

The Institution of the Ombudsman in the Former Communist Countries

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Introduction

The ombudsman tradition originated in Sweden in 1809 and has spread throughout the world in less than two hundred years. An ombudsman is a public official that offers people an opportunity to have their complaints heard, evaluated, and investigated by a neutral and independent body, and offers recommendations to the involved parties. The ombudsman plays an important role for strengthening democratic governance, rule of law, and civil society.

In this paper, I focus on the ombudsmen office in the former communist countries: new democracies in East-Central Europe and Central Asia. These countries share a history of authoritarian rule, and their transition to democracy and adoption of the ombudsman concept began at relatively the same time. In those countries, legal order is not yet complete and stable, and state bodies operate unsatisfactorily in terms of effectiveness and of obedience to law. Therefore, the main function of the ombudsmen is expressed as the non-judicial protection of human rights against public administration.

It is difficult to evaluate the results of each specific ombudsman office in a short period of time. The contribution of the ombudsman to democracy building must be based on a long-time loyal service to the public and commitment to the democratic rule of law. However, the young ombudsmen institutions in the former Communist countries are working desperately to contribute to the consolidation of democracy in their countries.

The evidence and examples of the ombudsmanship used in this paper are taken from different countries' practices because their achievements and problems were quite common due to their authoritarian past. In order to evaluate the role of the ombudsman in post-communist countries, I primarily looked to academic literature, legal texts, annual

reports, mass media, and the Internet sources along with reports, papers, speeches, interviews and press releases by the ombudsmen.

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I am sure that the IFES will make a strong contribution a lot in the future consolidation of the ombudsman in the former Communist countries.

I. The Ombudsman and Democracy

I. 1. The Ombudsman Concept

The word “ombudsman” is of Swedish origin and means “representative.” According to the Columbia Encyclopedia, “as a government agent serving as an intermediary between citizens and the government bureaucracy, the ombudsman is usually independent, impartial, universally accessible, and empowered only to recommend.”¹ More clearly, the American Bar Association states that “the ombudsman is an office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports.”² Hence, the ombudsman’s influence is solely based upon the independence, impartiality, objectivity, credibility, competence, and prestige of the office, not on his legislative or executive power.

The ombudsman is either appointed by the head of the state, or elected by the parliament for between 4-8 years. Since countries have different systems of government and legislation, the functions and power of ombudsmen can be varied in different countries.

As Donald Rowat (1965 and 1985)³ describes, there are two major models of the ombudsmen in the world. The first model is based upon the Swedish (est. 1809) and Finnish (est. 1919) ombudsmen who are called the “classic ombudsmen.” This model allows ombudsmen to have a very broad mandate and strong powers. The mandate comprises not only the whole public administration, state and municipal, but also the

supervision of the procedural and administrative activities of the courts. The classic ombudsman also has the power to prosecute or decide that a civil servant should be prosecuted before a court of law for criminal offences. This option is used only a few times each year, but it gives more strength to the remarks and opinions that the ombudsman makes public.

The second model is the Danish (est. 1953) version which is concentrated only on public administration, leaving out the judiciary from its mandate. This model focuses especially on problems in the activities of public management. The Danish model is the most widely practiced in the world.

Also, the ombudsman institution can be divided into models depending on their mode of functioning: reactive and proactive ombudsman. The reactive ombudsman waits for complaints and acts on issues or concerns that have been brought forward. The proactive ombudsman seeks out matters of concern, undertakes inspections and initiates investigations without prompting. For example, the ombudsman in the UK is considered as reactive, while the one in Sweden keeps a watchful eye on the public administration and takes proactive measures to ensure that standards are maintained.

However, not all countries with this type of national office use the word “ombudsman.” The ombudsman is called a ‘commissioner’ in the UK and in many other Anglophone countries, ‘mediateur’ in France, ‘mediateur’ or ‘protecteur’ in other Francophone African countries, and ‘defensor’ in most of the Spanish speaking countries.

Although the ombudsman tradition traces back to the 18th century, it has intensively spread worldwide since the 1950s. In the last half of this century, not only has the number of ombudsmen worldwide increased, but also the concept of the office been

enriched with new democratic principles and contents. Today, the ombudsman can be tied to other domestic and international institutions as well as to the national government and parliament.

Many countries have ombudsman offices not only at the national government level, but also at the regional, provincial, state, and municipal levels. There are institutions that have their own ombudsmen and countries that have a number of specialized ombudsmen for the sectors such as healthcare, banking, and finance. (Appendix 1) For example, in the United States the term ombudsman has been used more widely to describe any mechanism adopted by private organizations (e.g., large business corporations, hospitals, and universities) as well as by the government to investigate complaints of administrative abuses. Moreover, since 1965, when the first non-governmental organization adopted the ombudsman institution in Canada, hundreds of civil society organizations in the world have adopted this concept.

There is an increasing tendency to combine the traditional function of the ombudsman as defender of citizens against administrative abuses with the role of the human rights supervision. According to Jorge Santistevan, former Peruvian Defensor del Pueblo (1996-2001) and the Vice President of the International Ombudsman Institute - (2000), the inclusion of the human rights protection into the ombudsman duties, which began under the influence of the Spanish Constitution of 1978, is a hybrid model of the Scandinavian and European ombudsmen.⁴ Today, multiple ombudsman institutions are named as the National Commission of Human Rights (Mexico), the Counsel of Human Rights (Guatemala), the Human Rights Ombudsman (Slovenia), the Office of Civil Rights Protector (Poland), etc.

I.2. The Relationship between the Ombudsman and Democracy

According to Samuel Huntington, there have been three waves of democracy in the world. Subsequently, each wave of democracy has given birth to many ombudsmen. It denotes the inseparability of the ombudsman concept from democratic values. However, as Richard Sklar described in “Developmental Democracy” (1987), “the relevance of this idea to the third world countries has been doubted by analysts, who contend that it presupposes a stable constitutional order, a social ethos of civic responsibility, and a tolerant political culture.” By 1983, “studies of their performance reveal unanticipated adaptations of a remarkably flexible institution that invariably enhances freedom and democracy despite the absence of the presumed cultural prerequisites for its success.”⁵ The ombudsman survived successfully first in newly independent states in Africa and Asia and then in states emerging from a period of authoritarian rule in Latin America and East-Central Europe. According to the recent data of the International Ombudsman Institute, by 2001, the ombudsman office at the national level of government exists in approximately 110 countries around the globe, a significant increase from 21 in 1983 and 40 countries in 1998.⁶

As one of the most efficient instruments for the protection of citizens' rights from a poor state administration, the ombudsman helps pave the way for building a law-abiding democratic state. It has been recognized that the ombudsman is an influential body for increasing the accountability and transparency of public administration. Since the beginning of the 1980s, the state system all over the world has been subjected to downsizing. There was a need for countries to increase the productivity of public sector, so some countries privatized many organizations in the public administration, and many

duties of the government were contracted out to private entities. However, in spite of its close association with government bureaucracy, the ombudsman concept is enjoying a renewed popularity. Several international institutions including the United Nations, the World Bank, and the European Union, in addition to supporting the adoption of ombudsman offices at the national level, have created their own ombudsman offices. Therefore, the office of the ombudsman will continue not only at the national level, but also “emerging as a central part of global governance in the next millennium.”⁷

The other important contribution of the ombudsman in strengthening rule of law is made through defending human rights. There is a common understanding that in a democracy, human rights are guaranteed by the constitution of a state and protected by the judiciary. However, in new democracies, it is vital to have a non- or quasi-judicial system of human rights supervision due to the malpractice of human rights protection in previously non-democratic regimes. According to Philip Giddings et al. (2000), “human rights jurisdiction” is a feature of the ombudsman institution in Spain, Portugal, Ghana, Malawi and some other African countries, and in some states formerly controlled by the Soviet Union such as Lithuania, Georgia, Poland, Hungary, and Slovenia.⁸

The ombudsman is a civil society defender as well. It interacts closely with civil society and strengthens groups and the principles of pluralism.

