



Ombudsman and Human Rights Protection Institutions in OSCE Participating States

**OSCE Human Dimension
Implementation Meeting
October 1998
Background Paper 1**

The participating States will facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law.

*Conference of the Human Dimension CSCE
Copenhagen, June 1990*

While the primary objective (of the Ombudsman) should be to investigate and provide redress for the justified complaints of individual citizens, a secondary aim should be to amend or improve systems of administration which have made injustice possible, so that mistakes or injustice will not be repeated.

*Conference on Non-Judicial Mechanisms for
Protection of the Fundamental Rights of Persons CSCE,
Madrid, May 1992*

OSCE/ODIHR

**Warsaw, Poland
By Dean M. Gottehrer**

This report is one of a series of papers prepared under the auspices of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe for the benefit of participants at the 1998 Implementation Meeting on Human Dimension Issues. Every effort has been taken to ensure that the information contained in this report is accurate and impartial. We are grateful to a number of experts for their valuable contributions to this series.

These papers are intended to highlight key issues and to promote constructive discussion; the opinions and information they contain do not necessarily reflect the policy and position of the Office for Democratic Institutions and Human Rights or of the Organization for Security and Co-operation in Europe. Any comments or suggestions should be addressed to the ODIHR.

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1. EXECUTIVE SUMMARY

The overwhelming majority of the OSCE participating States have created national or state Ombudsman and human rights protection institutions as democratic ways to promote and protect human rights. New Ombudsman or human rights protection institutions have been established in 14 of the OSCE participating States. Discussions have taken place or legislation has been drafted in another 10 participating States. Only one participating State has rejected legislation to create an Ombudsman.

The OSCE and the CSCE, the United Nations and its agencies, the Council of Europe, other regional bodies and bilateral donor nations have supported the creation of new Ombudsman and human rights protection institutions as democratic ways to promote and protect human rights.

To be effective and respected by the people, Ombudsman and human rights protection institutions must be independent of the government and the political process and not subject to pressure or influence from those who might have a stake in the outcome of complaint investigations.

Human rights protection institutions offer people an opportunity to have their complaints heard, evaluated and investigated by independent neutrals who have no involvement in the outcome of the investigation, can make a finding on the complaint and offer recommendations to the agency that has violated someone's rights to remedy the situation and prevent it from happening again.

The irreducible minimum characteristics an Ombudsman must have are: independence, impartiality and fairness, credibility of the review and investigation process, and confidentiality. The most independent of national institutions are those established in a country's constitution or in a law. Commissions on human rights that are responsible to executive authority often function at the direction of the executive and generally are not as independent as those created by law with powers of investigation and recommendation separate from executive authority. To develop independent, effective Ombudsman and human rights protection institutions countries must set budgets for the institutions at a level sufficient to fulfil the institutions' functions and purposes.

The greatest guarantee of the impartiality and fairness of national institutions is the selection of an Ombudsman or human rights commissioner widely respected across political, economic, social and cultural lines as wise, impartial, fair and someone who seeks the broadest guarantees of respect for human rights. The review processes established in the laws creating new national institutions appear credible, at least on paper. While the process is credible, staffs of many new institutions need training in how to conduct a review. A number of laws creating Ombudsman institutions are silent on whether the complainant has a right of confidentiality.

Obstacles facing new Ombudsman and human rights protection institutions in the OSCE participating States are: lack of resources—inadequate budget, not enough staff, offices that are not in a good

location or that lack sufficient space; difficulty establishing the institution, its credibility and the respect it requires from the agencies under its jurisdiction; and the need for staff to be trained by experienced investigators from other countries who can help create a tradition that will further the promotion and protection of human rights through thorough investigations that result in recommendations adopted by the agency being investigated.

ODIHR's support of Ombudsman and human rights protection institutions this past year has included regional and national activities, some conducted solely by ODIHR and others that were joint projects. The main international organizations active in supporting Ombudsman and human rights protection institutions along with OSCE/ODIHR are the Council of Europe, the United Nations Development Programme, and the United Nations High Commissioner for Human Rights.

The need to assist Ombudsman and human rights protection institutions begins with interest being shown and extends from the creation of the institution until it is functioning fully and effectively.

The report concludes with recommendations to international organizations and the OSCE/ODIHR. ODIHR should continue to focus its support activities mostly on newly established institutions as its comparative advantage lies in its rapid response capacity. Other international organizations have an assistance capacity of long duration which takes more time to be implemented. While assisting newly created offices, it is not always easy to ascertain their genuine independence. This gives ODIHR an additional role for monitoring such recent institutions.

