force for administrative simplification

Ninety per cent of the complaints handled by representatives of the rights defender relates to public services (24 617 cases in the period January–November 2014). These complaints therefore offer an excellent vantage point from which to observe shortcomings in these areas and put the representatives in an excellent position to propose administrative simplifications.

By listening to the problems of a wide range of groups, the representatives are able to observe institutional weaknesses at first hand, particularly in public services. Drawing on this local dynamic, a working group of some 20 delegates produced a report for the rights defender on the issue of welcoming, informing and guiding public service users, as the deficiencies in these areas are at the origin of many referrals. The working group conducted a non-exhaustive review illustrated by numerous concrete examples representing the most frequent cases received or handled by the delegates, along with testimonies that bore witness to the situations being experienced on the ground.

The working group put forward 10 proposals, where seven related to a failure to follow the requirements of the Marianne Label aimed at simplifying relationships between public services and users. The group therefore recommended monitoring the implementation of this label, for example naming a contact person in correspondence, ensuring that cases submitted by users can be traced and prioritising, strengthening and adapting the 'public service gateway' telephone number 39 39.

Of the experimental or innovative good practices that the group noted for welcoming, informing and guiding the general public, it recommended more widespread use of the 'end of phone conversation' memo. The need for better user support through an upgrading of the skills and the professional recognition of all frontline customer service staff was also noted in the report.

This report is based on the observations and experiences of representatives on the ground and feeds into the qualitative component of the complaints watchdog that the rights defender has created. In particular, it forms part of a move to modernise the work of the public service sector. The rights defender has submitted a number of proposals in this regard to the Secretary of State for State Reform and Simplification, Mr Thierry Mandon. The defender has particularly emphasised the need for better career prospects for customer service staff.

See the Marianne Label
See the rights defender's seven proposals for administrative simplifications

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Italy

Activities of the president of the equal opportunities coordination body

In Italy, Law No 215/2012 laid down new provisions to encourage rebalancing the gender representation on the boards and councils of local authorities and on municipal and regional councils, as well as on the composition of local authority selection boards. In particular, Article 1(1) of the above law amended Article 6(3) of Legislative Decree No 267/2000 (local government consolidation act), providing that municipal and provincial statutes should establish rules to ensure conditions of equal opportunities between men and women within the meaning of Law No 125/1991 and to guarantee instead of 'encourage' the presence of both sexes on non-elected councils and collective bodies of the municipality and province, as well as the entities, authorities and institutions answerable to them. The same Article 1(2) also establishes that local authorities should adapt their statutes and regulations to the new provisions of Article 6(3) of Legislative Decree No 267/2000 within 6 months of the entry into force of the Law. Furthermore, new provisions introduced by Law No 215/2012 are tending to result in the presence of both sexes on municipal councils when drawing up lists of candidates, during related consultations of the electorate and in the formation of municipal and provincial councils 'in accordance with the principle of equal opportunities between women and men'. Moreover, Italian legislation has merely reiterated what is already enshrined on the subject in national and international sources, namely Article 51 of the Constitution, Article 1 of Legislative Decree No 198/2006 (equal opportunities act) and Article 23 of the Charter of Fundamental Rights of the European Union.

Opinion 93/15, Section I of the Council of State provided an interpretive opinion to the Ministry of the Interior, which became necessary in order to establish:

- whether council and board decisions adopted by bodies made up only by men, thus in breach of Law No 215/2012, are legitimate;
- whether Law No 215/2012 is applied only to local authorities elected after the entry into force of the law or also to authorities elected before the entry into force of the above law;
- whether it is necessary for the statutes of local authorities to make provisions to guarantee a minimum level necessary to constitute gender representation and, if so, what percentage is necessary;
- whether there are special procedures that the mayor must implement to demonstrate that despite having put in place all necessary initiatives designed to ensure the application of the principle of equal opportunities between men and women, he or she has been unable to achieve this objective and has had to appoint councillors who are all male.

The president of the coordination body circulated a summary of the opinion to regional counterparts with a letter arguing that, in addition to this judgment and the general principles referred to above, it was also necessary to take into account the subsequent Law No 56/2014, the 'Del Rio law', which states in Article 1(137) that: 'On the councils of municipalities with populations greater than 3 000 inhabitants, neither sex can be represented by under 40%, rounded off to the nearest whole number', where the mayor is counted as part of the percentage as a member of the council and judgment No 633 of Section IIa of the Lazio Regional Administrative Court (LAZIO-ROME TAR) of 21 January 2013, which reiterates that the principle of equality is a legally binding rule and therefore constitutes a constraint to be respected in the exercise of public power. The judgment adds in a specific and innovative manner that the principle of non-discrimination is general and applicable to the international, as well as the Italian, rule of law. Therefore the implementation of equality is bound to be interpreted as guaranteeing respect for a threshold that is as close as possible to the equal representation of genders, thus amounting to 40% of members of the under-represented sex. Otherwise the prescriptive scope of the rules and the effectiveness of the principles are in vain.

The president's letter ends by recalling initiatives undertaken by the Ombudsman of Tuscany, who referred the problem to the chair of the regional government council, the national association of Italian municipalities (of Tuscany) and the metropolitan city of Florence, also involving the president of the Equal Opportunities Commission and the initiative taken by the Ombudsman of Campania. These initiatives were subsequently joined by that of the Ombudsman of Piedmont.

At last the principle of gender equality seems to be becoming established in Italy and the Ombudsman will oversee its actual implementation.