II. The Ombudsman Institutions in the Former Communist Countries

II.1 Overview of the Ombudsman Institutions in the Former Communist Countries

In the nineties, the democratic movement of the 1970-80s was suddenly joined by a stream of countries from East-Central Europe and Central Asia. This was marked by the collapse of the communism and gave birth to some thirty new democracies. As mentioned previously, according to world practice, most new democracies build ombudsman offices. The reason is that “the public comes first in a democracy.”⁹ Government should serve the public much better than the previous dictatorship regime. Consequently, one of the first steps taken by countries transition, in order to build democracy and rule of law, is to impose legislative and institutional reforms. One such measure was the establishment of the ombudsman institution, a mechanism for human rights defense with a strong emphasis on the principles of good governance. The first country which established an ombudsman institution within the former Soviet bloc was Poland. The office was created in 1988 during communist rule for investigating violations by the administration of the law and principles of community life and social justice. As a result of this research, about twenty ombudsman institutions in the former communist bloc are counted in 2002. Also, several countries are preparing to create their ombudsman offices. (Appendix 2)

Most of the ombudsman institutions in the bloc are created under the status of human rights commission. The reasons are: *first*, the protection of human rights is important to successful transition; *second*, the essential characteristics for ombudsman institutions are similar to those of national human rights commissions or offices; and *third*, human rights commissions can exercise more authority than ombudsmen or in

other words, “while many human rights institutions may issue some sort of binding order, most ombudsman institutions still may only make recommendations;”¹⁰ Moreover, some research and training institutions were established. The Institute of Human Rights was founded in Auschwitz, Poland in 2001. As Dr. Juliana Pilon from the Washington-based International Foundation for Election Systems said, “this historic town of unspeakable tragedy was the right place to build this university.”¹¹ The Institute of International Relations in Moscow (MGIMO) became the first university ombudsman institution in the NIS.

Although all ombudsman institutions in the former communist countries are young, they can be divided into the following four groups depending on their length of service and achievements. (Appendix 1)

1. Leading ombudsman institutions which can serve as models for other institutions in the former communist bloc: Poland (1988), Estonia (1992), Slovenia (1994), Lithuania (1994), and Hungary (1995).
2. Developing ombudsman institutions which are attempting to consolidate their positive image: Croatia (1993), Bosnia and Herzegovina (1995), Latvia (1996), Romania (1997), Macedonia (1997), Uzbekistan (1997), Russia (1998), Ukraine (1998), and Albania (1999).
3. Infant ombudsman institutions that were created in the last two years: Kosovo (2000), Georgia (2001), Slovak (2002), and Azerbaijan (2002).
4. Yet-to-be born ombudsman institutions laws on which were approved, but ombudsmen are not appointed yet: Kyrgyz Republic and Serbia.

The ombudsman institutions in the first group are more mature than those in other emerging democracies. They have already survived the initial difficulties of new offices such as bad public relations, staff inexperience, and material shortage. The first country to appoint its ombudsman, Poland, has had three national ombudsmen to date. They have distributed the stress of their work in different ways depending on the development levels of their institutions. According to Prof. Adam Zieliński, the current Polish Ombudsman, “Prof. Ewa Łętowska started out by teaching us the basic rules of a state governed by law. At the start of her term, there was a major political rights problem. The next ombudsman, Prof. Tadeusz Zieliński, defended social rights and implemented social justice in the difficult first years of Poland's free market system. I was destined to take over operations under more normal conditions.”¹²

In 1992, Estonia created the unique precedent of joining the ombudsman's duties with the duties of the legal chancellor based on the country's institutional tradition. The institution of Legal Chancellor was established in Estonia in 1938 following the example of Scandinavian countries. But the office of Legal Chancellor was liquidated in 1940, after the occupation of Estonia by the Soviet Union. The first Slovenian Human Rights Ombudsman was appointed in 1994. Hungary has three ombudsmen: the Parliamentary Commissioner for Civil Rights, Data Protection and Freedom of Information, and for the National and Ethnic Minorities Rights. Lithuania has five Seimasⁱ Ombudsmen.

The ombudsman institutions in Poland, Estonia, Slovenia, Lithuania, and Hungary are called ‘leaders’ not only due to their length of service, but also due to their remarkable achievements in the protection of civil and political rights in their respective

ⁱ Seimas means parliament.

countries.ⁱⁱ Indeed, the experience of the leading countries such as Poland and Hungary encouraged the other countries undergoing the process of democratic reform to establish the ombudsmen in order to fill the gap in the relationship between the state authorities and the people.

Ombudsman Offices belonging to the second group are experiencing the same difficulties with the offices of Prof. Ewa Łętowska and Tadeusz Zieliński from Poland. Some ombudsmen, such as the Russian and Ukrainian ones, are going through more complicated problems as their countries did not have a similar starting point as Poland in terms of politics, economics, or in terms of civil society. The most unusual ombudsman is the Ombudsman of BiH. Due to the republic's sovereignty status, the Commission of Human Rights consisting of the Ombudsman Service and a Human Rights Chamber was created by the 1995 Dayton peace agreement. The ombudsman is appointed by the President of the Organization for European Security Cooperation (OSCE) after consultations with the parties. Likewise, the ombudsman cannot be a citizen of BiH. The current ombudsman is a Swiss citizen.

The infant offices are young institutions, the heads of which were appointed in the last couple of years. One of them, the Ombudsman of Azerbaijan, was appointed on July 3, 2002. Those institutions are working on their visibility and user awareness, and the building of a set of positive precedents as well.

The Kyrgyz and Serbian ombudsman offices fall under the category of yet-to-be born institutions. The Kyrgyz Parliament approved a bill on ombudsman written in

ⁱⁱ There were countries such as Croatia and BiH which appointed their ombudsman more than half dozen years ago as well as the leading countries did. However, according to the opinion of some ombudsmanship experts including Dragon Milkov, law professor from the University of Novi Sad, Yugoslavia, the work of the Croatian ombudsman is "still unnoticeable," and the work of the Ombudsman of BiH is "illusionary" due to circumstances of that country.

seventeen points on March 20, 2001. However, an ombudsman will be elected in November of this year. The Serbian Ombudsman has not been appointed yet, even though the government had approved an ombudsman bill on May 9, 2002.

There are countries in the former communist bloc which were not listed in any group: Belarus, Bulgaria, the Federal Republic of Yugoslavia, Armenia, Mongolia, Kazakhstan, and Turkmenistan. In most of those countries, the idea of building an ombudsman office is in “embryonic” stage. It has been almost six years, since the talk about building an ombudsman institution in Belarus began. The country’s human rights profile is very low, but authoritarian leaders are reluctant to establish an ombudsman office. In spite of multiple initiatives and discussions on the draft of ombudsman law since 1998, the office has not been established in Bulgaria. Armenia has not appointed yet its ombudsman. But in December 1997, The International Ombudsman Institute admitted the Armenian National Center for Democracy and Human Rights (NCDHR) as an associate member. Judging by official information sources in the Federation of Yugoslavia,ⁱⁱⁱ Armenia, and Kazakhstan, the introduction of ombudsman has yet to be seriously considered.

Mongolia and Turkmenistan do not have ombudsman institutions and there is no intention to establish them. In Mongolia, the idea of the ombudsman was raised by a member of the parliament in early nineties, but it was rejected as being allegedly an inappropriate system for Mongolia. But today, many elements of the ombudsman institution may be found in the work of the Parliamentary Commission for Human Rights, the National Audit Office, and other independent human rights organizations. In

ⁱⁱⁱ Although there is no federation ombudsman in Yugoslavia, a part of the federation, Kosovo, has an ombudsman, and Serbia will have soon.

Turkmenistan, the Ombudsman institution has never been discussed. Nonetheless, there is a National Institute of Democracy and Human Rights under the President of Turkmenistan. The institute has an office where all citizens may submit their complaints on human rights violation.^{iv}

In general, according to the 2000-2001 Washington-based Freedom House survey, countries succeeding in the ombudsman concept have higher freedom rates than those lagging behind. (Appendix 3) Some of the lagging countries contain highly disputed territories (such as Chechnya in Russia, Kosovo in Yugoslavia, Abkhazia in Georgia, Nagorno-Karabakh in Azerbaijan and Armenia, and Transdneister in Moldova) where human rights and freedom are in danger.

Although ombudsman institutions in transition countries may be divided in the above groups depending on their length of service and achievements, institutions have some common challenges as they shared the similar authoritarian past. Some of them will be discussed later.

