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Origin of the European Ombudsman

ABSTRACT

The purpose of this article is to set out the multiannual process for establishing the European Ombudsman's office and the reasons for its establishment. It presents the history of the first European Ombudsmen and the history of the European Communities from a legal perspective. The author goes back to the reasons for setting up the European Ombudsman's body, which were the lack of legitimacy in the European Union. The role of bodies such as the European Ombudsman is to ensure that citizens' rights are actually respected. The European Ombudsman strengthens the rule of law in the European Union and complements the role of the courts by providing a cheap, accessible individual remedy and, on the other hand, complements the representative function of the European Parliament by becoming the centre of independent critical assessment and improvement of the quality of European administration. The rule of law serves to maintain the EU system as a supranational system. It is the construction of the axis of integration. If there is a lack of trust in the community in this respect, it begins to be treated differently. It is therefore important that the European Ombudsman fulfils his Treaty obligations as a body of the European Union effectively.

Key words: European ombudsman, legitimacy deficit, European union law, public international law

Introduction

Much of citizens' rights are not adequately guaranteed because people do not know about them, nor do they know how to fight for them. It is the function of organs like the European Ombudsman to ensure that these rights are actually respected. The European Ombudsman strengthens the rule of law in the European Union and complements the role of the courts by providing opportunities for low-cost and accessible individual redress and, on the other hand, complements the representative function of the European Parliament by becoming a centre for independent, critical assessment and improvement of the quality of the European administration. The rule of law serves to maintain the EU system as a supranational system. It is the construction of the integration axis. When there is a lack of trust in the community in this respect, it begins to be treated differently. It is therefore important that the European Ombudsman fulfils his Treaty obligations effectively.

The creation of the European Ombudsman is correlated with the introduction of and support for the development of so-called European citizenship. The Treaty on European Union guarantees citizens of the European Union rights such as the right to submit complaints to the European Ombudsman, the right to vote and stand for election to the European Parliament and the right of free movement. The European Ombudsman was therefore to become the guarantor of the rights of citizens of the Member States of the European Union in its increasingly complex administration and the increasing number of legal acts issued¹. The European Ombudsman acts as an intermediary between the administration of the European Union and its citizens. The European Ombudsman's constitutive task is to examine complaints lodged and to conduct inquiries. An inquiry can only lead to a finding of maladministration. The European Ombudsman has no instruments at his disposal to enforce a change in the behaviour of an EU institution or body which has committed a misconduct, nor does he have sanctions, but he can only make a recommendation.

The reason for addressing this issue is the observation that the European Ombudsman plays an important role in the integration of the state of citizens. The research problem boils down to seeking answers to the following question: What were the reasons for establishing the European Ombudsman? The research problem identified above was related to the purpose of the article, which was to identify and present the reasons for appointing the European Ombudsman. The article deals with the legal reason for the appointment of the

¹ The European Ombudsman, Office for Official Publications of the European Communities, Luxembourg: Office for Official Publications of the European Communities 2005, s. 1.

European Ombudsman. The thesis of the hearing remains that the European Ombudsman was established because of the crisis of democratic legitimacy of the European Union. The result of this article is to present the origins of the European Ombudsman and to indicate the reasons for his appointment.

European Ombudsmen

The institution of the Ombudsman was formally established for the first time in Sweden in 1809. The main idea behind the establishment of this institution was to control the activities of the state administration and to recognise the complaints of people affected by the illegal and harmful activities of state bodies. However, the idea to establish this institution was not new, because in the history of Swedish law, this institution has already had its achievements. It was not until 1809 that such an Ombudsman was elected for the first time in the Swedish Parliament, by secret ballot, as an independent body². Until 1917, the Kingdom of Sweden was the only country in the world with an institution of the Ombudsman. Also in the same year Finland, having gained independence from Russia, established the Office of the Ombudsman under Swedish arrangements³. Then, in the 1950s, the next country to establish the Ombudsman's body was the Kingdom of Denmark⁴. Following the development of the Ombudsman's institution in the Scandinavian countries and the following process of democratisation of social life, the institution of the Ombudsman was established in 1987 in Poland⁵. Nowadays, even within the European Union, the European Ombudsman functions as an institution of extra-judicial control over the activities of European Union bodies and agencies⁶.