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Ombudsman of Lombardy

EU citizens and health service registration: the regional Ombudsman intervenes

The regional Ombudsman intervened in a case of discrimination concerning the health service registrations of two EU citizens residing in Italy, both made in the name of their respective partners.

Provisions issued over the years with regard to health care to foreigners by regions and autonomous provinces have led to an uneven application of the law within Italy. On 20 December 2012, the state–region conference[4] therefore approved an agreement whereby the procedures were 'regulated' with an indication of the proper application of the law.

Agreements approved by the conference are legally effective even without the specific adoption of an act of transposition by the regional government, particularly if they involve the tidying up of existing rules.

Nonetheless, a German citizen who is mother to an Italian child, and a citizen of Norway (a state that is part of the European Economic Area and has acceded to EU regulations) expecting a child and living with an Italian citizen were both denied permission to register with the regional health service by their respective ASLs (*Aziende sanitarie locali* — local health authorities).

Based on applicable laws on this subject and international agreements such as the UN Convention on the Rights of the Child approved in New York on 20 November 1989 and ratified by the Italian state, the parents of Italian children who are European Union citizens are entitled to compulsory registration in the health service renewable from year to year if they have been residing in Italy for under five years.

Furthermore, all EU citizens permanently residing in Italy who for various reasons do not have health coverage in their country of origin are entitled, if they so wish, to make use of voluntary registration in the health service by making the payments provided for by law.

After unsuccessfully urging the Directorate-General for Health of the regional government to apply the state–region agreement to the case in point, the regional Ombudsman turned to the Ministry of Health, which confirmed that compulsory registration and voluntary registration in the health service are both already governed by the law, irrespective of the agreement signed at the conference, thus stressing that the agreement is merely an acknowledgement. The document is entitled *Guidelines for the correct application of the law for the assistance of the foreign population by regions and autonomous provinces*.

In the light of this clarification by the Ministry of Health, the health authorities came into line and the women were able to register with the health service.

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4 Standing conference for dealings between the government, the regions and the autonomous provinces, a priority forum for political negotiation between central government departments and the regional government system.

Ombudsman of Piedmont

Electromagnetic pollution and the right to health; a case of confusion and swapping of roles and competences between the authorities involved

Every year since 2008, the Piedmont Ombudsman's office has been involved in a case reported by an ad hoc committee of citizens concerning a situation that arose following the installation, approximately 2 years earlier, of 15 satellite dishes for broadband satellite transmissions in the immediate vicinity of residential areas. The office has tackled the problem of environmental impact and intervened to protect the health of citizens, highlighting severe delays by the local authorities in issuing an opinion and a lack of transparency in their decision-making.

In 2011, the Ombudsman sent a letter highlighting the need to relocate the installation in question in the light of findings of technical assessments made by the *Agenzia Regionale Protezione Ambiente* (ARPA), the regional agency for environmental protection, for the region of Piedmont, health surveys for verification purposes, technical meetings and epidemiological checks lasting more than 3 years.

It was shown that the delays and uncertainties, as well as the objective 'confusion' between the various initiatives undertaken or announced by the local authority have reliably revealed this to be a case of maladministration. These findings were substantiated by the lack of responsible initiatives and the uncertainty for the population affected, who were allowed repeated glimpses of suggested solutions that never came to fruition and were never clarified or specified.

The Ombudsman's intervention was followed by the launch of an epidemiological investigation. With regard to this, in 2014, the office received a letter from the department of the local health authority involved in prevention, stressing that an additional investigation carried out by the ARPA in 2014 had found that the overall results for the medical disorders investigated in the population resident in the area (both the people who had remained permanently in the area and those who had subsequently moved) 'pointed to an overall worsening of the population's state of health and an excessive number of stress-related disorders in the area'. The aforementioned building and urban hygiene service therefore considered that 'we cannot further delay the order to transfer the plant to a sparsely populated or unpopulated area as already suggested in previous assessments of the state of health of the population living in the area'.

The office therefore reiterated its previous demands in full and called on the municipality to promptly establish the decisions taken and the measures implemented and/or that could be potentially implemented by those responsible and to transfer the plant if and when the conditions had been closely assessed. This must also be done in order to avoid and prevent the possible liability of the entities in question for any damage to the health of the resident population as suggested in the above letter sent by the building and urban hygiene service.

The city of Turin responded to this by explaining that since the construction of the teleport had been approved by a city council decision of 8 November 2004, 'the decision over relocation must be political and administrative. In the wake of considerations discussed at city of Turin council meetings, the last on the subject having been held on 7 October last year, and having taken all measures, including those of a precautionary nature, with regard to environmental aspects, an agreement was reached over the need to coordinate the employment, environment, heritage and health councillors with the aim of jointly taking the necessary measures. (…) In the event of a choice over the relocation of the plant, it seems appropriate to set up a special technical committee that will involve all relevant bodies and the public to seek agreement on a method of assessing the transfer timeframe and procedure'.

Conclusion?

This affair has been typified by confusion and swapping of roles and responsibilities with the buck being passed *ad infinitum*. At this point, a significant degree of apathy is emerging over the need for certain solutions that respect the health of the inhabitants, given that the ARPA and the department of the local health authority involved in prevention have stated that 'the overall results for the medical disorders investigated in the population residing in the Via Centallo area (whether they have remained permanently in the area or subsequently moved) pointed to an overall worsening of the population's state of health and an excessive number of stress-related disorders in the area' and considered that 'we cannot further delay the order to transfer the plant to a sparsely populated or unpopulated area, as already suggested in previous assessments of the state of health of the population living in the area'.

