

The Swedish Ombudsmen & Act of Publicity

There is certainly no doubt that the heritage of the two huge historical ideas of law-system, the roman and the anglo-american, plays a big role in nowadays legislation of an emerging European Union. Nevertheless, other traditions also find entrance in what more and more becomes a prior law to all member states of the EU.

- 5 An example for such an enriching, „outer“ element is the office of the „European Ombudsman“¹. It was established by the Maastricht Treaty to offer all citizens a central point of complaints about maladministration by the institutions and bodies of the European Community. The roots of the institution of „Ombudsman“ go back to Sweden in the very beginning of the 19th century.

- 10 Another interesting aspect of swedish legislation is the “Act of Publicity”, which assures a very high level of transparency concerning public administration. In the following, this text would like to give a short overview about what proved to be some two strong tools of democracy.

A. Ombudsman

History

- 15 The word „Ombudsman“ corresponds approximately with „mediator“ or „broker“ and was first used in 1809, when the swedish parliament „Riksdagen“² demanded an independent institution to control the compliance of the King's legislation. In fulfillment, the office of the „Justitieombudsmännen“ (**Parliamentary Ombudsman**) was established. As a constitutional organ, it then performed part of the parliaments surveillance task.

- 20 With increasing areas of the parliaments political activity, until today six more offices (Consumers, Children, Equal Opportunities, against Ethical Discrimination, against Discrimination because of Sexual Orientation, Disability) were set up as **government-appointed Ombudsmen**. In contrast to the Parliamentary Ombudsman (actually Ombudsmen since there are four of them in these days), the other
25 are government-appointed jobs.

The Parliamentary Ombudsmen

- 30 Despite all the growing complexity, the main task of the Parliamentary Ombudsmen has remained the same since the first days: To keep a fair-minded eye on the exercise of power. Today, their area of surveillance is not just limited to all federal civil and military agencies anymore. They also watch over the courts and almost every other person that is in a public office. Exclusions only apply for the work of the government, the cabinet or members of the national and regional parliaments.

- 35 So if a citizen is of the opinion that misjust has been committed to him, he can file an action to the Ombudsman (around 5000 a year). If this action passes the formal requirements such as

- a negative limitation (2 years)

1 <http://www.euro-ombudsman.eu.int/>

2 <http://www.riksdagen.se/>

- concordance with competence (e.g. the Ombudsman cannot change a judgement)

40 further 40% of the complaints are sorted out due to different reasons with the result, that an average of 20-25% of the total requests are being researched. In doing so, the main focus is on precedence cases.

45 If a breach of official duty is discovered, the Ombudsman can decide to go to court or even order disciplinary measures on his own. Beside compiling an annual report which contains references to the most important cases, the Ombudsmen have no other obligations to their principal, the „Riksdag“. The office enjoys full autonomy and a high public reputation, although some of the more controversial decisions are being critically accompanied by the media.

The Government-Appointed Ombudsmen

50 As a consequence of the good experiences with the Parliamentary Ombudsmen, the Swedish Government began to introduce comparable new offices in 1971. At that time, by reason of the new „Marketing Act“ and „Unfair Contract Terms Act“, the Consumer Ombudsman was appointed.

55 Some years later, offices of **Equal Opportunities-**, **Children-** and **Disability Ombudsman** successively followed, as well as the offices of Ombudsman against **Ethical Discrimination** and against **Discrimination because of Sexual Orientation**. Common to all is the link to a specific statute.

60 The Ombudsmen do not only act as intermediary between concerned citizens and these specified acts of state, but have investigational rights and duties too. If infringement is discovered, they can operate as substitutional prosecutors or impose disciplinary measures, very similar to the Parliamentary Ombudsman.

For instance, if a complainant feels overlooked for a job appointment or subjected to harassment by employers or co-workers because of ethnic origin, his matter can be taken to court by the Ombudsman against Ethical Discrimination in the worst case. The proceedings are then undertaken without any cost for the complainant.

65 The Children Ombudsman works on the general basis of the UN Convention of Children Rights³. As a political representative of all Swedes under the age of 18, the main target of this office is to collect their opinions and proposals (via Internet⁴, Post or phone) and act as their organ in the process of legislation.

3 <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

4 <http://www.bo.se>

B. Act of Publicity

70 The principle, that “all action on federal and municipal level should be in the spotlight of publicity”, is again a very old one and can be traced back to Swedish constitutions in the 16th century. Until today, its purpose is to ensure a general right of access to all citizens.

The legal ground in nowadays is laid down in the “**Freedom of Press Act**”⁵:

75 Chapter 2, Art. 1. *“To encourage the free exchange of opinion and availability of comprehensive information, every Swedish citizen shall be entitled to have free access to official documents.”*

To form this right, several ordinances have been enacted. In example, Agencies have to comply every request within latest 24 hours. It does not matter how a wish of insight is communicated, if it is only specific enough to be answered. To help finding documents, wherever some are created, there has to be maintained an index of all files. The right of access is not just limited to reading, further on every citizen is allowed to make personal copies of documents.

85 But without doubt, even the most open State has to keep some informations classified. Nonetheless, the requirements for such limitations are high. The classification remains the exception to the general procedure, every transaction needs to be separately justified. And still even insight-limited documents have to appear on the document indexes, so that of every file there is at least a proof of existence.

90 With all these principles, the Act of Publicity became a vital tool in the contention of balance of powers, keeping a constant pressure onto all executive organs. In combination with the supportive work of the Parliamentary Ombudsmen, it has shown its effectiveness against the tendency of public institutions to seclude itself.

5 <http://www.riksdagen.se/english/work/fundamental/press/press.asp>

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