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“Democracy Promotion and Ombudsman”

Introduction

The ombudsman institution in Poland was founded in 1988. This year Poland is celebrating 25 years of freedom, thanks to the 1989 elections – the first democratic and free elections after the Second World War. And although our transition is still an ongoing process we are faced with the expectation to share our experience and thus contribute to the strengthening of democratic institutions in other countries. This is simultaneously a challenge and an opportunity. In this fashion we appear, so to speak, as a chameleon, for 25 years is a period long enough to gather experience, but also still too short to act as the oracle of human rights.

This dilemma fits the daily work of the Polish ombudsman and as such will be the subject of my presentation.

One of the means of increasing the standards and supporting the transformation processes in transition countries is the exchange of best practices and knowledge related to the protection and promotion of human rights.

Since 2009 the Polish and the French ombudsmen have been participating in the project “Cooperation between ombudsmen from Eastern Partnership (EP) countries.” Its main long-term objectives aim at supporting partner-institutions from Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine in their efforts to:

1. strengthen their participation in building a democratic rule-of-law
2. implement broad mechanisms of respecting the rights of individuals – not only through the ombudsman institution, but also via other public administration bodies and NGOs
3. support the justice system

In spite of differences in structure, tasks and scope of individual ombudsman institutions, the project proved that there is a number of common problems, such as the need of staff training, improving services for citizens or developing and strengthening the protection mechanisms of overlapping human rights agendas.

Certain methods could be identified, which served as a joint response to various institutional needs. These were:

1. training courses and workshops
2. promoting the European Code of Good Administrative Behavior
3. monitoring the situation of prisoners
4. analyzing the national legislation with reference to European standards in the protection of rights of individuals and finally -
5. appointing contact officers responsible for overseeing the implementation of developed mechanisms

A group of challenges was also identified in the course of the project, which need to be addressed in future projects. Some of these were:

1. communication between offices, especially concerning the participation in joint activities
2. qualifications of participants at different levels
3. heterogeneous methods of presenting experiences

Last year, during the Eastern Partnership seminar held in Kyiv participants discussed, *inter alia*, the crossing of mandates of ombudsmen and special or secret services and its impact on human rights. Other topics tackled within this framework referred to the right to access court, especially in relation with judgments of the European Court of Human Rights concerning this issue. Poland had to react to a growing number of cases lost before the Tribunal due to complaints about a prolonged legal procedure before court.

The discussion concerning an improved access to justice also included appropriate educational activities. An area of future cooperation within the framework of the Eastern Partnership could be undertaking joint efforts in the field of informing complainants about how to properly lodge a complaint to the European Court of Human Rights or how to counteract the prolonged court procedures.

Also, the issues of freedom of expression and freedom of assembly were discussed during a few seminars. In the future particular attention in this respect should be paid to case-law of the Strasbourg court, which shows how so called political “hate speech” statements should be treated.

A separate field of cooperation between ombudsman offices lies in the sphere of National Preventive Mechanisms operating under OPCAT. It goes without saying, that the importance of preventing torture and other inhumane treatment in a democratic state is of utmost importance.

Within the last 12 months the Polish NPM hosted delegations from China, Turkey and a number of EU countries sharing experience in this area. The number of European ombudsmen acting as NPM is growing and I am glad that Mr. Normantas, the ombudsman of Lithuania joined the club recently and will be in Warsaw soon. I am looking forward to our close collaboration.

It is important to say, that thanks to the possibility of meeting with other NPM officers, analyzing common problems is easier and introducing an improved methodology of work more effective.

However, before entering into any cooperation an ombudsman has to present a clear mandate of his actions, e.g. whether there are any “sectoral” ombudsman-institutions in the country, which might be of interest for the partner institution. Possible examples are ombudsmen for the protection of the rights of children, military personnel or social affairs.

During the Turkish Chief Ombudsman’s study visit to Poland, Mr Mehmet Ömeroğlu showed much interest in the possibilities of legal protection of the rights of children. In

the Polish case, the ombudsman cooperates with the children's ombudsman, who is also an independent public authority, however with a specialized mandate. In this sphere (according to constitutional provisions), my office cooperates, shares information, but has also individual means of proceeding. On various occasions I also had the opportunity to support the actions of leading NGOs dealing with children's rights. The role of these organizations in the creation of the so-called "rooms of friendly interrogation" for minor victims (under the age of 15) or crisis intervention centres offering support to victims of domestic violence is outstanding and was very helpful in the process of improving the protection of rights of these groups. One of the most experienced NGOs in this field in Poland is the "Nobody's Children Foundation".