It is evidently difficult at this point to be able to communicate these decisions to the public, the latter claiming full rights of participation and consistent and guided decisions by the authorities involved who have a duty to come up with the solutions that have been repeatedly demanded by the Ombudsman and formed the subject of a specific report to the regional council of Piedmont by the Ombudsman.

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Ombudsman of Tuscany

Initiative by the Ombudsman of Tuscany to safeguard equal opportunities in Tuscan local bodies

In the wake of Law No 215/2012, Council of State Opinion 93/2015 and Law No 56/2014, the 'Del Rio' Law, Article 1(137) of the latter states: 'On the councils of municipalities with populations greater than 3 000 inhabitants, neither sex can be represented by under 40%, rounded off to the nearest whole number'. The Ombudsman of Tuscany called on the chair of the region, the chair of the regional council, the mayor of the metropolitan city of Florence, the chair of the national association of Italian municipalities of Tuscany and the union of Italian provinces of Tuscany, as well as the chair of the Equal Opportunities Commission and the local government council (the single body representing the system of local governments in the Tuscan regional council, set up by the region).

The Ombudsman included a personal reflection on the above legislative provisions and noted that while it is indubitable that the provisions are applicable only to bodies that replace their boards or whose boards in any case involve substitutions, the obligation to adapt the statutes is immediate. This is also clear from the attached documentation, which even suggests that powers of substitution should be activated in the event of default. It must therefore be established whether local authorities have taken measures to adapt their statutes and I am therefore hereby asking if the region of Tuscany and the other entities in question have implemented procedures to perform this check and what timeframe the above entities intend to observe in order to guarantee implementation where situations of default are identified.

From a systematic analysis of the regulatory provisions, it is clear that these only apply when a board is renewed in full or in part, but all local authorities should immediately adapt their statutes, and the Ombudsman has therefore called for the cooperation of the region, the board of local governments and the Equal Opportunities Commission, in addition to the Tuscan sections of the association of Italian municipalities and the union of Italian provinces in order to make local authorities aware of the problem and help the Ombudsman to monitor any infringements, intervening to support the Ombudsman in the event that infringements of the law are identified.

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Lithuania

Vigorous activities by the *Seimas* Ombudsmen raise public awareness about the Seimas Ombudsmen's Office

More than a half (54%) of Lithuanian residents would know where to find protection against human rights violations. As many as 42% would seek help from the *Seimas* Ombudsmen. Those are the findings of a representative survey of the population commissioned by the *Seimas* Ombudsmen's Office, carried out at the end of last year.

Increased public awareness about the *Seimas* Ombudsmen's Office resulted from a particularly high number of complaints examined by the office. Last year, the *Seimas* Ombudsmen resolved over 1 953 complaints, including ones relating to the practices of state and municipal officials.

The survey has revealed that 42% of Lithuanian citizens would apply to the *Seimas* Ombudsmen for protection against human rights violations, compared to 34.5% in 2013 and just 24.3% in 2012.

Researchers note that younger and more educated respondents, as well as those with higher incomes (70%) and living in major cities (58%), are more aware of the organisations to contact in cases of human rights violations.

In 2014, the *Seimas* Ombudsmen upheld nearly half of all complaints received and completed the complaint procedures by issuing nearly 1 800 recommendations.

'Recommendations are one of the key instruments we have for finding effective, flexible and swift solutions to the problems experienced by people, as well as for preventing possible human rights violations by national and municipal authorities', said Augustinas Normantas, Head of the *Seimas* Ombudsmen's Office.

The year 2014 saw a very impressive rate of implementation of the recommendations, reaching as high as 95%. Recommendations issued by the *Seimas* Ombudsmen have been recognised for the excellent legal reasoning in support of the conclusions made, which is a prerequisite for such a high rate of implementation.

'This shows that the authorities, to whom the recommendations are addressed, respect the position of the *Seimas* Ombudsmen and seek cooperation in dealing with the human rights issues identified by the *Seimas* Ombudsmen', notes *Seimas* Ombudsman Mr Normantas.

In 2014, the *Seimas* Ombudsmen commenced national torture prevention initiatives. This function was entrusted to the *Seimas* Ombudsmen following ratification by the *Seimas* of the Optional Protocol to the Convention against Torture, by which Lithuania undertook to appoint a national body responsible for the prevention of torture at places of detention. In Lithuania, the number of such places is more than 450.

Work in the area of torture prevention at national level began with data collection to determine the number and type of places of detention in Lithuania. In view of the wide diversity of such establishments, the *Seimas* Ombudsmen had to draw up different inspection methodologies for the different types of establishments, decide on the methods and duration of inspections and eventually carry out the inspections.

In 2014, the *Seimas* Ombudsmen's Office duly observed the principle of openness, transparency and publicity in disseminating information on its own activities, as well as on various issues of relevance to the public. The information was prepared and disseminated in Lithuanian and in English. In 2014, online media sources published some 200 articles, and there were approximately 20 radio and television shows covering the activities of the *Seimas* Ombudsmen. As of this year, the activities of the *Seimas* Ombudsmen are also being publicised on social networks, Facebook and Twitter.

Raising public awareness about the *Seimas* Ombudsmen's Office has directly contributed to the visibility of its activities and to the education of the public on human rights issues. The experience of the *Seimas* Ombudsmen is that, once the public learns through the media about individuals who have been successful in obtaining a remedy for human rights violations, they are inclined to apply to the Office with their own request to investigate an alleged failure by national or municipal officials to address their problems or to address them properly.

