

THE OMBUDSMAN IN THE PERSPECTIVE OF THE XXI CENTURY

Prof. univ. dr. Ioan Muraru

Key words: mediation

Public administration

Citizen rights

The perspectives of the ombudsman

Law of land

Even if the following subject approaches the perspective, the future, its actuality is indisputable, since the future is currently preparing.

Ombudsman is a classical name of Swedish origin (1776, XVIII century). The institution is now widespread in Europe, Asia, Canada, USA (Ombudsmen for universities).

The Ombudsman is an autonomous public authority, independent, neutral, usually elected or appointed by Parliaments. It is spread around the world under nuanced **names: European Mediator** (EU), named “ombudsman” by the Treaty for an European Constitution (pct.35); mediator of the Republic (France), Defensor del Pueblo (Spain); Commissioner for Human Rights (Azerbaijan); People’s Advocate (Romania and other countries); public mediator, the public defender.

Ombudsman **sense** can be synthesized as follows: trying to unblock the conflicts of the individual with the public administration, to fight against **bureaucracy** - the disease characterizing the state systems. Due to its proved efficiency, the ombudsman is widely spread in the world, being appreciated for its political neutrality, for the nature of the problems it solves. The Ombudsman is recognized as an effective authority, serving the citizen.

The procedures used by the Ombudsman: mediates; arbitrates. As for the ombudsman's work **consequences**, it is to be noticed that the ombudsman does not sanction, does not invalidate acts, and does not require the referral to the court.

The Ombudsman is addressed to a **civilized world**, which respects human rights and democracy and its actions are based on **tolerance** and **respect**.

The 2007 Lisbon Document

- enshrines what the states conquered so far, and opens a wide gate to the European unity, to freedom, democracy, prosperity, civilization.
- The perspectives of the XXI century require a rethinking of the institutions, improvements, developments, exigencies. Within the Ombudsmen system, **the European Ombudsman, also called the European Mediator** is functioning. It is nominated in the Lisbon document and if we take a look at the provisions of the European Constitution (Article I, 10, d); I 49; II, 103; III - 335) we can have a complete picture. The European Ombudsman is involved in cases of maladministration in the institutions, bodies or agencies of the European Union.

He receives: **complaints** from any citizen of the European Union or any natural or **legal** person residing or having its registered office in a Member State; complaints relating to cases of maladministration in the institutions, bodies or agencies of the European Union. The European Ombudsman also makes investigations on its own initiative or on request based on a complaint; refer the case to the institutions, which are required to communicate their opinion; submits a report to the European Parliament and the authority concerned; submits a **report** to the Parliament on the results of the investigation. The European Ombudsman is appointed by the Parliament, while it may be dismissed by the Court of Justice. He works in complete independence.

Findings: regulations or proposals set up by the European Union documents are a successful synthesis on what the ombudsman is. These issues can be found in the organization, operation, competence and acts of the Ombudsman, with some nuances of course.

The perspectives of the ombudsman should be examined in the view of the society development during the XXI century. The estimation of the development is first, the mission of government, and the ombudsman will integrate himself in the phenomena evolution.

Some prospects may already be made.

1. **The State**, this important political institution, should be rethought. The **reasoning** of this rethinking must start from the causes of the state appearance from its functions and its legitimacy (conventions, social contract). If we consider a natural evolution of the civilization, the scientific and technical development and the evolution of materials, people have to put a legitimate question: **can we maintain the same state!?** even if it is: democratic and governed by the rule of law. The answer must be sought in the

relations of the state with the civil society. If you look carefully, the state took over everything up to the detail. He decides today: how much to produce, how much each individual consumes, how much dough is in each pocket, as well, and how many pockets.

We already have to question whether the state, in the XXI century will actually be able to handle the future. We can not answer the simple yes or no. The state will **count** more "units" than the civil society? Especially now, that the state **has invaded** the civil society and is not yet a strong guarantor of individuals freedom. The individual is transformed into a number. Therefore a **reassessment** is required: on the relationship of the state - civil society; on the problems in charge of the state; a wider autonomy of the civil society, of individuals; state should be concerned only for major problems; a rationalization of state labour and of the state apparatus.

The relations of the state, as a political institution, with the civil society will be objectively restructured and improved. Because the economic and commercial relations between individuals will evolve in specific and innovative directions.