II.2. The Role of the Ombudsman for Consolidating Democracy in the Former Communist Countries

To date, about twenty countries in East-Central Europe and Central Asia have founded their ombudsman offices. Logically, it is worthwhile to examine why the post-communist countries had such a big demand for the ombudsman, and to evaluate their relative level of success.

Some of the needs for the ombudsman institution are as follows:

^{iv} This info was provided by Djemshid Khadjiev, a staff attorney, American Bar Association (ABA) and the Central and East European Law Initiative (CEELI), Ashgabat, Turkmenistan in July 2002.

- a) Complaints of citizens in countries undergoing transitional crises were broad-scoped comprising all spheres of social life. Hence, the society needed someone like ombudsman who could receive basically all kinds of complaints without restraints.
- b) In these countries, both the political system and the state of the rule of law were not stable yet, and political culture was not satisfactory (for example,, public servants were not neutral). Therefore, the society needed someone like an ombudsman who was politically neutral and independent.
- c) Not everyone had a lawyer because there was no tradition to have a private lawyer and because low-income people from transition economies could not afford lawyer. As a consequence, the public needed someone accessible like an ombudsman whose service was free of charge.

Although the most of the new ombudsman institutions were established merely a half decade, they have already played remarkable roles for the consolidation of democracy in their respective countries.

The ombudsman's primary constructive role in East-Central Europe and Central Asia was *to consolidate the democracy and the rule of law through the defense of human rights*. According to a survey performed by Ivan Bizjak,¹³ human rights problems were mainly about fundamental rights (life, personal freedom and security, protection from torture etc.), civil rights (freedom of expression, freedom of religious profession, freedom of assembly, the right to vote, family life, the right to fair trial, equality before the law etc.), and rights of minorities (among them, there have been salient ethnic problems in the selected countries, such as ethnic and religious conflicts between the former Yugoslavian

countries and discrimination of Gypsies in Central and Eastern Europe). Additionally, some problems related to economic rights were present due to transitional economic crisis.

Ombudsman offices have been paying close attention to all submitted issues and are doing what they can to protect human rights. Ombudsmen have submitted applications to relevant courts (Constitutional, Supreme, and other applicable courts) to review the constitutionality of laws and legality of regulations, actions, and decisions. They also have lodged constitutional complaints in the name of the people affected. In 1998, for example, the Polish Ombudsman Adam Zieliński made 21 submissions to the Constitutional Tribunal and two other complaints to the Supreme Administrative Court in the scope of local law. In other words, the ombudsman institutions were a kind of legal factory. Ombudsman recommendations following public complaints led to the adaptation of legislation and introduction of numerous new regulations. According to the former Hungarian Ombudsman for Civil Rights Katalin Göncz (2001), since 1995 she has made 786 proposals pertaining to various types of legal provision, 65 percent of which were accepted. In total, she has suggested modifying or repealing 250 laws proper, and of these proposals 45.2 percent have already entered into force and 16 percent are in the process of being dealt with.¹⁴

The second important role played by ombudsmen is *anchoring the reforms in public management sector*. The activities of ombudsman in any emerging democracy have been a direct reflection of economic, political, and social problems of that particular country. Therefore, the complaints resolved by new ombudsmen offices reveal which

sector of government in that particular country was functioning improperly; i.e., the hottest points of the public management reform.

In 1997, in Poland, the largest number of complaints or 23% of total number of complaints concerned employment relations and social insurance. The largest number of complaints in Hungary in the same year was against local governments (145 out of 352 complaints), police department in Lithuania (170 against 1017 complaints), court decisions and other issues outside the jurisdiction in Romania (NA out of 2,492 complaints), violation of constitutional or legal rights, negligence or other administrative irregularities in Croatia (80% of 1760 complaints), and court judgment in Uzbekistan (586 out of 2,319 complaints).¹⁵

Consequently, sectors and levels of public administration that have higher number of complaints were brought to the attention of state authorities and the donor community as well.

Third, the ombudsman could increase *public participation in the policy- and law-making process* which is one of the important dimensions of democracy. Not everyone who had a complaint went to the ombudsman institutions due to the mediocre knowledge of law and complicated administrative mechanisms. However, the number of public complaints addressed to the ombudsmen was high throughout the emerging democracies. In some model countries like Slovenia, the number of received and justified complaints (Appendix 4) was even higher than in some comparable Western countries, such as Ireland.¹⁶ In this sense, the ombudsman has been a bridge connecting the gap between citizen and state.

Fourth, the ombudsman has been *strengthening civil society* in the former Soviet Bloc, since its function is to serve and assist members of the civil society. On one hand, in a number of countries, the ombudsman concept was introduced thanks to the strong support from civil society. For example, the yet-to-be approved Bulgarian draft law on the ombudsman was developed by a number of NGOs and was introduced to the Parliament by a group of MPs. On the other hand, after its establishment the ombudsmen

have worked for and with the civil society. For example, the Hungarian ombudsman institution for civil rights reported that the office maintained regular contacts with 53 civil organizations and many ex-officio investigations were conducted by them.¹⁷

Fifth, the establishment of ombudsman institutions enhances the process of *internationalization and globalization* of the previously closed former Soviet countries. In order to establish and maintain the ombudsman institutions, the countries cooperate with many foreign countries and international organizations supporting democracy and human rights protection. Also, the role of the ombudsman is significant for the countries wanting to be members of the European Union. The ombudsman helps them to harmonize their legislation, institutions, and practices to the EU standards because by its nature, the ombudsman institution always encourages the implementation of international standards (mostly legal).

II.3. The Difference of the Western and Post-Soviet Ombudsmen

Currently, the majority of ombudsmen in transition countries are either former politicians, lawyers, or former law professors, which is not different from the practice of the developed democracies. But there are other dissimilarities.

First of all, it is important to show the difference between *the role* of the ombudsman in transitional post-communist countries as compared to Western countries with a stable democracy. No doubt, the role of the ombudsman in a transition country should be higher. A very quick adoption of the concept by the new democracies (adoption by 19 former countries between 1988 and 2002) can be a proof of this fact. Also, the 2000 Ivan Bizjak survey, a survey among the ombudsmen in transition

countries, enabled them to evaluate their importance in their countries. These officials saw themselves as very important, and felt they could do a lot for the future development of democracy and civil society.

The role of the ombudsman in transition conditions is perhaps even more important than in countries with a long democratic tradition. I tested this theory by means of a direct question in the survey: 'If you compare the role of the ombudsman in a country in transition to that of the ombudsman in a traditionally democratic country, do you feel that the role of the ombudsman in the transition country is more important, less important or equally important?' Of the eleven respondents, seven felt that the role of the ombudsman is more important in these circumstances, while four were of the opinion that it has the same importance as in a traditional democracy.

When asked how they assessed the conditions for work in a transition country in comparison to a traditional democracy (whether the ombudsman can do more, less, or that there is no difference), six ombudsmen took the view that the ombudsman can do more, three that he can do less, and two did not see any difference.¹⁸

The next interesting finding relates to the difference between *the complaints* dealt with by the ombudsmen in transitional countries and those in Western countries. As expected, they both dealt with similar problems. However, the ombudsmen in transitional countries handled more social and human rights problems (Appendix 5A) than did their Western counterparts. (Appendix 5B)

Third, the ombudsmen in the post-soviet countries use their *rights of initiating and modifying legislation* more frequently than do the Western ombudsmen because in transitional countries, there are still many laws and regulations inherited from the previous regime.

Fourth, the majority of the ombudsmen in the former communist countries are entitled to conduct *ex-officio investigations* which is considered one of the most important powers vested in the ombudsman in societies in transition. It implies that these ombudsmen initiate more ex-officio investigations than it is customary in the West.

Also, there are some country-specific features. In Hungary, the *comprehensive or project-like investigations* were an innovation.

We were inundated with complaints about problems in a particular type of institution and so we drew up an investigation plan before examining the human rights situation there from A to Z. We went about this by selecting five, eight, ten or even twenty of the kind of institution in question, looking at the conditions prevailing there in an objective manner, consulting representatives of the vulnerable group in question and sounding out their opinions generally via the medium of a thematic questionnaire form. We also listened to the managers, its specialist staff and, in certain cases, those responsible for maintaining it.