Also other statutory bodies, like the Commissioner for Patients' Rights or the Insurance Ombudsman need to be taken into account. In the Polish context they are not "real" ombudsmen because they are included in the structures of the executive, however, they perform significant representative tasks which have to be considered when presenting one's mandate and the overall country situation to a partner-institution. This has to be done without prejudice to any possible institutional solutions and with respect to the framework in which the partner institution is operating at home.

Another important feature of our experience-sharing refers to the regional or local ombudsman competence. Some of our partners look into the pros and cons of having regional branches or share their mandate with independent regional ombudsmen. The Polish case, where there is a one-person office at the central level with its three local branches – in Gdańsk, Katowice and Wrocław facilitates, in my opinion, the personal access to the institution and improves the institution's knowledge of the local environment, its inhabitants and their troubles. An additional tool for close contacts with claimants is provided by customer contact points, which can be found in 7 other cities across Poland.

Subsequently, another issue deserving attention is the relation of the ombudsman towards local self-government. In our case the ombudsman also serves as a controlling body of local administration governments at all levels. In fact in 2013 complaints from citizens against the activities of municipalities and provinces were amongst the most frequent ones.

During my recent contacts with Ukrainian representatives, the relationship between local and central authorities – not only based on ombudsman activity – were a priority. With regard to this dynamic, I am glad to hear, that UNDP is trying to support Ukraine by launching a study project, which focuses on analysing best scenarios for a strong central and local ombudsman activity.

Many of my European state-level counterparts do cooperate with regional or even city-level ombudsmen. This is not the case for Poland since we have no local ombudsmen. And although there is a growing number of city-level representatives e.g. for people with disabilities, they do not have the independent mandate to perform control functions over their local authorities. This seems an important message to many of my colleagues, who visit us Poland.

Another issue which was subject of our cooperation, for example within the Eastern Partnership framework, was the promotion of rules of good administrative behavior. The Polish constitution does not include any explicit provision establishing the citizens' right to good administration. However, this right stems from a number of constitutional provisions which follow from and develop the supreme principle of a democratic state ruled by law.

During the 2012 Eastern Partnership seminar we looked at the role of the ombudsman in reinforcing good governance and human rights and discussed major challenges to good administrative behaviour. Participants from all EP countries confronted their experiences and shared best practices. Here I would like to underline one single most important standard we are emphasizing and sustaining in following EP seminars: these meetings do not serve as a means of promoting best solutions in direction only. On the contrary, the basic rule is that each national ombudsman institution focuses on its own experience without judging the others. If, in the course of a seminar, experts manage to find similarities and possible ways of bridging differences, which could pave the way for a more effective protection of human rights in their own country, then we may lean back with satisfaction. Experience has shown many times, that good examples flow in both directions and the Polish ombudsman was able to profit from the experiences of its EP partner institutions on various occasions.

Independence of the ombudsman

A key issue addressed during almost every meeting with fellow ombudsmen is the necessary institutional independence. It seems however, that this fragile feature can be under threat even in countries, where a human rights defender looks back at impressive and long performances of his predecessors. Especially in times of crisis this fundamental asset needs to be preserved and – when needed – stood for by the whole ombudsman community. A good example of international ombudsman solidarity is the situation of one of our colleagues from Central Europe, who in 2013 had to face challenging difficulties in presenting a report before parliament concerning the situation of a minority group. I believe that partly thanks to a decisive and unified statement by the IOI Europe, which emphasised the importance of this democratic control body and its role in strengthening human rights standards, this year's report presentation went well.

It deserves special attention, that a strong independent mandate can safeguard any future attempts by governments to diminish or limit its role in the state and society. Therefore I put a special emphasis on this issue, whenever "younger" institutions ask for advice. One of the most recent opportunities of doing so was during two visits paid by colleagues from Turkey. In my opinion the institutional independence in a political system can be tested by the ombudsman's nature of his or her annual appearance before parliament: does an ombudsman participate in a question-and-answer session with MPs which is subsequently put under vote, then his ability to speak *the truth to power* is not as strong as required by our standards; but when she or he is delivering mainly a report about the current human rights situation in the country together with an information about the office's actions, which is followed by a discussion with MPs, then those standards are safe at least for a period of time.

In the Polish case the constitution provides for a special position of the Human Rights Defender, guaranteeing its independence and impartiality from other state authorities. The Defender reports only to the parliament and only on conditions laid down in the act. That is why the constitution states that the ombudsman cannot be a member of a political party or a trade union and cannot perform activities irreconcilable with the activity of the ombudsman's office. The constitution only allows the ombudsman to hold an academic university post. The Defender's term of office is five years, a year longer than that of the Parliament, which means that the Parliament in a given composition cannot normally appoint more than one ombudsman. The function of the Human Rights Defender cannot be performed by the same person for longer than two terms of office, a provision also standing for "fresh" ideas.