Living as such will be changed as a result of cultural and religious development. Sports and small production will have a unique influence on the human society picture. Solutions will be found according to the traditions, customs, morals, religion, the great constitutional rules. These developments will clearly lead to the strengthening of the communities and the increasing of the individual importance. If today the state is a **nanny**, its functions should be rearranged. It should only intervene upon request and only if the first procedures do not produce results.

Scattering its forces in small issues and up to the details, the state proved to be **impotent** in the cardinal issues: the protection of individuals against blind terrorism, the protection of individuals against serious diseases, ensuring decent living standards, ensuring a healthy environment.

Justice, as a state authority will have to be put into action **at a certain level of the conflict** between individuals. The minor and primary conflicts will have to be solved by the priests, teachers, doctors, councils of honour, mediators. **The autonomy** of the civil society will grow. Such an evolution: develops responsibility; saves the human and financial forces; strengthens the group, the community discipline; support the state showing a state of helplessness. Wanting or not, we have to be in agreement that: the state is weakened in its authority, in its role in solving major problems; the mass - media associations have taken the initiative and power to the detriment of public authorities (large number of files, property, justice, so major problems); lack of **loyalty** and **cooperation** between authorities; a permanent, immature conflict, which weakened the state and reduced its credibility. They have

fostered negative phenomena: corruption, even terrorism, a kind of game of the judiciary with the freedom of the individual; trials judged via mass - media.

2. A major problem of the XXI century will be the **rich people- poor people relationship**.

- the great contempt of the XXI century
- the governors assist helplessly the deepening of the precipice
- it appears that no fundamental solutions have been founded, especially given that this is the cause of the individual or collective revolts, crimes, drug abuse, prostitution.
- the police and the repression are not solutions, they only identify cases, but not the causes.

3. Rethinking the law of the land

It is a big problem, where you can advance solutions, mostly from legal point of view. While the private ownership has been and is the millenary solution, the people always seek to identify the **legitimacy** of the private property on the land.

If we consider the **religious sources**, in the Genesis we identify important details. **God** - called the land, earth and said "The earth is to produce vegetation, seed plants, trees which make the rich harvest by their species and have them seed on earth." This is the point about the land, it belongs to all. In the mean while there has been a **diversion**, and the land became a private property - nothing wrong with this. But in their greed, the people divided it, split it. This split was and is the cause of many evils, it generated a lack of productivity, of food, poverty and wealth, endless lawsuits, interpersonal conflicts, wars, slavery and exploitation. The land is part of the patrimony of the human community (national, European). It is clear that overcrowding will lead to a food scarcity. There is needed - in **perspective**: an alternative management of land; another legal regime, to face the difficulties. It could be that the **public property** be the future solution. Individuals will benefit by the fruits of the land concession, lease, *usu fructus*. This solution, obviously hardly recognized today, however, has to be advanced. The life of the world population depends on the land production.

From **constitutional** point of view, another legal regime of the land shall be strong grounded. The land is the territory and the territory is one of the state elements, along with population and sovereignty. These elements met developments. The sovereignty as a state mechanism, has evolved from despotism to democracy and rule of law. The population released from slavery and exploitation. The land retains its legal historical regime. A step forward should be made, shouldn't it?!

The Constitution states that the territory is inalienable and indivisible. This must be reflected in a legal regime aimed to answer the great issues of the future.

4. The solidarity between generations is another current issue, especially for the future. The principle is nominated in **Lisbon** document (4) art. (3). It is a generous and smart idea, giving moral and legal foundation for interpersonal relations. Unfortunately the plea for solidarity between generations is missing from the speeches of politicians and people of the state.

- The European Union combats social exclusion and discrimination and promotes the justice and the social protection, the equality between women and men, the solidarity between generations and the protection of child rights. Therefore, the false discussions on the pensioners should be removed.

5. The individual liberties must be viewed in a unique perspective. More autonomy to any individual should be given. Certain rights already set in the law or doctrine as the right to silence - (**Miranda v. Arizona**) or the right to be let alone should be put into value. In fact, the Lisbon Treaty clearly states that the Union is founded on the respect for human dignity, freedom, democracy, equality, rule of law and respect of human rights, including rights of persons belonging to minorities.

Conclusions. The perspectives of the ombudsman are related with the solutions applied, and we express the certainty that the ombudsman remains an institution of the future.