



SESSION 3: How ombuds institutions can maintain stability and sustain momentum?

Introduction

The consolidation of democracy relies strongly on the existence of control mechanisms on the exercise of power. Ombuds institutions play a significant role in that regard but they must be independent in order to perform their functions without governmental interference.

Independence is perhaps the most important attribute that these institutions must have to efficiently monitor the work of the institutions they are charged to oversee. And indeed, independence allows ombuds institutions to sustain the momentum by providing them with the space to perform their work, without undue influence in a context of growing political pressure.

Independence

Independence consists of three characteristics: institutional independence, operational independence and personal independence.

Institutional independence refers to the relationship between ombuds institutions and other bodies. It is a set of legal provisions and organizational and budgetary measures adopted to grant the independence from the government but, more specifically, from the bodies the institution is mandated to oversee. Many ombuds institutions have underlined the importance of their institutional independence as an essential precondition for effectiveness¹.

In term of **institutional independence**, internal bodies, such as inspectors general, may be presented as less desirable than other form of ombuds institutions since there are structurally part of the body they are charged to oversee. However, they may present a significant advantage in term of efficiency; they can access troops and receive complaints with greater ease, members of the armed forces may be more familiar with them, and they may possess the added institutional and contextual knowledge to most effectively carry out their work.

Operational independence refers to the freedom to decide the matter to pursue, the methods used and the ability to pursue investigations to their conclusion. This form of independence suggests that the activities of the ombuds institutions is not contingent upon the decisions of other actors. In practical terms, this means that ombuds institutions should be granted “own-motion investigations” (the ability to address an issue without a triggering complaint or request) and expanding individual complaints into a systemic investigation.

In addition, Personal independence is asked from the office holder and staff. In other words, the office holder should abstain from actions that are dictated by personal interest or motives, as well as from

¹ Benjamin S. Buckland, William McDermott (Geneva Centre for Security Sector Governance), “*Ombuds institutions for the armed forces; a handbook*”, Geneva: DCAF, 2012



activities that could be perceived as giving rise to a conflict of interest. This (perceived) impartiality gives the complainant the belief that their complaint will be handled in a fair and efficient manner.

Whereas institutional and operational independence may be guaranteed through law and legislative provisions, personal independence is more challenging to achieve because, unlike the former, personal independence relies largely on perception of independence and impartiality by outsiders. Personal independence can be addressed in laws and procedures, for example by including provisions prohibiting certain political affiliations or past professional experiences.

How is the work of ombuds institutions affected by independence?

Although there seems to be an intuitive consensus on the fact that the more independent an institution is, the more effective she is and vice-versa², the notion of independence of ombuds institutions may actually end up being a double-edged sword.

In practice, the capacity for ombuds institutions to efficiently carry out their mission – and this remains particularly true in a challenging environment - may be a function of the degree of personal interdependence, rather than independence, the institution is maintaining with the institution they oversee.

Ombuds institutions are not endowed with a coercive or punitive enforcement capacity. They mostly rely on making recommendations and persuading the armed forces to comply with the findings of their investigations. In such a context, a certain “closeness” between the institution in charge of the monitoring and the organisms that is overseen may present certain advantages.

Questions for discussion

1. What are the preconditions for your institution to achieve a minimum/critical level of independence in order for your institution to be efficient?
2. How do you ascertain what levels of independence (along institutional, operational, and personal) produce the most effective results within your context?
3. Effective (formal) independence vs. perception of independence: Can one go without the other? Do you think that one matter more than the other?
4. If we acknowledge that an ombudsman needs to maintain a certain balance between a certain degree of dependence and a certain degree of independence,
 - Can you think of concrete example you had to deal with?
 - Can you explore the pros and cons of this balance?
 - In your professional life, do you always manage to maintain the balance?
 - How do you prevent ending up on an extreme of the spectrum?
5. How important is the concept of “charisma” in your work?

² Parliamentary Assembly of the Council of Europe, *The Institution of the Ombudsman* (Strasbourg : CoE, 2003) : As the council of Europe argued in a 2003 report : “His/her duties are best discharged when acting as an independent, impartial intermediary [...] An Ombudsman ought to give the public in general the confidence there is an impartial “watchdog” holding government and public administration to account.”