2. INTERNATIONAL STANDARDS AND COMMITMENTS ON OMBUDSMAN AND NATIONAL HUMAN RIGHTS PROTECTION INSTITUTIONS

The OSCE and the CSCE, the United Nations and its organizations, the Council of Europe and other regional bodies have supported and stressed the importance of Ombudsman and national institutions as democratic ways to promote and protect human rights.

In the document of the Copenhagen Meeting of the Conference of the Human Dimension of the Conference on Security and Co-operation in Europe in June 1990, the participating States affirmed that they "will . . . facilitate the establishment and strengthening of independent national institutions in the area of Human Rights and the Rule of Law."

In the Conference on the Human Dimension of the CSCE in Moscow, in October 1991, "the participating States recognise(d) their common interest in promoting contacts and exchange of information amongst Ombudsman and other institutions entrusted with similar functions of investigating individual complaints of citizens against public authorities" (Article 29).

One of the most important discussions took place in Paris in early October 1991 at the First International Workshop on National Institutions for the Promotion and Protection of Human Rights. Its conclusions have been called the Paris Principles. They affirm that national institutions are to have competence to promote and protect human rights with as broad a mandate as possible set out clearly in a constitution or legislative act.

Under the **Paris Principles**, a national institution shall comment on human rights matters to government, parliament and any other competent body; promote conformity of laws and practices with international standards; encourage implementation of international standards; contribute to international human rights reports; increase public awareness of human rights; and co-operate with other human rights institutions.

The Principles also recognised that national institutions in some countries have the competence to receive and act on complaints of human rights violations. National institutions may seek amicable settlements, inform complainants of their rights and how to seek redress, hear complaints or refer them to competent authorities, and make recommendations to solve human rights problems including by amending laws or other acts that obstruct the free exercise of rights.

The World Conference on Human Rights adopted the **Vienna Declaration** and Program of Action, in June 1993, which reconfirmed “the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights” and encouraged “the establishment and strengthening of national institutions” (Article 36), recommended “that priority be given to national and international action to promote democracy and human rights” and “that special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights . . .” (Articles 66 and 67).

Since the adoption of the Paris Principles, the Vienna Declaration and the OSCE decisions mentioned above, many nations have created Ombudsman and human rights protection institutions that receive and investigate complaints about violations of human rights.

3. OSCE PARTICIPATING STATES WITH OMBUDSMAN AND HUMAN RIGHTS PROTECTION INSTITUTIONS

The overwhelming majority of the OSCE participating States have created national or state Ombudsman and human rights protection institutions as democratic ways to promote and protect human rights. OSCE and other international organizations and bilateral donor nations have supported these efforts.

These countries have longstanding Ombudsman or human rights protection institutions at the federal or state (provincial) levels: Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Great Britain, Greece, Iceland, Ireland, Italy, Malta, Netherlands, Norway, Portugal, Sweden, Switzerland, Spain, and the USA. (A working group in Turkey is drafting legislation that would create a national Ombudsman. France will add a *Médiateur pour les enfants* to its already existing institutions.) Institutions in these countries have a variety of jurisdictions and competencies.

Canada, Italy, Switzerland and the United States do not have national Ombudsman institutions—their Ombudsman institutions exist on provincial, state and local levels. In Austria and Germany, the Ombudsman institution is composed of members of parliament who constitute committees to receive complaints from the public and get them resolved. For the most part in the remaining countries, the Ombudsman institutions are considered classical—where the Ombudsman is appointed by a legislative body with jurisdiction over the executive.

Most of the institutions have jurisdiction over the administrative acts of government. Some do not specifically have jurisdiction over human rights violations, although in recent years more of them have construed their jurisdiction to give them authority to investigate violations of human rights. Past annual reports from the Ombudsman of Norway and that of the Netherlands, for example, have discussed human rights issues they have investigated or issues that have been raised in their countries. Some institutions have jurisdictions over the administrative acts of the legislative and judicial branches. In both Sweden and Finland, the Ombudsman has the power to prosecute public officials who are not performing their work or not performing it correctly. In Sweden it has not been necessary to use this

power in some time. The Finnish Ombudsman reports he has prosecuted a few officials in the past year.

This report focuses on the state of development of new Ombudsman and national human rights protection institutions in the OSCE participating States. Parliamentary human rights committees and commissions are not included in this report. Human rights centres, whether funded or operated by governments or not, and non-governmental organizations active in human rights are also not discussed.

New Ombudsman or human rights protection institutions have been established in these 14 participating States: Bosnia and Herzegovina, Croatia, Georgia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Slovenia, Ukraine, and Uzbekistan. Discussion is active and legislation has been drafted and is being considered in Albania, Belarus and Estonia. Estonia is considering adding Ombudsman powers to those of that country's Legal Chancellor.