We drafted a separate report for every institution visited before pooling the data compiled and drawing general conclusions. In this way two and in individual cases three reports were produced. One was addressed to the institution itself or to those responsible for maintaining it—in some cases ministers—setting out what kind of problems had to be resolved.¹⁹

In Estonia, the duties of the ombudsman were united with those of *the legal chancellor*. The Legal Chancellor has two different duties: dealing with the complaints regarding the work of state agencies or state officials (he or she performs the duties of the ombudsman), and monitoring the decrees of the President, the legislative acts and international agreements adopted by the Parliament, and regulations of governments or ministers in correspondence to the Constitution and other legislative acts. Today, there are only three countries in the world with legal chancellors: Sweden, Finland, and Estonia.

The above facts might be an effective and innovative use of the ombudsman concept by the new democracies in East-Central Europe and Central Asia.

III. The Challenges of the Ombudsman Institutions

III.1. Some Challenges of the Ombudsman Institutions in the Former Communist Countries

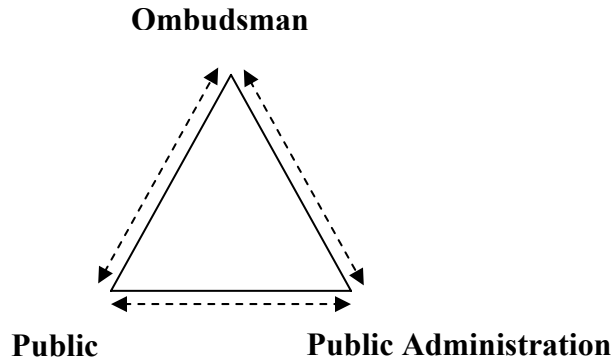
Any new institution confronts challenges. The ombudsman institution in the former communist countries is not an exception. Difficulties facing the ombudsman office are inherent not only in transitional countries but also in other developed democracies. Even in Britain, when the ombudsman institution was introduced in the sixties there were problems of the initial stages of implementation. The ombudsman was frequently criticized in the press as “muzzled watchdog,” “a crusader without a sword,” “an ombudsmanque,” and “an ombudsmouse” due to his limited power and scope.²⁰ Hence, the young ombudsman institutions in the post Soviet world are going through many common and unique problems. In order to illustrate these challenges more accurately, the figures of the Ombudsman Triangle and the Environment of the Ombudsman Triangle were drawn.

A. Challenges of the Ombudsman Triangle

The citizens bring their complaints to the ombudsman. After investigating public complaints, the ombudsman addresses the relevant public administration unit(s), and makes necessary recommendations. The administrative unit has a certain period of time, on average 30-60 days, at its disposal to react. Therefore, the ombudsman deals with two essential bodies: the public and administrative unit. (Figure 1) Higher feedback among the three subjects leads to more efficient outcome for the society.

However, in the former Soviet countries, there are some factors influencing negatively the effectiveness of this system.

Figure 1. The Ombudsman Triangle



The Public: The public is the reason for the existence of the ombudsman institution. As the April 2002 European Ombudsmen Conference concluded, at least four conditions need to be met for the individual to be able to lodge a complaint. These are:

1. The awareness of one's own rights and the rights of others,
 2. The existence of complaint procedures,
 3. The absence of fear regarding potential negative consequences of complaining,
- and
4. The confidence that the system is capable of correcting violations.²¹

The people of the former Soviet bloc have lived only a decade in a non-totalitarian regime. Therefore, the public is not knowledgeable about how to formulate their complaints, or their rights under their national constitutions and international laws and acts of human rights. In Hungary in 1996, altogether 10,447 petitions were submitted to the Office of the General Ombudsman. A little less than half of the complaints (5,026) had to be refused without any investigation due to the lack of jurisdiction (11% of

complaints were directed against courts) or for other reasons.²² Similarly, in 1998, according to Petro Rabinovich, a human rights expert from Lviv University, Ukraine, in 1998, 13,000 Ukrainians applied to the European Court of Human Rights in Strasbourg. Only 200 cases were accepted and others were rejected because they were incomplete. Although the applications in the latter case were not presented to the Ukrainian Ombudsman, both examples are evidence of the fact that citizens are not properly aware of their rights, and they do not know which authority or institution is competent to deal with the problem. Hence, the ombudsman institutions and civil society organizations in the former Soviet countries need to educate the public about their rights.

In most of the selected countries, there is no serious fear of negative consequences of complaining because there is no more communist regime, but the confidence that the system is capable of correcting violations is moderate due to weak rule of law and administrative irregularities.

Ombudsman and Ombudsman Institutions: The main distinguishing feature of the ombudsman office from other government institutions is its independence. The independence of ombudsman can be assured with the help of its legal status, competent staff, and mainly the ombudsman himself. But, there are some complicated issues regarding the independence of the office. For example, a lack of resources including budget restraint, staff shortage, staff inexperience, office space limit, and inappropriate location, hinders the institution's ability to provide much help to the public. Many new ombudsman offices are not able to hire sufficient and experienced staff to deal with all the complaints in a timely manner. On one occasion, for example, the Romanian People's Advocate highlighted (1997) that "the expectations from so many people to obtain some

form of redress for the massive abuses committed during forty five years of totalitarian rule are sky-rocketing, if seen in the light of the actual powers of the Ombudsman.”²³ Indeed, most other countries of the former Soviet Bloc had communist nightmares much longer than Romania. Due to this high workload, complaints are usually delayed for years. Even some of the best offices have this problem. For example, in 2000, the office of the Hungarian Ombudsman for Civil Rights was still examining cases dating all the way back to 1996. The other negative consequence of the high workload is that in many circumstances, small complaints are often postponed or ignored. In Georgia, for example, in order to work more effectively the Public Defender’s board outlined the priorities of its activities as well as target groups. Indeed, for an individual, every single complaint represents his priority and deep concern.

The location can have an important impact on the public confidence that the system is capable of correcting violations. It has been proven in the last years that “if complainants are to feel comfortable, the institution’s office should be located away from any other government offices.”²⁴

As the ombudsman is a special position based on people’s trust and public relations, by all measures, he should be a competent person in the field of legislation and human rights protection and recognized not only by the general public, but also by other institutions and the international community.

In the former communist countries, the selection of the ombudsmen is a complicated process due to two reasons. The first difficulty is related to the personality of selected candidates which nobody can predict. As Dragon Milkov described in his article (2000), the first People’s Attorney of Croatia (1993-1996) remained completely unknown

in the public in spite of his annual budget of around one million German marks. He was absent from media, did not make single address to the Croatian Assembly, and did not make any public assessments.²⁵ Finally, in March 1996, he resigned from his office; otherwise, he could have stayed for eight years as the Croatian Law on Public Attorney allows.

On the contrary, the Russian Ombudsman Oleg Mironov was criticized by human rights groups during his appointment in 1998. However, he has worked remarkably well in assailing the Russian government for different human rights violations such as the war in Chechnya, the death penalty, labor security, and others. The second reason which makes the selection of the ombudsman more difficult is that most of potential candidates had either a relation with communist party, or were actively involved in politics. For example, this year, the Slovak government has lost the support of many civil society groups with the election of a former communist as the country's first ombudsman. The ombudsman Pavel Kandrak was an active member of the Communist Party between 1971 and 1989, and had links to a party he had until recently represented as MP.²⁶ Indeed, the wrong choice of ombudsman is very detrimental to the future success of the institution.

However, an encouraging feature in appointing ombudsmen in the former communist countries is the number of women-ombudsmen. There is a complaint that even the word “ombuds-man” itself is sexist.^v But the current gender ratio of ombudsmen in the bloc is much better than that in other developing countries from Africa, Asia, and Latin America. Women were heading (Ms. Ewa Łętowska, Poland, Ms. Branka Raguz and Ms. Vera Jovanovic, BiH, and Katalin Göncz, Hungary) and are heading (Ms. Nina

^v Indeed, this is not true. In Sweden, “man” means “person,” unlikely in English. In order to avoid misperception, there are suggestions to use the female pronoun to describe the office of women-ombudsman as “ombudswoman” or “ombudsperson.”