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Hungary

Launch and first visits of the Optional Protocol to the Convention against Torture National Preventive Mechanism Department

The Hungarian National Assembly adopted Act CXLIII of 2011 publishing the Optional Protocol to the Convention against Torture (OPCAT) on 24 October 2011. From 1 January 2015 onwards, the tasks under the OPCAT national preventive mechanism are performed by the Commissioner for Fundamental Rights in person or by way of his authorised staff members. A separate department has been established for this task within the Office of the Commissioner for Fundamental Rights. If a visit to a place of detention requires special skills, for example translation, medical or psychological expertise, the Commissioner for Fundamental Rights may use the services of external experts on a one-off or regular basis in addition to the public officials among his staff.

The participants of the first site visit under the national preventive mechanism visited the rooms, equipment and amenities of the Asylum Detention Centre in Debrecen, which is used to detain asylum-seekers. They especially scrutinised the detention conditions of minors, including organised group activities. Members of the visit group examined the documents relevant to detention and treatment and interviewed detained foreigners as well as staff members under confidential conditions based on pre-written questionnaires.

The Commissioner for Fundamental Rights, Dr László Székely, also participated in the second visit under the national preventive mechanism, which was to the nursing home for psychiatric patients and persons with mental disabilities of the Debrecen therapeutic house (Debreceni Terápiás Ház). In addition to examining the documents relevant to detention and treatment, the national preventive mechanism inspected the living conditions of the persons living in the therapeutic house and conducted confidential interviews to collect information from those living or working there.

The third institution visited under the national preventive mechanism was the Reménysugár children's home in Debrecen. Participants visited the foster homes and the special children's home of the institution and observed group activities organised for the children, focusing primarily on the treatment of the children.

Summarising the experience from the visits and compiling the relevant reports is currently in progress.

Points of connection between children's rights and higher education in the Ombudsman's practice

Similarly to the previous legislation, the new Ombudsman act also requires the Commissioner for Fundamental Rights to pay special attention to the protection of children's rights in the course of his work, especially by conducting *ex officio* proceedings. Such special attention is due to persons participating in higher education application procedures and to students of higher education institutions.

Persons applying to higher education institutions and students of higher education institutions constitute a very varied group in terms of age. Pursuant to the UN Convention on the Rights of the Child, a child is a person who has not yet reached 18 years of age, except if such a person becomes an adult earlier pursuant to the laws applicable to him or her. Persons participating in higher education are typically above 18 years of age and most are therefore not considered children under the Convention. Students who have not yet reached 18 years of age — who, according to Hungarian statistics on education, comprise a small subgroup — are an exception. Additionally, a portion of the persons participating in application procedures are also minors. Consequently, all complaints about application procedures, tertiary vocational education or higher education concern children's rights. The state's increased protection duties, the provisions of Articles XVI(1) and XV(5) of the fundamental law are therefore applicable to these persons. Act XXXI of 1997 on the protection of children and guardianship administration defines a young adult as an adult who has not yet reached 24 years of age. The primary age group that higher education concerns is that of young adults between 18 and 24 years of age, who, in addition to being of concern for the system of child protection in some respects, may also be eligible for certain benefits, preferential treatment rules and special higher education-related rights. Several resolutions of the Constitutional Court have confirmed that the state's institutional protection duties also apply — albeit to a lesser extent — to young adults just past child age. These protection duties are even stronger where disabled higher education students are concerned. In this area, we find the most anomalies and deficiencies in the field of exemptions and reductions for these students. In the practice of the Commissioner for Fundamental Rights, non-compliant, incomplete or missing information in the course of studies in higher education institutions is an annually recurring problem with respect to the violation of the rights of young persons. On the other hand, the right to receive information gives guarantees with respect to the exercise of students' rights. As information in the institutions is often only provided orally, it is difficult to prove such violations of the law and therefore the injury caused cannot be remedied by the means available to the Ombudsman.

Limitations on the exercise of the right to receive information may cause especially grievous injury in the course of the application procedure, where admission requirements change frequently. This is because applying to a higher education institution is a decision, a choice made for life by young persons, which places a heavy burden — both financially and emotionally — on both them and their family. Submissions to the Commissioner of complaints about admission requirements have for years featured strongly in the course of the work of the Ombudsman. In these cases, the Commissioner provides comprehensive information that higher education, accessible on the basis of one's abilities, is provided to all, based on which persons with the appropriate abilities may conduct their higher education studies at the higher education institution of their choice. The requirement for appropriate abilities obviously allows the formulation of the criteria of appropriate abilities or admission requirements by legislation and by the higher education institutions. With respect to the right to education, it is the duty and right of the state to decide on the abilities that society needs to develop from public funds through higher education and which ability-related conditions need to be met in order for someone to participate in higher education of this type. In some cases, the Commissioner is contacted because a specific admission requirement is considered discriminatory. In such cases, the Ombudsman needs to emphasise that in the case of higher education institutions and with respect to entry and exit requirements, equal opportunities are safeguarded by the fact that the laws require everybody to have the same level of qualification for a given subject. The right to education is only violated if the state's decision puts unnecessary and disproportionate restrictions on the right to participate in higher education, for example it prevents persons with the appropriate abilities from participating in education or makes it impossible for them to do so. This means that arbitrary admission requirements that are at odds with the educational mission of the institutions and do not have the quality of education in mind are not allowed. Another typical issue in this field is the formal or substantive breach of the right to legal remedy. Over the course of the Ombudsman's work, the Commissioner also receives numerous questions concerning the financing of the higher education system. In these cases, it should be pointed out that while the fundamental law considers that financial support to persons participating in education is an important guarantee for the right to education, the legislator enjoys great freedom in designing the financing structure.