In Europe, the institution of the Ombudsman, is known as: Parliamentary Ombudsman in Denmark, Ombudsman in Ireland, Ombudsman in Portugal, Mediator in France, People's Defender in Austria, Ombudsman in Slovenia⁷ whether the people's attorney in Albania⁸. The reason for the establishment of

² Sweriges rikes grundlagar och konstitutionella institutioner [1809–1841], samt Norrrikes grundlag [1814]. Med. ett fullständigt register öfwer Svenska Grundlagarne och Riks-Akten, Örebro 1842 r. s. 125.

³ Säädosmuutosten hakemisto: Suomen Hallitusmuoto (94/1919), Helsingissä 17 päivänä heinäkuuta 1919 r.

⁴ M. Grzybowski, *Ombudsman w państwach nordyckich. Geneza, ewolucja i współczesne oblicze instytucji*, [w:] *Rzecznik Praw Obywatelskich*, red. L. Garlicki, Warszawa 1989, s. 86.

⁵ Ustawa z dnia 15 lipca 1987 r. o Rzeczniku Praw Obywatelskich, Dz.U. z 2018 r. poz. 2179, z późn. zm.

⁶ T. Dubowski, *Wysoki Przedstawiciel Unii do Spraw Zagranicznych i Polityki Bezpieczeństwa*, Białystok 2017, s. 192.

⁷ J. Arcimowicz, *Rzecznik Praw Obywatelskich: aktor sceny publicznej*, Warszawa 2003, s. 35-39.

⁸ M. Zubik., *Księga XX-lecia Rzecznika Praw Obywatelskich w Polsce*, Biuro Rzecznika Praw Obywatelskich, Warszawa 2008, s. 7.

this body in European countries was undoubtedly the effects of World War II. The deficiencies and shortcomings of the administration in the post-war reality resulted in increased interest in the protection of human rights. In Western Europe, the process of establishing the Ombudsman's institution intensified from the early 1950s to the late 1980s, while in Central and Southern Europe, the popularity of the Ombudsman was preceded by a change in the political system. The exception was Poland, which introduced the Ombudsman into its legislation on 15 July 1987⁹. The Polish Ombudsman was created on the model of the Iron Swedish Ombudsman; however, the Ombudsman's effectiveness does not always depend on his institutional model, but on his authority¹⁰. The Polish Ombudsman is very firmly rooted in the state system, which confirms his effectiveness; in connection with this fact, the West of Europe has recognised the model of the Polish Ombudsman, so the European Ombudsman Institute entrusted the ROP with the creation of the „International Charter for an Effective Ombudsman”¹¹.

The institution of the Ombudsman originally operated mainly in Sweden, the official name of this body is the Ombudsman „Justitieombudsman”, who was the first to be elected by Parliament. The Swedish government enshrined this body in the Constitution as early as 1809. The Riksdag elects four Ombudsmen for a period of four years, of whom one is elected as the Ombudsman General, who sets out the guidelines. Parliament can also elect one or more deputies for two years. An alternate may be a person who has previously held the office of Ombudsman General. The Riksdag shall elect both the Parliamentary Ombudsman and his deputies on a case-by-case basis and may, on a proposal from the Constitutional Committee, remove the Ombudsman before the end of the parliamentary term. The Ombudsman shall report annually on his activities and shall be accountable to the Riksdag. The Ombudsman shall attend meetings of the Riksdag and shall have access to court documents and minutes. He has control powers over both government and local government administration, and if he finds that irregularities have occurred during the investigation procedure, he has the possibility to impose sanctions. Where maladministration or misconduct has caused considerable damage, the Ombudsman has special prosecutorial powers and can prosecute such an official. Such cases are extremely rare, but the fact that the Ombudsman has this power creates an iron hand in his authority¹². Anyone can lodge a complaint with the Swedish Ombudsman without any criteria for Swedish citizenship or age¹³.

⁹ Ibidem, s. 8.

¹⁰ Ibidem, s. 10.

¹¹ Ibidem, s. 10.

¹² *Organy ochrony prawnej w wybranych krajach Unii Europejskiej*, Biuro Analiz i Dokumentacji Zespołu Analiz i Opracowań Tematycznych, Kancelaria Senatu, Marzec 2011, s. 9.

¹³ Ibidem.