Karpachyova, Ukraine, Ms. Leonarda Kuodiene, Lithuania, and Ms. Nana Devdariani, Georgia) the ombudsman institutions in the former communist countries. This fact clearly denotes the progressive nature of the ombudsman movement in the post-Soviet countries. Among them Prof. Ewa Łętowska deserves a special honor as she worked fearlessly investigating the activity of those communists who appointed her.

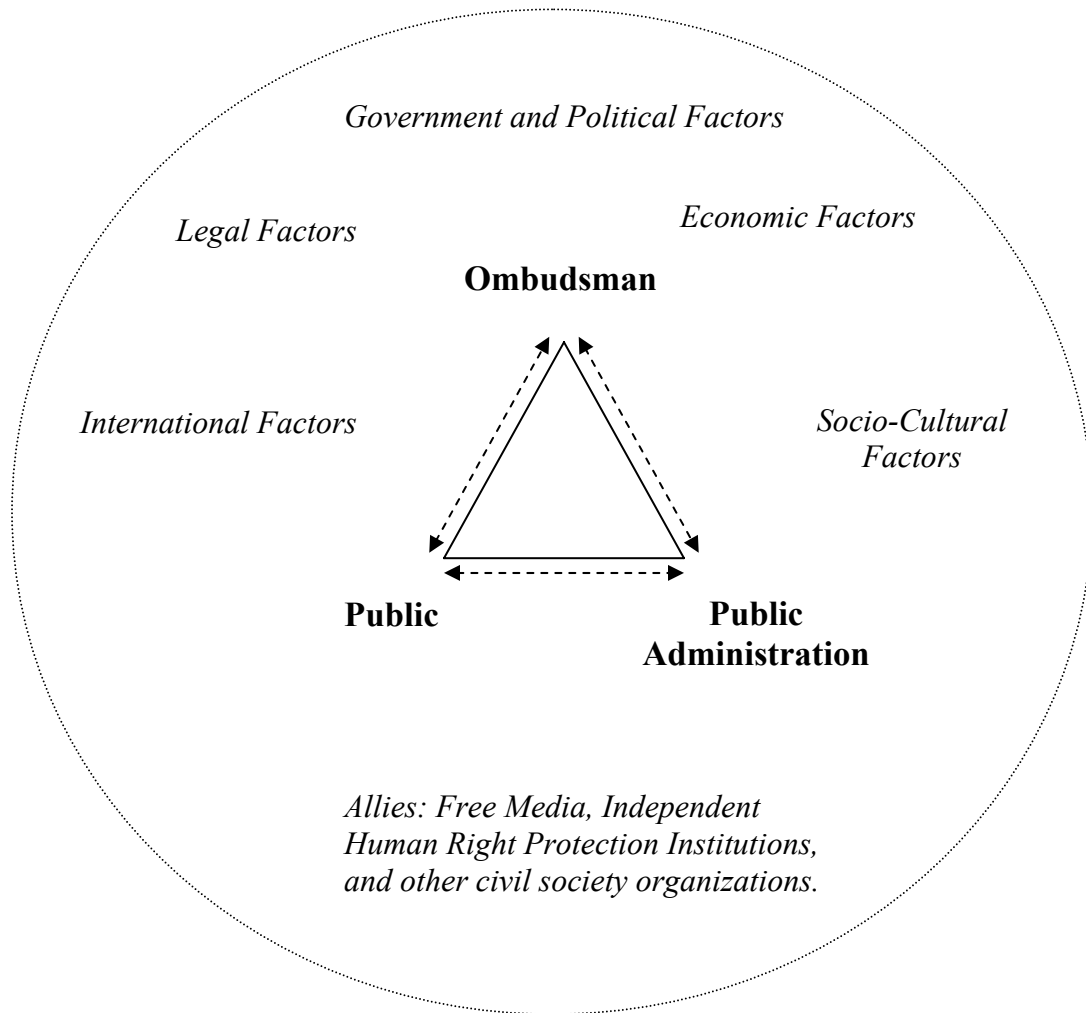
Public Administration: One or several administrative units of different levels of public management hierarchy may be involved into a complaint. According to annual reports of the ombudsmen institutions, many of the reasons for complaints throughout the region are large bureaucracy, malfunctioning, and corruption in public administration, unfair court decision, and incompetence of public servants which can be summarized as maladministration problems. In the new democracies, the branches of government are at various stages of development as institutions. Hence, most state institutions, especially younger or re-structured ones, do not make decisions within the legal deadline or within a reasonable period. This is a big obstacle for the effective follow-up of ombudsman recommendations. More clearly, the new ombudsmen face a special challenge of “re-educating” the public servants to do things a different way, as compared with the past, and it requires from the ombudsmen and their staff a high level of competence, well-formulated strategies, and of course, a lot of tolerance.

B. Challenges around the Ombudsman Triangle

The triangle of public-ombudsman-public administration may seem relatively simplistic. However, since the ombudsman and the citizens addressing them are not isolated from the outside world, there are multiple environmental challenges regarding

legal, governmental, political, economic, socio-cultural, and international factors. The factors challenge the ombudsman functions in either direct or indirect ways. (Figure 2)

Figure 2. The Environment of the Ombudsman Triangle



Legal factors: There are two legal challenges to the office of the ombudsman. The first aspect is related to all effective laws and regulations in a particular country (i.e., the situation of rule of law in the country). Currently, the checks and balances system typical for a developed democratic society has not been completed either in the legal or in the political system of the selected countries. The rule of law is weak and sometimes contradictory. There is no unanimous interpretation of laws and regulations, and they are

subject to frequent changes. As the Hungarian Ombudsman reported in 2001, there have been examples of entire laws being declared null and void by Parliament subsequent to her initiative, or of brand new laws being drafted. This kind of problem causes a certain level of uncertainty for the ombudsmen. The second challenge is represented by laws on the ombudsman institution, which mandate its power and status. As shown in Appendix 1, the status of all ombudsman institutions is guaranteed by constitutions and enabling laws. In some cases, it takes too long to approve for the ombudsman laws. For example, there was a brief provision concerning the ombudsman in the 1993 Russian Federation Constitution. However, it was not until 1996 that the Federal Council approved a federal constitutional law creating a Human Rights Commissioner. The ombudsman was appointed in 1998.²⁷ Although the Bulgarian society really needs an ombudsman to deal with the high level corruption and other human rights problems, a Draft Law on the People's Defender has been under discussion since 1998.

On the other hand, some ombudsmen complain that they lack not only organizational capacity to implement their recommendations, as alluded before, but also they lack a legal power to do so. Some provisions of the 1998 Moldovan Law on the Ombudsman were criticized by domestic and international legal experts. The law, for example, provided for the nomination of three ombudsmen for five-year terms of office, yet allowed the parliament to dismiss them in the middle of that period with a two-thirds votes. Moreover, the ombudsman's mandate did not include dealing with complaints filed about laws, governmental decisions or presidential decrees, and those submitted under the civil code, civil procedure code and other legislation. The independence of the ombudsman's role was also not mentioned in the law.²⁸ The

following Ukrainian case can be a support to this argument. In Ukraine, under existing laws, the Ombudsman's powers are fairly clear. Any citizen or resident can address complaints to the ombudsman, who can then present their case to authorities or to the Constitutional Court. The ombudsman also has the right to unrestricted access to any public official, from the president on down, and is free to inspect any government institution, such as prisons. The problem is that the law does not provide the ombudsman with much enforcement authority or penalize those who obstruct human rights inquiries. Although the law states the executive branch should work out and submit all necessary amendments to Ukrainian legislation to comply with the mandate of the ombudsman, this has not been done. According to Ms. Karpachova, the Ukrainian Ombudsman has drafted amendments to some 70 laws to allow her to operate as the law on the ombudsman stipulates. However, these amendments have not been enacted. Therefore, she and her staff are asking for an institution with “plenipotentiary power.”²⁹

Government and Political factors: The ombudsman is a politically independent body. However, the complaints of his customers are always related to or touched by the government and its agencies. Therefore, the factors are the same with those in the public administration section of the Ombudsman Triangle. However, there are few political factors influencing the ombudsman. In Belarus, the President Alexander Lukashenko used the idea of the ombudsman institution for his election campaign. He promised to appoint a human rights ombudsman during his re-election campaign in 2001.³⁰ Unfortunately, he has not yet appointed an ombudsman. There are hurdles for establishing the ombudsman offices in the Central Asian countries although they have human rights problems. It looks like the authoritarian leaders of Kazakhstan, Kyrgyz, and