Discussions have taken place and interest has been voiced to consider creating Ombudsman institutions or working groups are developing legislation in Armenia, Azerbaijan, Bulgaria, and Kazakhstan. While legislation was drafted some time ago, it is not being discussed for the time being in Tajikistan. Discussion has taken place but no legislation has been drafted in Kyrgyzstan.

No legislation is actively being considered to create institutions in Slovakia and Turkmenistan. The Czech Republic has rejected legislation to create an Ombudsman.

4. ESSENTIAL CHARACTERISTICS OF OMBUDSMAN AND HUMAN RIGHTS PROTECTION INSTITUTIONS

To be effective and respected by the people, Ombudsman and human rights protection institutions must be **independent of the government** and the political process and not subject to pressure or influence from those who might have a stake in the outcome of complaint investigations.

Ombudsman and human rights protection institutions created in a country's constitution or under parliaments with specific guarantees of independence are more likely to be independent of the government and the political process than other complaint mechanisms not established in constitution or law that may be abolished at the political whim of the person or group that established them. Independence for these institutions must be respected by government agencies, officials and leaders and encouraged if the institution is to be effective and credible with the country's people, the government's agencies and international organizations.

Human rights protection institutions offer people an opportunity to have their complaints heard, evaluated and investigated by independent neutrals who have no involvement in the outcome of the investigation, can make a finding on the complaint and offer recommendations to the agency that has violated someone's rights to remedy the situation and prevent it from happening again.

This and other important principles for creating and structuring Ombudsman and human rights protection institutions have been developed by organizations supporting their creation, including the OSCE and others. An Ombudsman conference on non-judicial mechanisms for protection of the fundamental rights of persons in the CSCE countries held in Madrid in May 1992 described the characteristics of an Ombudsman institution. The group said the Ombudsman should be a parliamentary office offering free services for people with complaints. It should be completely independent, its recommendations treated with the greatest respect, and no area of public administration should be outside the Ombudsman's jurisdiction.

The conference concluded: “While the primary objective (of the Ombudsman) should be to investigate and provide redress for the justified complaints of individual citizens, a secondary aim should be to amend or improve systems of administration which have made injustice possible, so that mistakes or injustice will not be repeated. The Ombudsman may suggest changes in the Law, but it is for the Government and Parliament to make such changes through the parliamentary process. Similarly, when the Ombudsman recommends redress, it is for the body which has created the injustice to provide the remedy.”

The conference also agreed that the Ombudsman should be provided with **sufficient resources** to fulfil all duties, deal with every complaint and be well-known so complainants will know where to turn for help.

Commonly accepted **essential characteristics** for genuinely independent institutions exist.¹ This paper uses those characteristics to evaluate recently established institutions. The irreducible minimum characteristics an Ombudsman must have are: independence, impartiality and fairness, credibility of the review and investigation process, and confidentiality. Each of the four characteristics are listed below followed by an evaluation of that characteristic as found in the newly created institutions.

4.1. Independence of National Institutions

- a. The Ombudsman’s Office is created in the Constitution or a law of the jurisdiction to establish its permanence.
- b. The Ombudsman acts as an officer of a legislative body or on behalf of the legislative body, and is independent of the organizations the Ombudsman reviews.
- c. The Ombudsman is appointed or confirmed preferably by a super majority of a legislative body through a process designed to prevent political appointments.
- d. The Ombudsman has a fixed, long term of office and may be reappointed.
- e. Removal of the Ombudsman is for cause and by a super majority of the parliament.
- f. The Ombudsman has a high, fixed salary.
- g. The office has a budget funded at a level sufficient to carry out the purposes established in law and spends and accounts for its funds directly to the legislative body.
- h. The Ombudsman has the sole power to appoint and remove staff.
- i. Someone is always capable of exercising all the Ombudsman’s powers.
- j. The Ombudsman is provided immunity from liability and criminal prosecution for acts performed under the law.
- k. Ombudsman actions may not be reviewed in court except to determine the Ombudsman’s jurisdiction.
- l. The Ombudsman may appeal to courts to enforce the powers granted by the act.

Evaluation:

National institutions created in the office of a country’s president or as a committee of parliament are not as independent of political considerations or as impartial as those established in a country’s **constitution** or in a law. While some constitutions of the republics of the former Soviet Union make the country’s president the ultimate guarantor of human rights, the president’s power is not infringed by an Ombudsman or national institution with the power to receive and investigate complaints and make recommendations. National institutions with the power to make recommendations must make them to

¹ *Essential Characteristics of a Classical Ombudsman*, by Dean M. Gottehrer and Michael Hostina, to be published in a volume on Ombudsmen by the International Institute of Administrative Sciences in Brussels (see annex 1).

executive branch agencies administered by the government and responsible directly or indirectly to the country's leader.