The Finnish Eduskunta, following the example of Sweden, introduced the Chancellor of Justice and then the Parliamentary Ombudsman in 1919. Chapter 10 of the Finnish Constitution is devoted to observance of the rule of law, while §108 of this chapter provides for the duties of the Chancellor of Justice, who is responsible for the correlation of official acts of the Council of State and the President of the Republic. The Chancellor of Justice also supervises the courts and other authorities, together with public officials and employees, so that they observe the law and fulfil their duties in accordance with the principles of good administration. In the performance of his duties, he controls the observance of constitutional rights and freedoms and human rights¹⁴.

The prosecution of the offending judge shall be initiated by the Chancellor of Justice or the Parliamentary Ombudsman. The Parliamentary Ombudsman and the Chancellor of Justice may also prosecute or decide to prosecute in other cases falling within their competence to monitor compliance with the law¹⁵. The Chancellor of Justice and the Parliamentary Ombudsman have the same powers, while the division of duties is governed by a separate law¹⁶.

Folketing, the Danish Parliament on 5 June 1953, introduced into the Constitution the appointment of one or two persons who are not members of parliament to supervise the civil and military state¹⁷. The first Ombudsman in Denmark was appointed by the Ombudsman Act of 11 June 1954.

The Norwegian Parliament, better known as the Stortinget after each election, elects Sivilombudsmann, formally the Parliamentary Ombudsman for Administration. A candidate for the Norwegian Ombudsman must meet the requirements of a Supreme Court judge¹⁸. The first Norwegian Ombudsman to be appointed by the 1962 Act did not have the power to review or annul administrative decisions, but mainly focused on making recommendations for better treatment, conditions of detention and prevention of torture and other cruel, inhuman, or degrading treatment¹⁹.

The next European country to introduce the Ombudsman is the United Kingdom. The reason for this initiative was undoubtedly the fact that in 1962 the first Ombudsman of New Zealand was appointed in a country belonging to the British Commonwealth. In 1967, the United Kingdom appointed the

¹⁴ Suomen perustuslaki, Eduskunnan päätöksen mukaisesti, joka on tehty valtiopäiväjärjestyksen 67 §:ssä määrättyllä tavalla, säädetään: 11.6.1999/731.

¹⁵ Ibidem.

¹⁶ Ibidem.

¹⁷ M. Liber, *Duński Rzecznik Praw Obywatelskich*, „Studia Politicae Universitatis Silesiensis” 2005, nr 1, s. 213.

¹⁸ Lov om Stortingets ombudsmann for forvaltningen sivilombudsmannsloven., Justis- og beredskapsdepartementet 1962 r.

¹⁹ Ibidem.

Ombudsman for Local Administration, which had powers exclusively covering government administration in a very modest spectrum²⁰. The UK currently has a Parliamentary and Health Service Ombudsman, a Scottish Public Service Ombudsman, a Welsh Public Service Ombudsman and a Northern Ireland Ombudsman²¹. In the wake of the United Kingdom, more and more Western European countries started to create such offices. On the third of January 1973 the French Ombudsman, known as the *Médiateur de la République*, was appointed. The French Mediator is appointed for six years by decree of the President of the Republic, adopted by the Council of Ministers. He enjoys procedural and material immunity, has a non-renewable mandate and is protected by the principle of non-removability. The French Mediator shall also be barred from office by choice, with the exception of a situation in which the Mediator was elected to hold local offices on the General Council and the Town Council before being appointed as Mediator of the French Republic²². When the Ombudsman left the French border, he became increasingly popular in Europe's democratic countries; for example, Portugal introduced the Ombudsman into its legal system in 1976²³. The Republic of Austria appointed the People's Defender in 1977²⁴. The Kingdom of Spain was also named *Defensor del Pueblo* (Defender of the People) by its Ombudsman in 1981.

The Spanish Ombudsman is enshrined in the Constitution by Law 3/1981 of 6 April 1981. According to this law, the Defender of the People is elected by the Congress of Deputies for a term of five years. The candidate must win 3/5 votes both in the lower house and in the upper house²⁵. A year later, in 1982, the Kingdom of the Netherlands proclaimed the *Nationale Ombudsman*, elected by the Second House of the General States for a term of six years. The Dutch Ombudsman is entitled to bring a witness from his place of residence to take part in investigative activities²⁶.