Other procedural legal measures at the ombudsman's disposal stand for his/her independence too. In general, the Defender may request immediate access to information and documents and demand explanation concerning its cases. If systemic violations of the rights of an individual are identified, the Defender may submit petitions concerning specific problems. The Defender does not have any legislative powers, but may however encourage some legislative initiatives.

Of course, guaranteeing this quality is also, or should I rather say is strongly combined with adequate resources. The budget of the Office of the Human Rights Defender is covered by the central budget. Unfortunately, after accepting in 2008 the function of the National Preventive Mechanism under OPCAT, no additional budget allocation was made by the finance minister. This resulted in an unsatisfactory implementation of this international agreement, under which Poland promised to launch a system of regular controls of places of detention. Additional new tasks, for example the observance of equal treatment were secured in a better way. However, my office has still to suffer under budget cuts.

We are probably in most if not all cases financially dependent. It needs to be stressed though, that it is worth fighting for a stable and predictable budgetary situation, whenever a young ombudsman institution is being introduced in a state. In cases of new responsibilities with which an institution is entrusted and which almost always requires additional, significant resources, we all should bear in mind, that pressing for adequate financial measures might be more effective, when an ombudsperson uses its institution's social authority and cooperates closely with civil society. For it is often NGOs, which care strongly for effective control mechanisms in the society.

Conclusions

There are many topics in the scope of interest of ombudsmen, which when compared between countries show similarities running across cultures, religions and languages. Priorities which I have chosen for my mandate range from the rights of people with disabilities, over the rights of the elderly, minorities up to the economic and labour situation of young members of society. These groups, often referred to as being defavourized, raise concerns in most of the countries our office which has been cooperating with. The protection of their rights is not always an easy task and may well begin with consciousness-raising campaigns, which I also had to promote in Poland. We often see potential risks concerning for example the health situation of a maturing

society. But to start thinking about it in complex and policy terms is challenging and time-consuming. However, when meeting ombudsmen with less experience, we quickly and easily found a common ground and reciprocal understanding for the senior agenda. This comes partly from the fact, that young democratic societies often cherish less individualistic and more family-based attitudes towards and within their societies. There, people of age are respected, taken care of by their own families, through which not only their children can sustain a life-long emotional tie, but also their grandchildren learn how to understand that the elderly are essential and immanent members of the society. This case also proves, that experience-sharing always requires open-mindedness and certainly flows in both directions.

Remaining flexible in our cooperation with other ombudsman institutions offers also a certain freshness in applying new solutions to old problems. Recently I have heard of an initiative from one of Poland's eastern neighbors, where – among others – homelessness and migration are currently growing rapidly. It was proposed to introduce – due to lacking administrative resources – an internet database helping to register and locate cases of people suffering from the dire conditions. I would like to look into details of such a system, especially since it is used on-line and could help ease some administrative annoyances faced by Polish citizens.

Sharing best practices and showing one's own weak and strong sides, the things we are proud of but also irregularities needing improvement, should be, in my view, an important element of an ombudsman's activity. It is through underlining our mandates, our political impartiality and the trust given us by societies, that we strengthen the universal ombudsman mission. Of course this mission demands, that we stay patient and conscious that the establishment of an ombudsman-institution as one of the pillars of a democratic society takes time, sometimes even years or decades. Rome was not built in a day. Not all countries can call themselves "Sweden", not everyone can look back at centuries of experience when it comes to protecting the rights of citizens. Poland is in its 26th year of gaining experience in this area and through the eyes of an ombudsman. In this period we committed some grave mistakes: from the beginning not sufficient means were used to promote the institution society-wide. And although a threshold of 70 thousand claims annually proves that we are considered by citizens as a means of support in difficult legal or administrative queries, I think that still much has to be done to raise the level of our recognizability in society. I realized this need during my office's regular TV presence, when we discuss burning issues from our every-day activity and viewers and listeners tune in to complain that they did not know about the possibilities to act through the ombudsman. This shows that we still have to invest more time, staff and – *last but not least* – financial resources to increase our effective presence.

This presence is significant, because – as we all know – through it an effective ombudsman can safeguard the citizen's right to good administration. Its principles are fundamental to a democratic state and as such the establishment of an ombudsman by EU-candidate countries remains an important condition in the membership context. This gives older ombudsman-institutions an excellent impact not only in their cooperation with future EU-members but also with important countries from outside this group. The European Ombudsman has a significant mandate in this area. That is why I believe that the Code of Good Administrative Behavior has such a tremendous meaning for our

community. It is one of the benchmarks which will project European standards of protecting citizens' rights and thus bridge the relationship between the citizen, the ombudsman and the state.

Thank you for your attention!

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