Commissions on human rights that are responsible to executive authority often function at the direction of the executive and generally are not as independent as those created by law with powers of investigation and recommendation **separate from executive authority**. A commission whose members are directly appointed by a president or prime minister is accountable to the executive branch the commission most often investigates. Impartially investigating the power that appoints or dismisses a Human Rights Commission in any realistically independent manner is very difficult and perhaps ultimately impossible.

Ombudsman and human rights protection institutions that are part of the legislative branch perform an additional legislative oversight function. In the new and restored democracies, the legislative branches of government are at various stages of development as institutions independent from the executive. The independence of an Ombudsman or human rights institution appointed by parliament is often a reflection of the independence of parliament itself. Occasionally, the requirements for appointment have proved to be initial stumbling blocks when the parliamentary body was unable to muster the appropriate majority to appoint the first Ombudsman. This happened, for example, in Russia and Georgia. Passage of the law in Russia took several years and the appointment of the Ombudsman added additional time to the process because the various parties and factions could not unite behind one candidate for some time. Several candidates nominated by the President of the Republic of Georgia were rejected by Parliament before it accepted the current Public Defender. So while absolute and **super majorities** are theoretically important, they can also delay the initial selection of an Ombudsman.

To develop independent, effective Ombudsman and human rights protection institutions countries must set budgets for the institutions at a level sufficient to fulfil the institutions' functions and purposes. Offices in some countries were established with relatively small budgets. Several institutions do not even have appropriate office space or space separate from government or legislative agencies. It may give some complainants pause to have to enter a building that may also house the very agency they are complaining against to file a complaint with the Ombudsman or human rights institution. **Adequate budgets**, office space and equipment are needed to establish effective and efficient Ombudsman or human rights protection institutions that are not themselves guilty of the delays and maladministration people complain about in other agencies. Difficulties have been experienced in obtaining adequate budgets in Romania, the Russian Federation and the Ukraine and may also have been difficult in other countries.

A national institution, whether headed by a single person such as an Ombudsman or a group of commissioners, must be **able to appoint and remove its own staff without interference** or approval from others, particularly those who could be subject to investigation by the staff being appointed. Some institutions have this power; others do not. The independence of an institution that can only appoint people who have been approved by some other power, executive or legislative, outside of the institution itself is always in doubt.

Most Ombudsman institutions around the world have **deputies** who can serve and exercise all of the institution's powers when the Ombudsman is out of the jurisdiction, incapacitated or the position is vacant. The majority of such deputies are selected by the Ombudsman and not subject to approval by anyone. A minority of deputies are selected by the Ombudsman and subject to parliamentary approval. This is less than ideal. In Uzbekistan, for example, the naming of a deputy has been delayed because suitable candidates have not been willing to accept the post. If the incumbent were to become ill or leave the country for an extended period of time, the institution would be paralysed because no one would have the authority to exercise the Ombudsman's powers.

So far as is known, no Ombudsman or human rights commissioner in the newly established institutions has been removed from office or charged with criminal or administrative offences. The provisions of laws on these issues appear to be working. **Actions of Ombudsman** or human rights protection institutions have been **reviewed by courts**, for example in Lithuania. This review was in a country where the institution of the Seimas Ombudsmen has a power greater than that of simple recommendation. As might be expected, some decisions reviewing actions of the Seimas Ombudsmen have not supported the Ombudsman. This is an additional argument for not giving the institutions power beyond what is needed to conduct a thorough investigation and make recommendations designed to remedy violations of human rights.

A number of new as well as more established Ombudsman or human rights protection institutions in the OSCE participating States have the **power to apply** to a country's Constitutional Court or Supreme Court to have a law declared unconstitutional or other courts to examine decisions of lower courts or re-examine their own decisions. Institutions with this power appreciate having it. It is most important in countries where the tradition of independent courts is beginning, and this power helps the Ombudsman or human rights institution foster greater independence of courts that have functioned in the past as arms of the government.

While Ombudsman and human rights protection institutions of established democracies have had to **apply to the courts to enforce powers** granted by laws creating them, no instance of this has been reported by the newer institutions. Undoubtedly such an instance will arise in the future and it will be important to see how strongly the courts support the powers granted by legislative acts to Ombudsman and human rights protection institutions.

Answers to the following **critical questions** will help assess the independence of any Ombudsman or human rights institution: Who appoints the Ombudsman or human rights commissioners? Who sets the institution's budget and assigns office space and how adequate are both? Was the appointment of the first office holder the result of broad-based support for the candidate by the legislative body? Are the institution's staff freely appointed or removed by the Ombudsman or the commission without interference or need for approval by any authority outside of the office?