In Poland, the institution of the Ombudsman appeared under the name of the Ombudsman on 15 July 1987, becoming an important addition to the

²⁰ K. Klepacki, *Instytucja ombudsmána na szczeblu lokalnym na przykładzie Wielkiej Brytanii – wybrane aspekty*, „Internetowy Przegląd Nauk o Administracji” 2018, nr 1 (1).

²¹ *Ibidem*.

²² A. Legrand, *Une institution universelle: L'ombudsman?*, „Revue internationale de droit comparé”, Année 1973, s. 851-861.

²³ W. C. Opello, *Portugal's New Ombudsman: A Preliminary Evaluation*, „Luso-Brazilian Review” 1981, Vol. 18, no. 2, s. 239.

²⁴ L. Garlicki, *Ewolucja instytucji Rzecznika Praw Obywatelskich w świecie współczesnym*, [w:] *Rzecznik Praw Obywatelskich*, red. L. Garlicki, Warszawa 1989, s. 9.

²⁵ Ley Orgánica 3/1981, de 6 de abril, del Defensor del Pueblo., Publicado en BOE de 07 de Mayo de 1981 Vigencia desde 27 de Mayo de 1981. Revisión vigente desde 05 de Noviembre de 2009.

²⁶ The Netherlands National Ombudsman Act., Act of 4 February 1981 (Bulletin of Acts and Decrees 1981, 35), most recently amended by Act of Parliament of 12 May 1999 (Bulletin of Acts and Decrees 1999, 214).

institutional guarantees of the rule of law²⁷. The Ombudsman, in carrying out his statutory duties, has gained constitutional status. The Constitution of the Republic of Poland regulated the position of the Ombudsman in the chapter devoted to state control and law protection bodies²⁸.

As the Ombudsman's popularity in Europe and the world grew, the Treaty on European Union (Maastricht 1992) established the European Ombudsman, known as the European Ombudsman, who has undoubtedly become one of the bodies that guarantee respect for the catalogue of rights granted to all citizens of the Member States of the European Union²⁹.

Reasons for establishing the European Ombudsman as a body of the European Union

After the Second World War, the countries of Europe, which suffered from the effects of red and brown totalitarianism, began the process of European integration. The economic crisis caused the need to regulate heavy industry, coal and steel; the concept of control of the strategic industry was to create the European Coal and Steel Community, which in effect was to protect Europe against a possible German armament³⁰. The European Coal and Steel Community was signed on 18 April 1951 under the Treaty of Paris signed by the Netherlands, Belgium, Luxembourg, France, Germany, and Italy. This treaty entered into force after ratification by the founding states on 25 July 1952 and was concluded for a period of 50 years³¹. The satisfactory effects of economic integration resulted in the creation of the European Community, better known as the European Economic Community, a supranational organisation of European countries, signed by the Treaties of Rome on 1 January 1958. The EEC's aim was to create a common market between the Member States, based on the free movement of: goods, people, services, and capital. For many years, the Community countries focused mainly on economic aspects, not integrating citizens who are in the European Community. The rights of the citizens of the European Community, as if they referred to the right of economic operators to the freedoms established by the Treaties of Rome³².

In the following years, the community expanded to include more countries. When the objectives of the common market were achieved to some extent, the

²⁷ Ustawa z dnia 15 lipca 1987 r. o Rzeczniku Praw Obywatelskich., Dz.U. 1987 nr 21 poz. 123, t.j. Dz.U. 2020 poz. 627.

²⁸ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.

²⁹ Traktat o Unii Europejskiej, Dziennik Urzędowy C 326 , 26/10/2012 P. 0001 – 0390.

³⁰ J. Gillingham, *Coal, Steel, and the Rebirth of Europe, 1945–1955: The Germans and French from Ruhr Conflict to economic community*, 1997, s. 86.

³¹ Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951).