An important conclusion drawn from investigating the complaints regarding higher education is that being a young adult is a period of profound change in one's life. Persons of this age are biologically and socially adults, but their sense and acceptance of responsibility and their values are still fluid and uncertain in many respects. This is why it is also especially important to use the means available to the Ombudsman to provide support to persons in this age group when accessing higher education, for example raising awareness of the

rights of children and young persons is necessary with respect to child-aged applicants, students and young adults. The Commissioner strives to ensure that autonomous decision-making is important for someone's participation in higher education and that applicants and students are aware of their procedural rights and their rights to special protection and support, both over the course of the application procedure and during their higher education studies. Such knowledge is also important as embarking on higher education studies is a decision for life for young people, and their years spent in higher education are extremely decisive for beginning a life on their own, for supporting themselves in the future and for finding employment. However, people at this age are not yet fully independent, neither financially nor emotionally. This dual, transitional state — midway between childhood and adulthood — is expressed by certain components of a student's legal relationship: student loan, student ID, the right to seek legal remedy independently or the institution of student governments. For the reasons presented above, investigations concerning the system of higher education and the operation of higher education institutions are of exceptionally high importance during the Ombudsman's tenure. The importance of protecting the fundamental rights of children and young persons should be emphasised, taken into consideration and referred to at all times during these proceedings, and the points of connection between children's rights and higher education should also be pointed out.

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Romania

The Ombudsman's involvement in the establishment of the legal regime of infringement notices for failure to pay for the vignette, sent on paper to persons penalised for infringements, requesting the High Court of Cassation and Justice in terms of his duty to rule an appeal on points of law as regards inconsistent practice

In exercising his powers provided for in Article 514 *et seq*. of the Code of Civil Procedure, the Ombudsman notified the High Court of Cassation and Justice of the legal question concerning the interpretation of Article 17 of Government Order No 2/2001 on the legal regime of infringements and Law No 455/2001 on electronic signature in terms of the signature of the official examiner required for the legality of the infringement notice and for the infringements penalised by Government Order No 15/2002 on the application of the utilisation fee and the fee for crossing the national road network in Romania, as amended and supplemented.

In his request to the High Court of Cassation and Justice, the Ombudsman noted that the electronic signature of the official examiner, namely the National Company for Motorways and National Roads of Romania S.A., is likely to void the infringement notice concluded for the finding of infringements in Government Order No 15/2002, as amended and supplemented, for the following reasons.

According to Law No 455/2001 on electronic signature, republished:

• the document in electronic form is 'a collection of logically and operationally interrelated data in electronic form that reproduces letters, digits or any other meaningful characters in order to be read through software or any other similar technique', and the 'Electronic signature means data in electronic form, which are attached to or logically associated with other electronic data and which serve as a method of identification' (Article 4, points 2 and 3 of the concerned regulatory action).

The examination of Law No 455/2001, republished, shows that a document in electronic format bearing an extended electronic signature is assimilated into an electronic document under private signature, but it is strictly for electronic use.

Therefore, the electronic signature is specific to the documents generated and used electronically, which are set out in Article 1 of Law No 455/2001 on electronic signature, according to which 'This law establishes the legal regime of electronic signatures and of documents in electronic form, and the conditions for the provision of electronic signature certification'.

In addition, according to the laws on electronic signature, 'The document in electronic form that incorporates an electronic signature or has an electronic signature attached to or logically associated with it, based on a qualified certificate not suspended or not revoked at that time, and generated using a secure-signature-creation device, is assimilated, inasmuch as its requirements and effects are concerned, to a document under private signature'. However, the infringement notice has the legal nature of an administrative act, so an act of public law as it is not a document under private signature. Moreover, Government Order No 2/2001, as amended and supplemented, precedes Law No 455/2001, so it is understood that Government Order No 2/2001 does not refer to the electronic signing of infringement notices by official examiners.

Nothing in Law No 455/2001, republished, regulates the possibility of attaching the electronic signature to an infringement notice and a penalty for infringements or to another authentic document. It can be unambiguously concluded from the overall legislation on electronic signature that it applies exclusively to private legal relations.

In these circumstances, the Ombudsman considered that the provisions of the law on electronic signature are not applicable to infringements for the absence of a valid vignette.

As regards the infringements incriminating the act of movement without holding a valid vignette, which can also be found by approved technical means, the provisions of Government Order No 2/2001 on the legal regime of infringements, as amended and supplemented, apply, which is a regulatory action that requires the signing of infringement notices under the penalty of absolute nullity.

In this sense, Article 17 of Government Order No 2/2001 provides for 'The absence of entries as regards the full name and the position of the official examiner, the full name of the offender, and in the case of a legal person, the absence of its name and location, of the infringement and the date of the infringement, or if the signature of the official examiner invalidates the notice. Nullity may also be declared *ex officio*'.

If this is not the case, the infringement notices issued under Government Order No 15/2002, as amended and supplemented, are generated and signed electronically as they are not sent to offenders through an electronic system but on paper by mail, so it cannot be argued that the infringement notices that carry the electronic signature of the official examiner would meet the eligibility criteria provided for by Article 17 of Government Order No 2/2001, subject to the absolute nullity of the concluded infringement act.

In this situation, the Ombudsman noted that once the information is created and certified by electronic signature in the electronic environment, it is intended to be used exclusively in the electronic environment whereby it is unlawful to put them on paper to be submitted to the offenders.