4.2 Impartiality and Fairness of National Institutions

- a. Qualifications to serve are imposed and designed to select an Ombudsman widely respected among different political, ethnic and social groups as impartial and fair.
- b. A super majority is required for the Ombudsman's appointment.
- c. The Ombudsman's political and other activities are restricted to remove the office from the political arena and make the Ombudsman accessible to complainants from any political group. The Ombudsman must resign from all political parties.
- d. Legislation creating the Ombudsman's Office or internal written policy states how conflicts of interest will be handled.
- e. Anyone may bring a complaint directly to the Ombudsman, without paying a fee or having first to present the complaint to someone else such as a member of parliament.
- f. The Ombudsman may criticize any agency or person under the office's jurisdiction and may make recommendations to resolve specific situations or prevent their reoccurrence.
- g. The Ombudsman is required to consult before criticising an agency or person and allow the agency or person criticized to reply.
- h. The Ombudsman is not an advocate for any individual or group although the Ombudsman may, after an investigation has been conducted, advocate for recommendations that would benefit a complainant.

Evaluation:

The greatest guarantee of the impartiality and fairness of national institutions is the selection of an Ombudsman or human rights commissioner widely respected across political, economic, social and cultural lines as wise, impartial, fair and someone who seeks the broadest guarantees of respect for human rights. The **quality of the selection process** ensures the quality of the candidate chosen. Because these institutions greatly depend on the people who head them, one of the most important factors in the institutions' effectiveness and success is how the people who head them are chosen. These institutions have been established in nearly 100 countries around the world. They are flexible enough to be adapted to most political and government settings. While the selection process is often a reflection of the structure of the government of the country in which the institution is established, it is extremely important that the process be designed to choose someone who will lead the institution effectively to a position of great respect where its recommendations are almost always followed.

A number of different ways to choose the best Ombudsman or human rights commissioner have been devised. The best **focus on choosing one candidate** rather than forwarding a number of names at each step in the process, which tends to eliminate vote trading and politics and widely consult or set an absolute majority of all members of the parliament or a super majority to select the person. Having to choose only one candidate during the process tends to remove it from politics, although it usually is never far from being a political decision. It cannot be said too often, however, that one of the greatest indicators of how impartial, fair and successful an office will be is the quality of the person chosen to head it. Few institutions achieve excellence with less than excellent leaders.

To ensure impartiality and to make everyone welcome to file a complaint, the Ombudsman is **restricted from partisan political activity**. All countries that have created Ombudsman institutions have restricted the office holder from party political activity and from earning income outside the office's salary, except for teaching and scholarly activity. No instances of violations of these provisions have been reported.

Few new offices in the OSCE participating States have established clear procedures to handle the actual and potential **conflicts of interests** that will inevitably occur, especially in countries with smaller populations, when the person who will conduct an investigation has some sort of prior relationship with one or another party to the complaint. Procedures to deal with these conflicts have been worked out in other institutions in other parts of the world. So new wheels do not have to be invented and when the circumstances begin to arise in different countries, as they likely will, the ways to deal with the conflicts and avoid them will be available.

All of the offices receive complaints directly from people and **investigate them without charging a fee**. The only offices anywhere in the world where complainants must first see someone else are in the United Kingdom and France. In both countries complaints must first be addressed to members of parliament, who may refer them to the country's Ombudsman. In the United Kingdom, people can approach *any* member of parliament. On several occasions, attempts have been made to change this to allow direct initial contact with the Ombudsman. (The Parliamentary Commissioner for Administration, Britain's Ombudsman, is also the Ombudsman for the country's health service. People may approach the Health Service Ombudsman directly but must go through a member of parliament to reach the Parliamentary Commissioner for Administration, when this is actually one person holding two positions.) In France, this restriction is seen to hold down complaint numbers to a reasonable amount.

While the laws creating Ombudsman and human rights protection institutions provide for criticism and recommendations to resolve specific situations or prevent them from reoccurring, the question is an open one on how freely institutions will use this power. The oldest institution among the new or

restored democracies is the Commissioner for Civil Rights Protection of Poland. Legislation was passed in 1987 and the office began functioning in 1988, before the collapse of the Soviet Union. All who have held the post of Commissioner have been **willing to criticize agencies and institutions**. Many national institutions in the remaining countries that have created them are relatively new. Some were created in the past year or two. How willing they are to discover violations of human rights and make recommendations to resolve the problems and prevent them from happening again remains to be seen.

It is also important to recognise that **some human rights violations cannot be solved without money**. Improving conditions in prisons, for example, usually requires money, often substantial sums. While some changes such as halting torture can take place at little cost, others such as improving the physical facility require resources some countries do not have or are using for what they consider more important purposes.

Future evaluations of these new institutions will be better able to look at the specifics of investigations and their outcomes to judge how significant a role the institutions are playing in their countries using the power to criticize and recommend to achieve changes that will protect and promote human rights.