³² Traktat ustanawiający Europejską Wspólnotę Gospodarczą, EUR-Lex – 11957E/TXT – PL.

integration process was to be extended to include such aspects of cooperation as politics and law. However, the process of social integration of the community's citizens proved to be more complicated. The economic effects of the community did not increase confidence in European institutions. It should be noted that until the 1970s, citizens of the Member States were treated as economic entities not subject to human rights protection³³. One of the reasons for the integration of society has been the case law of the European Court of Justice solving problems related to freedom of movement and freedom to provide services³⁴. That Court took the view that fundamental rights, i.e., both personal and political, derive from fundamental principles of Community law³⁵. Nevertheless, Member States of the Communities have continued to ignore the participation of citizens in political life, justifying their position by the fact that there are no rights that citizens could directly invoke in the Treaties. This position of the Member States has led the European Court of Justice to declare Article 48 of the EEC Treaty directly effective in the legal orders of the Member States and a source of rights for individuals which are protected by the national courts³⁶. As a result of such judgements, social rights, movement and labour rights were actually respected, which was the beginning of the creation of a supranational society. The CJEU began to move away from the concept of the „citizen of the market” and the „reduced functionalist” and related concept of the individual. The perspective of the notion of a „citizen of the market” presented a person as an object having economic rights, serving only to achieve the economic objectives contained in the Treaties³⁷.

On 1 and 2 December 1969, the Hague Summit took place, a decisive moment in the process of European integration under the auspices of the triptych 'Deepening, enlargement, completion'. This meeting was organised at the initiative of French President Georges Pompidou. The first aspect recommended the establishment of economic union. The second aspect was to determine the progress that could be made in the area of political unification. A committee consisting of the political directors of six foreign ministries and chaired by Étienne Davignon from Belgium began to be set up in this way³⁸. Its

33 N. Nugent, *The Government and Politics of the European Union*, 2017, s. 15.

34 Sprawa 53/81 D. M. Levin v. Staatseckretaris van Justitie.

35 Wyrok Trybunału z dnia 12 listopada 1969 r., Erich Stauder przeciwko Stadt Ulm - Sozialamt. Wniosek o wydanie orzeczenia w trybie prejudycjalnym Verwaltungsgericht Stuttgart – Niemcy. Sprawa 29-69. ECLI identifier: ECLI:EU:C: 1969: 57.

36 Wyrok Trybunału z dnia 4 grudnia 1974 r., Yvonne van Duyn przeciwko Home Office. Wniosek o wydanie orzeczenia w trybie prejudycjalnym: High Court of Justice, Chancery Division – Zjednoczone Królestwo. Sprawa 41/74. ECLI identifier: ECLI:EU:C:1974:133.

37 H.P. Ipsen, *Europäisches Gemeinschaftsrecht*, Verlag 1972, s. 187

38 Étienne Francois Jacques Davignon, Deputy Count of Davignon (born 4 October 1932 in Budapest) – Belgian diplomat, Director-General at the Ministry of Foreign Affairs of the Kingdom of Belgium in the years 1959–1977, head of cabinet of Belgian Prime Ministers Paul-Henri Spaak and Pierre

task was to develop proposals on foreign policy issues³⁹. At the summit in The Hague, Willy Brandt, Chancellor of the Federal Republic of Germany, stated that „if all was well with Europe they would not meet under these circumstances, the success or failure of this conference will rightly be judged as to whether we can get a Community ship back into shipping”⁴⁰.

Community law has granted social and economic privileges to citizens of the community, ignoring political rights, showing a vision of transnational citizenship as a society without respect for human rights. Further development of the economic community without directly proportional integration of society resulted in a lack of democratic legitimacy in the community. The citizens of the Member States were spectacularly inclined towards the further development of the economic community because they saw no benefit in it. By taking up employment in another Member State and settling there, they do not enjoy the same rights and privileges as citizens of their country of residence. The need for integration and the granting of citizens’ rights within the community became inevitable in order to expand economic cooperation⁴¹.

In December 1974, during a meeting of government representatives in Paris, a special group was set up to examine the possibility of introducing so-called Special Rights. A year later, a working group report called the Tindemans report “Towards a Europe of citizens” was presented. The Tindemans report recommended increasing citizens’ rights, including equal access to public offices, abolishing border controls, supporting schools and student exchange programmes, mutual recognition of diplomas, and improving consumer protection. It also concluded that universal suffrage for the European Parliament and a single passport would be obvious signs of citizens’ rights for a “Europe of citizens”⁴².

In 1978, Sir Derek Walker-Smith, a British Conservative Member of Parliament, declared that Community law increasingly regulates the lives of the average citizen of Community Member States. Although he was satisfied with the protection of civil and political rights under the European Convention

Harmel. In 1970 presented the Davignon report, which initiated the European Political Cooperation (preceding the creation of the so-called second pillar of the EU). In 1974–1977 the President of the International Energy Agency. From 1981 to 1985 he was Commissioner for Energy and Vice-President of the European Commission. Honorary Chairman of the Bilderberg Group since 1999.