Tajikistan are supporting the idea of establishing the ombudsman offices for only amending their worldwide accepted poor image of human rights protection.^{vi} For example, in April 2002, the Kazakh government announced to create a human rights ombudsman by the end of this year. But the Kazakh human rights activists do not expect much from the ombudsman. They suppose this will not be an independent institution since the ombudsman will be appointed by the President saying that “It is an eye-wash. There is no political will or no real feeling to set up an independent institution.”³¹

International factors: First of all, all post-communist countries without exception have established their ombudsman offices with a direct assistance of developed democracies and international organizations. The main supporters of ombudsman and human right institutions are the United Nations Development Program , United Nations High Commissioner for Human Rights, Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, Council of Europe and the International Federation of the Red Cross and Red Crescent Societies. Their support is expressed in both institutional and methodological forms: project financing to build ombudsman institutions, drafting laws on ombudsman, training staff, and organizing discussions, roundtables, seminars, conferences, and as well as study tours in countries with stable rule of law and solid ombudsman traditions. There was even a case where an ombudsman institution was directly established by an international organization: UN Special Representative for Kosovo Bernard Kouchner established an Ombudsman institution in Kosovo by his Decree 2000/38 of June 30 entrusting it with the supervision

^{vi} Here Uzbekistan is excluded because in terms of the ombudsman concept, Uzbekistan is leading the other four countries in the region.

of the institutionalization of democratic developments. Interestingly, Serbia, a country containing Kosovo, has still not appointed its ombudsman, as mentioned earlier.

The other important influence of the international community is expressed by international laws and regulations ratified in that particular country. It allows the ombudsmen to apply the documents directly into their work. For example, as the Slovenian Ombudsman Ivan Bizjak (2000) wrote, international legal documents ratified in Slovenia were incorporated in the domestic legal system, and this has a special importance for his work. He could directly apply ratified conventions of the Council of Europe, such as the European Convention on Human Rights and Convention on the Prevention of Torture, and those of the United Nations, such as the Convention on the Rights of the Child.

Moreover, the international community is able to put pressure on post-totalitarian authorities to enhance their human rights protection by threatening to stop or cut down aid and loans. For example, in June 1999, the Council of Europe threatened to annul Ukraine's credentials if the country did not introduce better human rights legislation. This sort of pressures obliges the ex-communist or authoritarian leaders to feel more responsible for building and maintaining the ombudsman institutions.

Socio-Cultural factors: Socio-cultural environment defines the nature of complaints presented to the ombudsman. The most general socio-cultural factors influencing activities of ombudsmen are the post Soviet public mentality, which is under transformation, and social problems such as unemployment, poverty, corruption, social security, and housing which are aggravating in most of the selected countries.^{vii}

^{vii} Some evidences of social problems influence on the nature of complaints are shown in Appendix 5A.)

However, even in the developed democracies, the majority of complaints concerns social problems. Hence, it is possible to predict that socio-cultural problems will be ever lasting challenges for the post-Soviet ombudsmen.

Economics: As emerging democracies are having a hard time with economic transition, ombudsmen received a certain number of economic issues predominantly related to privatization and property rights. However, ombudsmen do not prioritize the economic rights over civil and political rights because the socialist conception of human rights always stressed the priority of economic and social rights. But today, things are done in reverse order. In addition, it is usually beyond ombudsman's power, when complaints are related to money and property rights. These complaints are more efficiently addressed in court.

Allies: The success of ombudsman institutions depends heavily on strong allies such as civil society organizations, independent human right protection institutions, and free media. In a number of countries including Central Asian countries, Russia, Belarus, and former Yugoslavian countries, civil society is weak, and free media is suppressed by authorities, which is highly undesirable for the successful functioning of ombudsman institutions.

Almost all of the above problems are challenging directly the post-Soviet ombudsman institutions, although some of them are usually classified as indirect factors in the environment of other entities, such as business firms. Probably, this multi-factor environment is a phenomenon of the ombudsman in a transitional country. In order to increase their effectiveness, the ombudsmen in the post communist countries should overcome those disadvantages as quick as possible.

III.2. Possible Arguments against Establishing the Office of the Ombudsman

Establishing an institution of the ombudsman is not easy because there are legislative, administrative, and social barriers. In other words, advocates of the ombudsman institution should persuade many groups of the society: the public, civil society organizations, legislators, and administrators. In order to implement an ombudsman plan faster and more effectively, advocates must to be aware of the disadvantages of the ombudsman system and take into consideration other possible country-specific arguments against establishing the office of the ombudsman.

Traditional deficiencies are a limited power (only recommendation), resource shortage, and a high dependence on the individual – ombudsman. Then, if the functions and status of the ombudsman are not defined properly, it may duplicate the functions of courts, human rights institutions, and other auditing or monitoring agencies. In other words, if the office is inefficient, it would increase the amount of administrative excesses. The ombudsman may face all kinds of resistance, since nobody likes to be investigated. The nature of complaints addressed to the ombudsman is usually complicated because people come to the ombudsman when they exhaust their places to address. Due to the resource limits and other legal or administrative barriers, recommendations of the ombudsman institution are tended to be delayed.

In the case of the post-communist countries, there might be other obstacles along with the traditional disadvantages. As mentioned earlier, in some countries such as Russia, it took long to establish an office of the ombudsman, and there are seven countries (Armenia, Belarus, Bulgaria, Tajikistan, Yugoslavia, and Serbia) where the establishment of the ombudsman institution has been under discussion for several years.

Reasons for this long-time discussion could include bad pre-establishment research works, no similar institutional tradition, and previous unsuccessful experiences of institutional reforms. Also, there might be low confidence in an one-person office due to the past authoritarian experience. In some countries like Belarus, unwillingness of state leaders to create this office is a big hurdle.

Conclusion and Observations

In the last decade, in the former communist countries, many new institutions and offices with the purpose of either controlling and monitoring government functions or improving the existing ones were established.^{viii} One of them is the institution of the ombudsman. Almost every country in the former communist bloc has created or is planning to create an ombudsman institution. This is not because of the “ombudsmania” in the bloc, but is a part of the evolution of national democratic institutions. To quote Dr. Victor Ayeni (2000), “establishing an ombudsman is now a popular measure of a country’s seriousness about democratic reforms.”³² The countries have created their ombudsman institutions to consolidate the rule of law, democratic governance, and democracy as a whole through the defense of human and civil rights.

There were several countries such as Bulgaria, Armenia, and Belarus that have not established yet their offices, and there are a couple of countries such as Mongolia and Turkmenistan that do not intend to adopt the ombudsman concept. But this does not mean that those countries do not want to build democratic institutions. The first countries are

^{viii} Examples are the National Anti-Corruption Advisory Commission in Romania, the Anti-Fraud and Procurement Monitoring Units in Bosnia and Herzegovina, the Commission for Fighting against Corruption in Serbia, and the Civil Service Commission in Albania.

trying to clear their hurdles for the ombudsman institution, and the latter countries argue that the functions of ombudsman are being performed by other human rights and auditing agencies.

The following observations could be useful for the newly established or yet-to-be established ombudsman institutions in order help them to overcome faster their challenges and to secure their long-term effective functioning.

A. For Policy Makers:

Designing a suitable model of the ombudsman institution:

- The ombudsman concept has been adopted from country to country. Hence, before transplanting the concept, policy makers should form a team consisting of national and international experts to research and compare the experiences of other countries. After the initial research is completed, policy makers should integrate lessons learned while designing a suitable model to country-specific conditions. Some of the factors to be taken into consideration are territory, population size, type of government, legal system, freedom rate, civil society, economic development, human development, pre-existence of similar institutions etc. For example, both Hungary, using the Danish model, and Croatia adapting the Swedish model, made their own modifications. They may work successfully in part because of the methods of their approach.

Ensuring the independence of the ombudsman:

- Independence is vital for the ombudsman office. In order to develop independent and effective institutions, countries must guarantee sufficient financial resources to fulfill their mission and functions.

- The nomination of the ombudsman should not be achieved through political compromise since this would influence his or her authority.