4.3 Credible Review and Investigation Process of National Institutions

- a. The Ombudsman has general jurisdiction in the government that is broadly defined and not restricted to one agency or one particular type of grievance.
- b. The Ombudsman may investigate grievances of anyone concerning any decision, recommendation, or any act done or omitted relating to a matter of administration or human rights, by any organization or person over whom jurisdiction exists.
- c. The Ombudsman may investigate complaints against government or semi-government departments and agencies.
- d. The Ombudsman may initiate an investigation without a complaint.
- e. Administration and agency staff are required to co-operate with the Ombudsman and the Ombudsman is given access to records and agency premises; the Ombudsman has subpoena power or the ability to compel individuals to testify or produce evidence in countries where subpoena power does not exist.
- f. The grounds for Ombudsman review are stated broadly and include "fairness."
- g. After investigation, the Ombudsman has the responsibility to make findings and recommendations to organizations under the office's jurisdiction and has the ability to publish and publicise them.
- h. The Ombudsman's findings are not reviewable.
- i. The Ombudsman may not make binding orders.

Evaluation:

The review processes established in recent laws creating national institutions in OSCE countries appear credible, at least on paper. The **jurisdiction of the institutions** is broad, often broader than in other countries. Investigations can be done of all the types of acts or omissions that can also be done in established democracies. Most Ombudsman institutions can investigate without a complaint. Agency staff are required to co-operate in examinations or investigations of complaints, explain their acts, testify before the Ombudsman, produce documents and other records. Most laws refer to human rights guaranteed in the country's constitutions and also allow reference to international treaties and conventions adopted by the country. The Ombudsman may make a report, present it to the agency and the complainant and make it public. Findings are not reviewable by anyone other than the Ombudsman and only a few institutions have powers to do anything beyond making non-binding recommendations.

While the process on paper is credible, staffs of many new institutions need training in how to conduct a review. In most countries with a Soviet history, an “investigation” as it is translated into Russian is only conducted by procurators. In other words, “investigation” is of criminal matters by those charged with administration of the criminal justice system. Some countries have viewed what the institutions do as an administrative investigation, rather than a criminal one. Others have given the Ombudsman the power to “examine” complaints rather than “investigate” them. In any event, in those countries with only a recent history for respect of human rights or a complaint mechanism to resolve people’s problems, the **staff need to be trained** how to conduct Ombudsman or human rights institution investigations. They also need education in the rule of law and how to apply it to the work of national institutions where once the facts of a complaint are ascertained, the law needs to be researched and the facts analysed under the law to reach a conclusion about whether human rights were violated.

International organizations have been and will be very key to helping train and educate staff of national institutions in methods of investigation and about human rights in general.

4.4. Confidentiality of National Institutions

- a. The Ombudsman may maintain confidentiality.
- b. The Ombudsman may not be forced to testify or produce records.

Evaluation:

A number of laws creating Ombudsman institutions are silent on whether the complainant has a **right of confidentiality**. The Public Defender of Georgia has said that his country’s law does not provide automatic confidentiality for complainants but that any who request it will be given confidentiality. Many laws provide that the ombudsman may not reveal information that is private and confidential. All the laws provide protection for the Ombudsman not to have to testify in court or reveal office records. So far, no known tests of those provisions have occurred in the newly established institutions of the OSCE participating States. If the provisions are eventually tested, it will be important to gather support within a country and internationally to urge that the provision be upheld.

5. DO ESSENTIAL CHARACTERISTICS DIFFER BETWEEN OMBUDSMEN AND HUMAN RIGHTS PROTECTION INSTITUTIONS?

The essential characteristics evaluated above for Ombudsman institutions are similar to those of national human rights commissions or offices. National institutions with the power to receive and investigate complaints about human rights violations have few significant differences whether they are called Ombudsman or national commissions or some other name. While most Ombudsman institutions are headed by a single person, a number are headed by more than one person appointed by Parliament. While most human rights commissions have jurisdiction over the private sector, so do some ombudsmen. One of the most important differences is that while many human rights commissions can issue some sort of binding order, most Ombudsman institutions still may only make recommendations.

In earlier years significant differences existed in the jurisdiction of Ombudsman institutions and human rights commissions. Those differences have blurred in recent years as more Ombudsman institutions have been created that **receive and investigate complaints about human rights** and simultaneously violations of administrative rights are increasingly seen as human rights violations.

In evaluating national institutions, the name chosen no longer matters much. For some countries, the words Ombudsman, commissioner or commissar are foreign words with unfortunate connotations and they are being replaced by titles more favourably viewed in the country and by the people. Countries are choosing between institutions headed by a single person or a commission. They may give the

institution the power to issue a binding order or the power to make recommendations. The institution may have power over the private sector or not. It may have the right to appeal to the Constitutional Court or the Supreme Court or it may not. These may be significant questions in a specific country. For example, the power to apply to the Constitutional Court or the Supreme Court is important in those countries whose court systems are not yet completely independent branches of government on equal footings with the legislative and executive.