39 On 2 December 1969, in the Final Communiqué from the Hague Summit, the Heads of State or Government of the Six declare their determination to pursue the aim of the unification of Europe and to strengthen the European Communities.

40 Meeting of the heads of state or government the Hague 1–2 December 1969, s. 35-36.

41 In 1972, the President of the European Commission, S. Mansholt, stressed that immigrants must not feel like second-class citizens in their place of residence.

42 Towards European citizenship, Implementation of point 10 of the final communiqué issued at the European Summit held in Paris on 9 and 10 December 1974 r., Report presented by the Commission to the Council on 3 July 1975 r. Bulletin of the European Communities, Supplement 7/75, s. 20.

on Human Rights, he recommended that the appointment of a Community Ombudsman could improve the protection of social and economic rights, would also make it possible to investigate injustices caused by maladministration and show the EEC that it is an inaccessible and impersonal community. However, Walker-Smith did not suggest that the Community Ombudsman should be an alternative to judicial review⁴³.

In 1984, the European Parliament adopted a draft Treaty establishing the European Union drawn up under the leadership of Altiero Spinelli⁴⁴. For the first time in history, the term „citizenship of the Union” has been used⁴⁵. The European Council convened the Committee called Altiero Spinello to adopt Community measures aimed at strengthening and developing⁴⁶. However, the project did not receive parliamentary support and never entered into force. It has, however, become the starting point for further discussions on Community citizenship, the protection of citizens’ rights and the right to good administration. The Council and the European Commission concluded that since a citizen can lodge a complaint with the ECJ, there is no need to regulate citizens’ rights and create a new mechanism to protect citizens’ rights. In the late 1980s, the European Parliament noted the lack of legitimacy of the European Union’s institutional system as a result of a lack of respect for citizens’ rights. It concluded that citizenship of the Union would restore the confidence of Member States’ citizens in a supra-national organisation⁴⁷.

43 Report drawn up on behalf of the Legal Affairs Committee on the appointment of a Community Ombudsman by the European Parliament, 6 April 1979 (PE 57.508/fin.). Rapporteur: Sir Derek Walker-Smith

44 Italian politician, supporter of the federal concept of European unification. Called the father of the European Union, as a person who influenced the European integration process after the Second World War. In 1924–1937 member of the Italian Communist Party, expelled from the party for criticising Stalinism. Between 1927 and 1943 imprisoned and interned by Benit Mussolini’s government for communist activity. In 1941 contributed to a text called the Ventotene Manifesto, in which he presented his vision of a united Europe. At the end of the war, in 1943, he founded the European Federalist Movement in Milan (Movimento Federalista Europeo), which promoted the federalist concept of European integration. By 6 for the years (1970–1976) as a member of the European Commission, he was responsible for industrial policy and research scientific. In 1979 he was elected to the European Parliament. In the 1980s he played an important roles in the process of European integration by formulating the idea of strengthening the Treaties, called the Plan Spinelli. The plan did not gain the support of the national parliaments and was never implemented, it became but inspired by the Single European Act (1986), which created the single market within the EU.

45 Rezolucja projektu Traktatu ustanawiającego Unię Europejską, Dz.U. 1984 nr C 77, str. 53; Artykuł 3 PTUE: U. C 77 z 1984 r., str. 53; art. 3 PTUE: „Artykuł 3 obywateli państw członkowskich są obywatelami Unii. Obywatelstwo Unii zależy od obywatelstwa państwa członkowskiego; nie może ono zostać niezależnie nabyte lub utracone. Obywatel Unii bierze udział w życiu politycznym Unii w formach przewidzianych w Traktacie, korzysta z przysługujących jej praw przyznane im przez system prawny Unii i podlegają jej prawu”.

46 J. H. H. Weiler., *The Jean Monnet Program*, European Union Jean Monnet Chair in cooperation with the Max Planck Institute for Comparative Public Law and International law, Heidelberg, 24–27 February 2003 r., s. 7-8.