Expanding the system of the ombudsman:

- In the post Soviet bloc, the ombudsman exists primarily at the national level. Only in certain autonomous republics or regions of the Russian Federation, a few ombudsmen exist at the regional level. Some other former Soviet countries have not only many levels of administrative hierarchy but extensive territories and isolated regions or populations. So if it is necessary to make the service of ombudsman more accessible for all groups, local and regional ombudsman offices could be established as well.

B. For Practitioners:

Gaining wide recognition in society:

- The ombudsman needs to pay more attention creating a positive set of precedents early on because a good reputation will enormously contribute to the future success of his office.
- It is important for the ombudsman institution in a former Soviet country to cooperate with civil society organizations to educate people about their rights and encourage people to approach the ombudsman and human rights institutions. In many circumstances, the most vulnerable sectors of the population, such as children, the elderly people, foreigners, and minorities do not utilize justice organizations because they are usually uninformed of their own rights, unfamiliar with the system, and do not trust authorities.

Increasing the effectiveness of the ombudsman:

- Although the ombudsmen institutions in the East-Central Europe and Central Asia often complain as being understaffed, the office of the ombudsman should be compact. Consequently, the institution should develop its organizational capacity in order to increase its effectiveness (i.e., the staff of the ombudsman should be very skilled and the organization of the institutions must be very efficient).
- Acquiring strong allies (free media, independent human rights protection and other NGOs, as well as society in general) will improve the ombudsman's efficiency. Also, establishing a close relationship with the government, and government agencies will facilitate positive and effective solutions for the grievances received by the office.

Improving the exchange of information:

- The ombudsman should be more active as a real public defender. He must mobilize all his potentials resources to strengthen his mediating and recommending power. Making statements, giving speeches and interviews, attending meetings, and participating in talk shows are all effective means of communicating with the society.
- The importance of getting feedback from the public and authorities regarding annual reports and other press releases was highlighted by several transitional ombudsmen.
- According to the experience of the best ombudsman institutions in the post-Soviet bloc, the use of websites is helpful to increase user awareness and accessibility. Also, it should be useful to develop an international website for the ombudsmanship in the former communist countries. The shared site can improve

the exchange of info between the ombudsmen and help them to learn best practices from each other.

Internationalizing the ombudsman institution:

- The ombudsman must initiate and maintain contacts with international organizations active in the field of human rights and with national ombudsman institutions in other foreign countries. It would gain an enormous amount of institutional, methodological, and financial support.

C. For International Supporting Agencies

Pre-Establishment Support:

- It is important to support the advocates of the ombudsman establishment and NGOs that lobby the public and legislative, judicial, and executive branches.
- It is important to choose the right kinds of technical and practical support. For example, according to the impression of ombudsman staff in the former Soviet bloc, study tours to countries with a strong ombudsman tradition before the opening of the office or in the early period of its functioning are evaluated as one of the most effective means of training. Also, the lessons learned from the ombudsmen movement in Africa and Latin America preceded that of the former communist in Eastern and Central Europe and Central Asia can be useful.
- In some cases, a feasibility research project such as the one conducted in 1999 in Kosovo by the UK humanitarian organizations,^{ix} may be fruitful.

After-Establishment Support:

^{ix} The feasibility research of a possible model for a humanitarian ombudsman in Kosovo (August 3 - September 2, 1999) was led by a Steering Committee, based in the UK, which includes the British Red Cross, CAFOD, CARE-UK, Merlin, ODI, Oxfam GB, RedR, Save the Children UK and World Vision.

- Some countries have more grave conditions than others because of war, high levels of poverty, or authoritarian rule. In such circumstances, ombudsman institutions need assistance from international supporting agencies not only for their creation, but also for their full and effective functioning. It will help ensure their independence and success.

In the corollary, it should be recognized that although the young ombudsman offices in the former communist countries have shouldered different difficulties (lack of experience, resources, power, and allies), the ombudsmen have already become a tangible force in the life of the societies and the states. If the national governments and the international democratic community take better care of their current challenges, the ombudsmen will contribute more in the future consolidation of democracy in the bloc. No doubt, the efforts and creativity of the ombudsmen themselves are important.

Leading Functional Areas of Specialty and Corporate Ombudsman Institutions ^x

Australia	1. Privacy	
Canada	1. Fair Practices 2. Language 3. Correctional Services	4. Police Work 5. Environment 6. Information and Privacy
Costa Rica	1. Consumer Protection	
Germany	1. Data Protection	2. Defense
Hungary	1. Data and Information	2. Ethnic Rights
Israel	1. Military	2. Police
The Netherlands	1. Pension and Insurance 2. Property	3. Health Care
Norway	1. Military 2. Consumer Protection	3. Children
South Africa	1. Women 2. Languages 3. Minority Rights 4. Youth 5. Land and Tenure 6. Insurance 7. Correctional Services	8. Media 9. National Reconciliation 10. Banking 11. Property 12. Legal Services 13. Defense
Sweden	1. Consumer 2. Equal Opportunities 3. Ethnic Discrimination	4. Children 5. Press 6. Disability
Tanzania	1. Leadership Code	
United Kingdom	1. Police 2. Northern Ireland 3. Legal Services 4. Investment 5. Insurance	6. Property and Estate 7. Banking 8. Media 9. Pensions 10. Health Services
United States	1. Elderly 2. University 3. Housing 4. Correctional Service 5. Consumer Protection 6. Minority Business 7. Schools 8. Environment 9. Children	10. Equity and Investment 11. Health Services 12. Families 13. Minority Rights 14. Tax Collection 15. State Corporation 16. Employee Concerns 17. Business 18. Mental Health

^x Adapted from International Ombudsman Institute Directory of Worldwide Ombudsman Offices, 1999

The Ombudsman Institutions in the Former Communist Countries^{xi}

	<i>Country</i>	<i>Initiating Act</i>	<i>Office Establishment</i>	<i>Title</i>
1.	Albania	1998 Constitution	1999	People's Advocate
2.	Armenia	1994 Constitution		Under discussion
3.	Azerbaijan	2001 Law on Human Rights Commissioner	2002	Human Rights Commissioner
4.	Belarus	1994 Constitution* & Law on Ombudsman is under discussion		No Ombudsman yet
5.	BiH	1995 Dayton Agreement	1995	The Commission on Human Rights: The Office of the Human Rights Ombudsperson and the Human Rights Chamber.
6.	Bulgaria	1991 Constitution* & April 2000 Draft Law on the People's Defender and Civic Mediator is under discussion.		No ombudsman yet
7.	Croatia	1990 Constitution & 1992 Law on People's Attorney	1993	People's Attorney of Croatia
8.	Czech Republic	1992 Constitution*	1997	The Commissioner on Human Rights
9.	Estonia	1992 Constitution & 1999 Legal Chancellor Act	1992	The Legal Chancellor of Estonia ^{xii}
10.	Georgia	1995 Constitution & 1996 Law on Public Defender	2001	Public Defender of Georgia
11.	Hungary	1989 amendment to the Constitution & 1993 Law on the Parliamentary Commissioner for Civil Rights	1995	Parliamentary Commissioner for: 1) Civil Rights, 2) National and Ethnic Minorities Rights, and 3) Data Protection and Freedom of Information.
12.	Kazakhstan	1996 Constitution		Planned by the end of 2002.
13.	Kyrgyz	2001 Ombudsman Law		Planned in November 2002
14.	Latvia	1992 Constitution*	1996	National Human Rights Office
15.	Lithuania	1992 Constitution & 1994 Law on Seimas Ombudsman	1994	Seimas Ombudsmen of the Republic of Lithuania (5 Seimas Ombudsmen)

^{xi} The table was put together by UV using various paper and online information sources.