The most important characteristics of these institutions regardless of their names remain independence, impartiality and fairness, credibility of the review and investigation process, and confidentiality.

6. OBSTACLES FACING OMBUDSMAN AND HUMAN RIGHTS PROTECTION INSTITUTIONS

Obstacles facing new Ombudsman and human rights protection institutions in the OSCE participating States are of two general kinds: problems caused outside the institution, problems encountered inside the institution.

The most significant problems caused outside the institution are **lack of resources** dedicated to it—inadequate budget, not enough staff, offices that are not in a good location or that lack sufficient space—and difficulty establishing the institution, its credibility and the respect it requires from the agencies under its jurisdiction.

When an office is created, the initial budget may be enough to establish the office. But that budget is normally not sufficient to sustain the office at adequate levels once complaints begin to rise. If the budget is not increased to hire more staff to conduct investigations, it starts to take longer and longer to conduct investigations and report on results. If it begins taking too long, the institution will lose credibility and start to be the kind of bureaucracy about which it is receiving complaints.

A thorough examination of a complaint, which is necessary if the people lodging complaints will find the institution credible, requires **sufficient time and staff resources** to conduct the investigation in a timely manner. Without sufficient staff, Ombudsman and human rights protection institutions may not be able to do a job respected by the people or government officials and civil servants. Providing sufficient staff and financial resources comes second after the selection process in factors most important to the success of an Ombudsman and human rights institution.

If complainants are to feel comfortable, the institution's **office should be located away from any other government offices** or buildings. People who want to complain should not have to worry about being seen entering the office for fear they will be subjected to retribution. Also the offices need to be of sufficient space and design to allow complainants to talk to staff in confidence without being overheard. The offices of all staff should be in close proximity and not distant from one another in a building with other offices and other purposes. Offices should also be sufficiently secure so records cannot be stolen or read when the office is closed.

Early in a new institution's history, the most difficult problems are in learning how to organize the office and conduct the investigations in a credible way that leads to resolving problems. New institutions are being created in countries with **no tradition of the rule of law or of observing human rights** and that **never had an Ombudsman or human rights protection institution**. Staff for these institutions need to be trained by experienced investigators from other countries in the rule of law and specific human rights and who can help create a tradition that will further the promotion and protection of human rights through thorough investigations that result in recommendations accepted by the agency being investigated. Mistakes made early in the history of Ombudsman and human rights protection institutions can be difficult to reverse later once a precedent is set.

Insufficient resources allocated to the institution can create problems inside the institution. Aside from problems caused by insufficient staff, the lack of equipment and proper office space can cause morale problems and make it difficult to track complaints and bring investigations to an end.

7. HUMAN RIGHTS VIOLATIONS INVESTIGATED BY OMBUDSMAN AND HUMAN RIGHTS PROTECTION INSTITUTIONS

Many complaints brought to Ombudsman and human rights protection institutions early in their history are not within the institution's jurisdiction. It takes time for people to understand the institution's functions and what types of government acts are within the institution's jurisdiction. None of these complaints are included below.

The following are examples of statistics or typical complaints from reports of Ombudsman and human rights protection institutions in different stages of development. The statistics were reported by the institutions and have not been checked or discussed. In some instances reports do not contain statistics on how many cases were completed or with what results. These examples represent the kind of work that national institutions do. They are not intended to be comprehensive, represent all countries or suggest that these problems are distinct or unusual. They were chosen for their variety and informational value from reports that were available.

7.1. Canadian Human Rights Commission

Looking forward to its 10th anniversary in 1998, the Commission published highlights of its 1997 annual report. Chief Commissioner Michelle Falardeau-Ramsay, Q.C., commented that "there is still a gap between the rights that have been won in law and the reality of people's day-to-day lives.

"Sexual harassment and unequal pay remain facts of life for far too many working women, racism and racial tensions are still a reality in many communities, gays and lesbians are still targets of discrimination, people with disabilities still have difficulty breaking down barriers to meaningful employment, and Aboriginal peoples still suffer the legacy of centuries of mistreatment.

"There is also the issue of poverty, which reduces the effective enjoyment of rights for many Canadians. Those who are most vulnerable in our society by virtue of the various prohibited grounds of discrimination—women, Aboriginal people, and people with disabilities—are also most likely to be poor. The international community has recognised that economic and social rights cannot be separated from political, legal or equality rights. It is now time to recognise poverty as a human rights issue here at home as well," Commissioner Falardeau-Ramsay wrote.