47 K. Lenaerts, P. Van Nuffel, *Constitutional law of the European Union*, London 2005, s. 542-543.

A little later, in 1990, the Council issued three directives which were merged into individual rights in the European Community. Freedom of movement (Article 18 EC), voting rights (Article 19 EC), and freedom of establishment (Article 19 EC). Right of information with regard to the EU institutions (Articles 21 and 255 TEC). In the section on civil law, the Charter of Fundamental Rights of the European Union also grants the right to 'good administration', which is closely linked to the third group (Article 41 CFR). The right to protection abroad by the diplomatic and consular authorities of other Member States also appears as a fourth element (Article 20 TEC). Union citizenship is not limited to these rights. It extends to all rights and obligations under Union law (Article 17(2) EC). It therefore covers the fundamental freedoms flowing from the constitutional traditions common to the Member States (Article 6 TEU) and the social rights which until now have mainly existed under secondary law⁴⁸, to which the Charter of Fundamental Rights refers (Articles 27-38 of the CFR). However, the rights guaranteed by Articles 27-38 of the CFR, 18-21 EC, have a special symbolic value. In principle, only citizens enjoy complete freedom of movement. Similarly, the right to vote and to stand as a candidate in elections is usually reserved for Community citizens⁴⁹.

The establishment of the European Ombudsman is correlated with European citizenship. The initiative to regulate European citizenship in the Treaty on European Union was launched by Felipe González⁵⁰ on 4 May 1990, by letter to the other members of the European Council. The Spanish delegation presented the plan for an Intergovernmental Conference on Political Union, one of the main parts of the concept being dedicated to citizenship 'The road to the European Union'. According to the Spanish vision, in addition to the adoption of the rights of citizens of the European Union, it should have been accompanied by the establishment of a body responsible for protecting those rights. The Spanish representatives proposed that European citizens should be guaranteed their rights by the possibility of petitions or complaints to the European Ombudsman, whose function would be to protect the rights of European citizens⁵¹. The Spanish concept of the European Ombudsman has been accepted by Denmark, a country where the ROP is very successful. It was also stated that in order to strengthen the democratic basis of Community cooperation, the body of the European Ombudsman should be set up under the auspices of the European Parliament.

⁴⁸ European Council, Rome, 14 and 15 December 1990 r., Presidency Conclusions Part 1, 2, 3, 4, s. 2-90.

⁴⁹ Dyrektywa 90/364/EWG w sprawie prawa pobytu, Dz.U. L 180, 26; Dyrektywa 90/365/EWG w sprawie prawa pobytu; Dyrektywa 90/366/EWG w sprawie prawa pobytu dla studentów.

⁵⁰ Felipe González Márquez (born 5 March 1942 in Dos Hermanas) – Spanish politician and lawyer, Secretary General of the Spanish Socialist Workers' Party (PSOE) between 1974 and 1997 (with a break in 1979), a long-time parliamentarian, from 1982 to 1996 Prime Minister of Spain.

⁵¹ B. Mielnik, *Obywatelstwo Unii Europejskiej*, Wrocław 2000, s. 37.

The institution of the European Ombudsman was approved at political level by the European Parliament. At their meeting on 14 and 15 December 1990, the Heads of State and the Government of the Twelve States stated that attention should be paid to the possible institution of a mechanism for the defence of citizens' rights in relation to Community matters. In implementing such provisions, due account had to be taken in particular of the problems in certain Member States. A few months later, on 21 February 1991, the Spanish delegation submitted a new and more detailed proposal on European citizenship⁵². The proposal provides that European citizenship will be one of the three pillars of the European Union and the foundation of its democratic legitimacy.

The application consisted of 10 articles. While Articles 1-8 of the proposal concerned the substantive rights of European citizens, Article 9 concerned mechanisms to protect those rights. It was proposed that an ombudsman should be appointed in each Member State to assist European Union citizens to defend their rights in the Union before the administrative authorities of the Union and its Member States and to invoke such rights before the judicial authorities, either on their own account or on behalf of the persons concerned⁵³.