16.	Macedonia	1991 Constitution & 1997 Act on the People's Attorney	1997	People's Attorney of Macedonia
17.	Moldova	1997 Law on the Parliamentary Advocates	1998	Center for Human Rights (3 Parliamentary Advocates)
18.	Mongolia	1992 Constitution*		No ombudsman
19.	Poland	1997 Constitution & 1987 Law on the Commissioner on Citizens' Rights	1988	Commissioner for Civil Rights Protection
20.	Romania	1991 Constitution & 1997 Ombudsman Law	1997	Advocate of the People
21.	Russia	1993 Constitution & 1996 Constitutional Law creating Commissioner	1998	High Commissioner for Human Rights
22.	Slovak	1992 Constitution*	2002	Ombudsman
23.	Slovenia	1991 Constitution & 1993 Human Rights Ombudsman Law	1994	Human Rights Ombudsman
24.	Tajikistan	1994 Constitution		No Ombudsman yet
25.	Turkmenistan	1992 Constitution*		No Ombudsman
26.	Ukraine	1996 Constitution & 1998 Law on the Authorized Representative of the Verkhovna Rada	1998	Authorized Human Rights Representative of the Verkhovna Rada
27.	Uzbekistan	1992 Constitution & 1997 Law of Ombudsman	1997	Ombudsman (or Authorized Person) of Uzbekistan
28.	Yugoslavia	1992 Constitution		No ombudsman yet
	Monte Negro			No ombudsman
	Serbia	May 9, 2002, Ombudsman Bill		Pending
	Kosovo	June 2000, UN Decree 2000/38.	2000	Human Rights Ombudsman

* - The institution of ombudsman is not mentioned in the Constitution.

The Relationship between Freedom^{xiii} and the Ombudsman Institution in the Former Communist Countries

	<i>Country</i>	<i>Political Right</i>	<i>Civil Right</i>	<i>Freedom Rating</i>	<i>Ombudsman Institution</i>
1.	Albania	4	5	Partly Free	1999
2.	Armenia	4	4	Partly Free	Under discussion
3.	Azerbaijan	6	5	Partly Free	2002
	Nagorno-Karabakh	5	6	Not Free	-
4.	Belarus	6	6	Not Free	Under discussion
5.	BiH	5	4	Partly Free	1995
6.	Bulgaria	2	3	Free	Under discussion
7.	Croatia	2	3	Free	1993
8.	Czech Republic	1	2	Free	1997
9.	Estonia	1	2	Free	1992
10.	Georgia	4	4	Partly Free	2001
	Abkhazia	6	5	Not Free	-
11.	Hungary	1	2	Free	1995
12.	Kazakhstan	6	5	Not Free	Planned by the end of 2002
13.	Kyrgyz Republic	6	5	Not Free	Planned in November 2002
14.	Latvia	1	2	Free	1996
15.	Lithuania	1	2	Free	1994
16.	Macedonia	4	3	Partly Free	1997
17.	Moldova	2	4	Partly Free	1998
	Transdnister	6	6	Not Free	-
18.	Mongolia	2	3	Free	No
19.	Poland	1	2	Free	1988
20.	Romania	2	2	Free	1997
21.	Russia	5	5	Partly Free	1998
	Chechnya	7	7	Not Free	2000
22.	Slovakia	1	2	Free	2002
23.	Slovenia	1	2	Free	1994
24.	Tajikistan	6	6	Not Free	Under discussion
25.	Turkmenistan	7	7	Not Free	No
26.	Ukraine	4	4	Partly Free	1998
27.	Uzbekistan	7	6	Not Free	1997
28.	Yugoslavia	4	4	Partly Free	Under discussion
	Serbia				Under discussion
	Monte Negro				No
	Kosovo	6	6	Not Free	2000

Explanation of Free, Partly Free, and Not Free:

- 1-2.5 – Free
- 3-3.5 – Partly Free
- 5.5-7.00 – Not Free

^{xiii} Adapted from *Freedom in the World: The Annual Survey of Political Rights and Civil Liberties, 2000-2001*, Freedom House, Washington, D.C., 2001, pp. 655-657

SLOVENIA**Human Rights Ombudsman Annual Report 2000: Resolved Cases**^{xiv}

AREA OF OMBUDSMAN'S WORK	RESOLVED COMPLAINTS						Index (00/99)
	1995	1996	1997	1998	1999	2000	
1. Constitutional rights	22	54	48	57	50	33	66,0
2. Restriction of personal freedom	60	165	144	226	210	211	100,5
3. Social security	202	374	466	438	439	464	105,7
4. Labor relations	98	124	157	234	216	179	82,9
5. Administrative affairs	418	717	718	687	730	623	85,3
6. Court and police procedures	397	824	931	959	1.009	1.113	110,3
7. Environment	36	86	93	65	108	104	96,3
8. Public services	21	39	30	38	79	43	54,4
9. Housing matters	175	223	156	161	132	124	93,9
10. Others	446	676	599	640	754	549	72,8
TOTAL	1.875	3.282	3.442	3.505	3.727	3.443	92,4

^{xiv} The table shows the number of resolved cases by individual area in the period between 1995 and 2000.
<http://www.varuh-rs.si/index-eng.htm>

Examples of the Most Frequent Complaints Dealt by the Ombudsmen in the Former Communist Countries

<p><u>Romania (1997, 1998, and 1999).</u>^{xv}</p> <ul style="list-style-type: none"> ☞ Pensions and social benefits; ☞ Rights of former political prisoners and victims of the totalitarian rule; ☞ Special protection of disabled persons; ☞ Protection of former employees dismissed as a result of collective firing from re-organized state-owned companies; ☞ Protection of children in need; ☞ Social housing; ☞ Consumer rights violated by state-owned companies; ☞ Police activity; ☞ Detention of prisoners; ☞ Rights of asylum-seekers and refugees. 	<p><u>Latvia (1998).</u>^{xvi}</p> <ul style="list-style-type: none"> ☞ Legalization of non-citizens ☞ Rights of foreigners ☞ The rights of a person for human treatment and respect to his dignity in prisons and in the police, a just, open, and timely court, just and favorable work conditions, social security: granting of pensions and benefits, ensuring of social grantees, and rights of ex-prisoners, property/ownership, and housing such as registration of citizenship, eviction from apartment, and disputes with landlords.
<p><u>Russia (1998 and 1999).</u>^{xvii}</p> <ul style="list-style-type: none"> ☞ Massive human rights violation in Chechnya; ☞ The improper activities of the militia and of other law enforcement bodies; ☞ Press freedom ☞ Labor relations and delay of salary, payments, pensions, and social benefits; ☞ The rights of the citizens of the Russian Federation and aliens and people without citizenship residing in the territory of the Russian Federation. ☞ Veterans' affairs. 	<p><u>Albania (2000 and 20001).</u>^{xviii}</p> <ul style="list-style-type: none"> ☞ Unfair judicial decisions ☞ Delays in the judgment of the penal or civil cases. ☞ Non-applying with procedures in relation to the notification to the parties of the date and time of the judgment. ☞ Non-providing defense during the trial to the accused persons missing the financial means to have a solicitor. ☞ Non-allowing to be present during the trial at the Supreme Court. ☞ The judicial administrations that have delayed the files not sending them in time for examination at the higher instance courts. ☞ Corruption of judges who didn't apply with procedures intentionally, etc.

^{xv} The People's Advocate of Romania, European Ombudsman Newsletter no. 18, June 1999

^{xvi} Latvian National Human Rights Office, 1998 Annual Report, European Ombudsman Newsletter no. 19, October 1999.

^{xvii} Ombudsman of Russian Federation: The activities in the first half of 1999 and The Activities of the Commissioner on Human Rights in the Russian Federation in 1999 and the Nearest Perspectives. European Ombudsmen Newsletter no. 18, June 1999 and no. 20, February 2000.

^{xviii} People's Advocate Presentation, Mr. Ermir Dobjani at the Conference organized by the Council of Europe in Ljubljana (Slovenia) on 12-13 November 2001. European Ombudsman Newsletter no. 26, April 2002.

The Ombudsman of the Queensland, Australia:

Top Ten Common Themes of Complaints against Agencies^{xix}

(in descending order of frequency)

1. Failing to consider complainant's interest.
2. Failing to carry out statutory duties.
3. Delaying the performance of duties.
4. Failing to meaningfully consult persons affected by agency's actions in advance.
5. Acting contrary to law or without a proper legal basis.
6. Making decisions contrary to the weight of evidence.
7. Making discriminatory or inconsistent decisions.
8. Failing for no apparent reason to apply policies.
9. Applying policies inflexibly as if they were law.
10. Failing to adequately explain actions and decisions to affected persons after the event.

^{xix} Address to Student Ombudsman Conference by Mr David Bevan, Queensland Ombudsman, February 14, 2002. pp.18-19

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