By Decision No 6 of 16 February 2015, the High Court of Cassation and Justice upheld the appeal on points of law raised by the Ombudsman and stated that the infringement notices for the failure to pay the vignette, sent on paper to persons penalised for infringements, are null and void in the absence of the handwritten signature of the official examiner.

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Applicability of Council Directive 92/85/EEC in Romania

'When I took parental leave, I was working in a bank agency, a position that has since been dissolved. Two months before the end of my parental leave, my employer sent me a notice of dismissal on the grounds that the agency where I had been working was closed due to the lack of customers in the area. I was offered no alternative and no other job'.

In accordance with the international acts, with special reference to Article 10(2) of Council Directive 92/85/EEC of 19 October 1992, the Member States shall take necessary measures to prohibit the dismissal of pregnant workers and workers who have recently given birth or are breastfeeding, from early pregnancy until the end of maternity leave, except in special cases not connected with their condition, allowed by law and/or national practice and, where applicable, where the competent authority has given its consent.

According to Article 25(2) to (4) of Government Emergency Order No 111/2010 on parental leave and the monthly allowance, as amended and supplemented, the employer is forbidden to terminate the employment relationship or service in the case of an employee who is, as appropriate, on parental leave of up to 1 year or up to 2 years, or up to 3 years in the case of disabled children and in the case of an employee who is on insertion incentive payment. The aforementioned prohibition can be extended once by up to 6 months after the final return of the employee to the unit.

In other words, the provisions of Government Emergency Order No 111/2010 as specified in Article 25 of this regulatory action establish a special level of protection for the employee who was on maternity or parental leave for up to 2 years, compared with international provisions that allow their dismissal for reasons that are not in connection with pregnancy. The reasons why the Romanian legislator decided to this effect are of course intended for the protection of the employee's family status, namely of the minor child, trying to avoid the mother's loss of employment and the total deprivation of child-raising funds in the period immediately following their return from maternity or parental leave.

The prohibition of dismissal does not have the effect of creating immunity from disciplinary liability, namely a case of exemption if committing disciplinary misconduct. In fact, if the employer finds that the employee has committed serious disciplinary misconduct, it may be subject to another disciplinary action of those provided for by the Labour Code (demotion from a leadership position, reduction of the basic salary).

Basically, the protection law does not exempt the employee from disciplinary liability but it does however limit the ability of the employer to appreciate, meaning that the misconducts are so serious that they justify the measure of dismissal or the specific individualisation of the disciplinary measure applied, which is to be made only by reference to other disciplinary measures provided for by law.

However, if judicial reorganisation or bankruptcy of the employer occurs, the prohibition laid down by the legislature and set out above shall not apply.

In addition, according to Article 10(8) of Law No 202/2002 on the equality of opportunity and treatment between men and women, republished, upon the termination of the maternity or paternity leave with children aged up to 2 years, or 3 years in the case of a disabled child, the employee is entitled to return to the last job or to a similar job with equivalent working conditions and to benefit from any improvement of the working conditions to which s/he was entitled during his/her absence.

Furthermore, according to Article 76(3) of the single national collective labour agreement from 2011 to 2014, the period of at least 6 months after resumption of the activity is considered as the rehabilitation period following paid maternity leave and/or parental leave of up to 2 years, during which time the employee may not be dismissed on grounds of professional unsuitability as provided for by the Labour Code.

In other words, on the date of the employee's return from leave, the employer must make the same job, the same position in the company and the same salary available to him/her. The work contract shall be resumed in similar conditions. However, in normal circumstances, re-employment to another position or the amendment of the salary may also occur provided that the employee agrees to such proposals.

If the position for which the employee had been hired before starting the parental leave was terminated, the employer is obliged to provide another job within the company. If there is no such possibility or the employee does not accept the job offered, the employer must give a notice of dismissal of 20 working days, as well as severance pay.

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Sweden

Complaint against a social worker

In a petition to the Parliamentary Ombudsman (JO), Linda S. lodged a complaint against a social worker in the social services department of the municipality of Hultsfred. She stated as follows. The social worker searched for information about Linda S. and her family via the social worker's private Facebook page and through joint contacts with Linda S.'s children in order to be able to use it against them as 'threats, slander and blackmail' in their case for income support.

According to the Parliamentary Ombudsman, there are no formal obstacles to the social services in the context of an investigation on income support, obtaining generally available public information on the benefit claimant from the internet. Nor does the Parliamentary Ombudsman see any formal obstacles to this taking place without the claimant's consent. Although no consent is required, social services should make it known that information may be obtained or checked on the internet.

The fundamental principles applicable to the activities of social services must also be observed in the gathering of information from the internet. The basic premise is thus that the investigation must be undertaken in consultation with the individual. Furthermore, the investigation must be conducted with respect for the right of self-determination and privacy of the individual.

Against this background, social services should not, according to the Parliamentary Ombudsman, engage in a more or less general and routine search for information concerning an individual benefit claimant. Only if for some reason it is deemed necessary to check a piece of information provided by the individual should a search on the internet come into question. The search should thus have a definite purpose. This information added to the case, like all other information obtained, must be relevant to the administration of the case. It must be documented and communicated with the claimant before a decision is made on the case.