In addition, the ombudsmen would also have the task of clarifying and supplementing the information available to Union citizens concerning their rights and the means at their disposal. At the same time, the Spanish delegation indicated that it was considering two other options: firstly, to entrust these functions to the European Ombudsman as an independent Union body or person accountable to the European Parliament, and secondly, to strengthen the activities of national ombudsmen by establishing an Ombudsman operating at European level. The creation of the European Ombudsman had to face reality, i.e., to coexist with the European Parliament's Committee on Petitions, the national ombudsmen and the European Parliament's Committee on Petitions. The Committee on Petitions of national parliaments had to respect their functioning and be careful not to jeopardise it⁵⁴. The Luxembourg Presidency therefore issued its draft Treaty on European Union, which was characterised by the art of compromise. In this respect, the draft Treaty provided, for the first time, a legal basis in Community law for the right of petition to the European Parliament, which functioned as a custom. At the same time, citizens' rights to petition the European Parliament were restricted by introducing the condition that petitions to the European Parliament were admissible if they did not directly concern the petitioner as an individual. On the other hand, the draft Treaty provided for the creation of a European Agency for the Ombudsman,

⁵² C. H. Church, D. Phinnemore, *The Penguin Guide to the European Treaties-From Rome to Maastricht, Amsterdam, Nice and beyond*, London 2002, s. 228.

⁵³ *Ibidem*.

⁵⁴ *Ibidem*.

limiting its jurisdiction to the investigation of maladministration in relation to the activities of Community institutions, bodies or agencies.

The body of the European Ombudsman was established by the Maastricht Treaty (officially the Treaty on European Union) as part of the creation of citizenship of the European Union. The EU Treaty entered into force on 1 November 1993 following referendums in 12 Member States. Citizenship means that the institutions and bodies of the Union should be accountable to citizens, both through their elected representatives and through legal and administrative supervision mechanisms similar to those that exist at national level to control public authorities. The role of the European Ombudsman in ensuring good administration by the institutions and bodies of the European Union is particularly important as citizens have limited possibilities to bring actions directly before the Community courts. All national offices in the Member States and acceding countries are linked to the European Ombudsman through a liaison network, which ensures that complaints can, if necessary, be referred to the authority competent in their field of competence. The first European Ombudsman started his work in September 1995, but the Ombudsman's Office opened it on 8 April 1997. The European Ombudsman is based in Strasbourg.

Conclusion

Original European integration related to the common market was, in principle, intended to unify politics, law and economic intergovernmental (internal) and international relations. Social satisfaction with the achievement of economic objectives did not allow for the extension of both vertical and horizontal integration. The lack of democratic legitimacy for the Community has contributed to the creation of „European citizenship“. By introducing citizens' rights into the legal order of the European Union, a body was also created to safeguard these rights. A European Ombudsman was therefore created to guard the rights of Member States' citizens at European Union level. As the European Ombudsman cannot order anyone to improve his or her behaviour, the Ombudsman's ability to solve problems is limited because he or she does not have the appropriate enforcement powers. The mandate of the European Ombudsman should be laid down in rules which are also binding on the administration of the institutions and bodies of the European Union. It is important that officials are required to cooperate in order to solve problematic situations.

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SUMMARY

Origin of the European Ombudsman

The institution of the Ombudsman was formally established for the first time in Sweden in 1809. The main idea behind the establishment of this institution was to control the activities of the state administration and to recognise the complaints of people affected by the illegal and harmful activities of state bodies. However, the idea to establish this institution was not new, because in the history of Swedish law, this institution has already had its achievements. It was not until 1809 that such an Ombudsman was elected for the first time in the Swedish Parliament, by secret ballot, as an independent body. Until 1917, the Kingdom of Sweden was the only country in the world to have the institution of the Ombudsman. Also in the same year Finland, having gained independence from Russia, established the Ombudsman's Office according to Swedish solutions. Then, in the 1950s, the Kingdom of Denmark was the next country to establish the Ombudsman's body. Following the development of the Ombudsman's institution in the Scandinavian countries and the subsequent process of democratisation of social life, the Ombudsman institution was established in 1987 in Poland. Today, even within the European Union, the European Ombudsman functions as an institution for the extra-judicial control of the activities of the bodies and agencies of the European Union. The function of bodies such as the European Ombudsman is to ensure that citizens' rights are actually respected. The European Ombudsman strengthens the rule of law in the European Union and complements the role of the courts by providing opportunities for low-cost, accessible individual redress and, on the other hand, complements the representative function of the European Parliament by becoming a centre for independent critical assessment and improvement of the quality of the European administration. The rule of law serves to maintain the EU system as a supranational system. It is the construction of the integration axis. When there is a lack of trust in the community in this respect, it begins to be treated differently. It is therefore important that the European Ombudsman fulfils his Treaty obligations effectively.