The Parliamentary Ombudsman further declares that there cannot be a question of the social services gathering or attempting to gather information from the internet which is not public, for example which is not available to everyone. Neither, obviously, should administrators and other public servants use private Facebook accounts or similar to gather information over the course of their work. The more detailed circumstances concerning the gathering of information in the reviewed case are unclear. However, the Parliamentary Ombudsman has not investigated the case further and has focused primarily on the fundamental issue of the right of the social welfare committee to obtain information from the internet. The Parliamentary Ombudsman therefore does not level any criticism at the authority for the information concerned having been added to the case.

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Turkey

The Ombudsman as the defender of the culture of rights

As is the case in Ombudsman institutions worldwide, the aim of the Turkish Ombudsman is to solve problems on the basis of a human rights and good governance approach, to increase individuals' satisfaction with the administration, to create a culture of rights in society and, above all, to ensure quick access to justice. Our institution conducts its activities in order to solve complaints that first and foremost concern the right to life, education and good administration on the basis of equal opportunity and with an eye to dialogue based on reconciliation. From this perspective, the Ombudsman conducts its mandate with an individual-focused attitude and is a defender of the culture of rights in the whole of society.

With this in mind and based on the Soma mine accident that caused deep sorrow in our country, the Ombudsman, in his first Special Report, examined the responsibility of the administration for the 'protection of the right to life'. On the basis of international implementation and science, he underlined that 'unsupervised bureaucratic dominance' is a threat to the service the state provides to the individual. The Ombudsman made some evaluations of and proposals to the administration in order to ensure that it functions fully and to enable it to regain individuals' trust. The Ombudsman shared his advice with Parliament and with the public. During the examination phase, discussions were held with the relevant administrations, NGOs, enterprise officers and survivors of the accident. While preparing the report, the universal values of human rights, national and international legislation, best practices and the case-law of the European Court of Human Rights were taken into account. In his report, the Ombudsman presented the expectations of society for an administration that is faithful to good administrative principles and respectful of the right to life. In doing so, he aimed to melt the rights of all parties, from the administration to civil society, in the same pot and thus give 'not same and equal, but equitable' responsibilities to everyone. In this way, the Ombudsman has contributed to the development of the culture of making use of one's rights in accordance with law and equity.

At the same time, the Ombudsman considers it essential not only to instil a culture of rights for 'now', but also to build it for the 'future' in order to fully root it in society. Accordingly, in order to reach children via tools appealing to their feelings and thoughts and pursuing their needs, a special website specifically for children was designed in cooperation with the United Nations Children's Fund (Unicef). Through this website, children are able to transmit their applications to the Ombudsman directly and without any oppression. In this way, the Ombudsman enables children to inform themselves of their rights through democratic means at an early age. The Ombudsman also contributes to the formation of a culture of claiming rights by the youngest individuals in society. In particular, the transmission of applications by children with disabilities via the website enables those people who bear the double vulnerability of being both disabled and children to make themselves heard.

The principle of equality in rights and freedoms in the context of the right to education was also placed on the agenda by the Ombudsman. The Ombudsman examined the loss of rights of non-Muslims who acquired a low number of points due to their inability to answer high school entrance exam questions about religious culture and moral knowledge. In his recommendation, the Ombudsman emphasised that, as a requirement of equal opportunity in education, each citizen should have the right to an education without any discrimination and no person, family or community should be privileged over others. With this single decision, the Ombudsman placed 'prevention of discrimination', 'utilisation of the right to education' and 'equal opportunity in education' at the centre of our lives.

The Ombudsman's examination of applications by citizens of other nationalities, without recourse to the principle of reciprocity, reaffirmed the awareness that a culture of rights is a universal value that cannot have any political borders. On this basis, an application by a Dutch citizen who has a child from his marriage with a Turkish woman and who lived in Turkey for a certain time was accepted. The applicant declared that following court proceedings between him and his wife in Ankara, Turkey, his wife was granted custody of the child. However, he also maintained that since he was not permitted to enter Turkey, he could not attend the court and make use of his right to see his child. He asked for the Ombudsman's assistance to help him secure an entry permit. The Ombudsman decided that the situation is contrary to the European Convention on Human Rights, to the Turkish Constitution and to the UN Children's Rights Convention, which clarifies that, except in extraordinary cases, a child has the right to have regular relations with both his mother and his father and to have direct meetings with both of them. It stipulates that the signatory parties must respect this right. In the advisory decision, it was also underscored that the right to a fair trial and to respect for family life, which are guaranteed by both national and international legislation, had been violated. Proceedings to enable the granting of a visa, residence permit, etc., should therefore be instituted in order to enable the utilisation of these rights and to provide relief in a reasonable period of time.

The Ombudsman, as a voice of the conscience of the public and mirror of the administration, is a structure that reunites both administration and society with respect to the notions of 'human' and 'rights'. In these very early years of its establishment, the Turkish Ombudsman will endeavour to be the greatest promoter of embedding this culture within society in the future. This will involve a long journey.

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Seminars and meetings

Italy

Study convention with the presentation on 19 October 2014 of the first national report on the Ombudsman and developments with the Chamber agenda of 5 November 2014

On 2 October 2014, a convention entitled 'The Ombudsman in Italy — First Annual Report' was held in the Chamber of Deputies, in the Aldo Moro room in Palazzo Montecitorio. This was the presentation of the first report drawn up by the national coordination body of ombudsmen of the regions and autonomous provinces on the role of the Ombudsman, which is an important instrument for the out-of-court protection of citizens against local authorities and public service operators.

The study convention was chaired by Bruno Tabacci, Chair of the Parliamentary Commission for Simplification, who recalled how 'the début of the public advocacy coordination body today in parliament has gone some way to compensating for the long wait for an ad hoc law, which has taken 17 years as it was promised in 1997'. Lucia Franchini went on to emphasise that the Ombudsman is a useful tool in the process of building democratic quality, 'but a framework law would be required if it is to be used to the full extent, however, at present there is no such law'.

The European Ombudsman, Emily O'Reilly, spoke at the convention and recalled the troubled history of the development of public advocacy in Italy, expressing her hopes that this 'appears to be the right time, particularly considering that Prime Minister Renzi has repeatedly committed his government to significant reforms. I believe and I suggest, with the greatest respect, that the flexibility of the institution of the Ombudsman means that it could usefully be added to the package of reforms in the Prime Minister's programme'. Another speaker was Clodovaldo Ruffato, representing the chair of the regional legislative assembly conference of chairpersons, which houses the coordination body, and the convention was concluded by Renato Balduzzi, Chair of the Parliamentary Commission for Regional Matters, who explained that 'the difficulties encountered by the office of the Ombudsman mainly arise out of the fact that Italians struggle to acknowledge a 'controller' who is never well accepted unless he or she is an integral part of the institutions or of the local authority'.

In addition to the European Ombudsman, the convention was also attended by Rafael Ribó, representing the International Ombudsman Institute, and Igli Totozani, representing the Mediterranean Ombudsman Association, while the European Ombudsman Institute sent its good wishes to the venture.

The commitment made by Member of Parliament Bruno Tabacci was followed by a presentation by him, on 5 November 2014, of the agenda endorsed by the government during conversion of the decree law on the reform of the justice system in which, recalling the study convention of 2 October 2014, the government undertook to 'support initiatives for the reform of civil justice with special initiatives designed to promote the institution of the Ombudsman for defusing disputes between the public and local authorities, strengthening functions, powers and areas of knowledge, with particular reference to the role of guaranteeing and safeguarding essential levels of performance regarding civil and social rights' (Agenda 9/02681/127).

It is hoped that adoption of the agenda will be the first step toward a legal reform that ultimately involves Italian public advocacy as a whole.

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Ombudsman of Tuscany

Looking beyond: the Ombudsman and 40 years of the institution in Tuscany at the formal session of the regional council on 30 November 2014

On 30 November 1786, Tuscany drew up a new penal code which called for the abolition of the death penalty for the first time in the world. The Tuscany Festival, held on 30 November, wished to remember this extraordinary event and affirm the commitment to the promotion of human rights, peace and justice as an intrinsic part of the Tuscan identity.

The festival was celebrated with a series of initiatives and a formal session of the regional council.

This year, the theme of the festival was 'looking beyond' and the formal session was dedicated to civil defence. A total of 40 years have passed since the first regional law on the Ombudsman (which was provided for in the 1972 statute), Regional Law 8/74, and in 2015, 40 years will have passed since the first Ombudsman was established. Tuscany began its discussion on fundamental rights, beginning by celebrating 40 years of the Ombudsman. In addition to the chair of the council and of the board, the Regional Ombudsman, Lucia Franchini, and Professor Nikiforos Diamandouros took part in the debate.

The Chair of the council, Alberto Monaci, recalled the experience of the Ombudsman with a view to calling for improved relationships between the public and institutions in the light of what we can learn from the experience in Europe, where the culture of the Ombudsman is well-rooted. Looking beyond is bound to involve a Community dimension, 'which is our future and not a life sentence', stated the Chair, recalling the words of Alcide De Gasperi in his speech to the European Parliamentary conference on 21 April 1954 when he spoke of our 'European homeland'. 'We wish to look at that context', stated Monaci, to better organise the ability to safeguard citizens in their dealings with the local authority and the institutions. Enrico Rossi also spoke in favour of the Office of the Ombudsman and its presence in Italy, while in her speech, the Ombudsman, Lucia Franchini, recalled how 'the Office of the Ombudsman is still evolving and we will definitely need a national framework law to strengthen even the most virtuous experiences at local level and reinforce the independence of the institution, which is expressly provided for by resolutions of the United Nations, the Council of Europe and other organisations that describe what is required of the Ombudsman and that our Regional Law 19/2009 which, as you know, specifically calls for in Article 1, being the only law in Italy to do so. I emphasise that 'independence' is not separation or 'countervailing power'. If anything, it is quite the contrary, it is wedded to 'responsibility' and 'discretion' when designed to foster the relationship between citizens and local authority and public services, and not as an exclusively individual interpretation of the mandate by the Ombudsman.

Independence must be linked to functions of self-protection, control and defence of citizens' rights, and at the same time of mediation in resolving disputes between citizens and public services, guaranteeing the impartiality and independence of the local authority and even acting as a third party to aid and encourage the activity of the local authority in reconciling interests and rights, objectives and practices.

The Ombudsman, as an instrument of mediation and a guarantee of listening, reflection and effective satisfaction of rights, of legitimate individual and collective or general interests and of needs and situations where weak individuals require protection and where there is still no level of official acceptance, despite serious expectations, is and can be in this light a crucial driving force toward a new culture of social cohesion, participation, joint responsibility and sharing.'

The meeting was closed with a speech by Professor Nikiforos Diamandouros, European Ombudsman until October 2013, who listed the ideal qualities of an Ombudsman, recalling how the experience of the Ombudsman in Tuscany 'spearheads the movement in all of Italy. The office of the Ombudsman is the most developed here and must act as a driving force for the establishment of a national Ombudsman. (…) Italy is very far behind in this area, but this delay could become an advantage if our country is able to find the momentum to take a leap toward into the future, benefiting from the experiences and problems faced to date'.

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