The Commission suggested that three key challenges must be addressed to improve the existing system: whether the definition of human rights in Canadian legislation is too restrictive; whether existing enforcement mechanisms exclude certain types of human rights problems from being dealt with because they do not fit into the specific categories of current human rights laws; and whether a better process can be found to reduce the often negative impact of delays on individual complainants and their families.

The Commission reported receiving 1,527 new complaints in 1997 and completed work on 2,025 files. Disability remained the ground most often raised—29 per cent of all new complaints. During 1997, 25% of new complaints alleged age discrimination. This increase from previous years, the Commission said, is due largely to a significant number of complaints about mandatory retirement in the Canadian armed forces following a court ruling. Complaints on the grounds of race, colour, religion and/or national or ethnic origin made up 20% of the caseload. Complaints of discrimination based on sex made up 16% of

complaints received by the Commission in 1997. More than half of these complaints involved allegations of harassment. Complaints based on sexual orientation were 2%, down from 5% in 1996.

7.2. Provincial Ombudsman of Ontario, Canada

In her 1997/98 annual report to the Legislature, Roberta Jamieson, Ombudsman of the province of Ontario, Canada, said the fundamental issue in times of rapid and profound change in governance of Ontario is “the challenge of keeping government accountable to the people.” In reviewing changes affecting public service delivery, Ms. Jamieson described the past year as “tumultuous” and said that too often what sounds like a reasonable goal of efficiency is translated into a single focus of savings dollars and cents.

Ms. Jamieson reported that investigation reports revealed delay at an unacceptable level in five agencies and included the following findings:

A current backlog of over 16,000 registrants requesting birth relative searches. The median (mid-point) age of searches is more than seven years.

The median time for requests to review a decision by a college of a health profession is almost two years. The Health Professions Board has experienced continuous turnover in its membership and has been without its vice-chair for over two years.

At the time of investigation, the Social Assistance Review Board had 6,742 outstanding open appeal files. The average processing time for appeals is seven months, during which the livelihood of vulnerable clients may be at stake.

During the five year period surveyed, the median time taken to close an appeal file at the Workplace Safety and Insurance Appeals Tribunal doubled from 170 to 340 days. Last year more than 8,500 appeals were received or carried over from the previous year, while only 3,042 were decided.

Ms. Jamieson said the evidence in these investigations led to one conclusion: “It is demonstrably clear that at the root of the problem of delay is not an inefficient or uncaring public service, but rather insufficient resources to deliver an acceptable level of service. These agencies are quite simply lacking the tools to do their job.”

Each investigation report included recommendations by the Ombudsman to improve service and enable timely delivery of service.

Ms. Jamieson called for action on accountability through a system-wide introduction of service standards to be adopted by all government organizations.

“There should be a clear statement of service standards, and reasons given when these standards are not met, such as insufficient resources. Disclosure of information may be the only way to close the accountability gap - by encouraging a dialogue that results in either reduced expectations or an increase in resources. In the meantime, public servants should not be held accountable for a situation which is not of their making.”

The Ombudsman also referred to the challenges facing her own office as a result of funding cutbacks at a time of increasing complaints and inquiries, which were up slightly this year to a total of 29,339.

7.3. National Ombudsman of Croatia

The Ombudsman received 1,760 complaints in 1997, most of which were from complainants who physically came to the office. About 40 percent of the people who approached the Ombudsman complained about the courts or were seeking legal advice or assistance. Nearly 80 percent of the complaints required investigation of infringement of individual constitutional or legal rights, negligence or other administrative irregularities. The greatest number of complaints about violation of constitutional and legal rights—about 588 or 42.06% of the total—were about property and tenant rights. The second largest number of complaints—212 or 15.16% of the total—were about violations of retirement and disability rights, particularly from the former Yugoslav National Army. Significant numbers of complaints were also received about citizenship, residence permits, status as refugees or displaced persons, health insurance rights, labour rights or the difficulty finding work, construction and planning rights and other issues.

7.4. Ombudsman of the Republic of Hungary

The Ombudsman of Hungary issued a report of an *ex officio* investigation of legal and constitutional rights in penal institutions, particularly the rights of those in the correctional service. The Ombudsman found the staff were not well-trained, leading to imminent danger of injury; offices were crowded and furniture worn; illumination and ventilation were bad; in some places it was not possible to wash one's hands. Those detained had less space than specified (in two institutions it was 0.8 square meter per person). In one prison, people were kept on three floors below ground level and the Ombudsman considered the prison a dungeon that should be closed. Staff must work other jobs after hours to earn enough to live on, often without seeking permission of their superiors. The Ombudsman made a series of recommendations to the Prime Minister, the Minister of Justice and the National Commander of Correctional Services to correct the problems discovered in the investigation.

7.5. Parliamentary Commissioner for National and Ethnic Minority Rights of Hungary

In his 1997 report, Ombudsman Jenó Kaltenbach “found that legally realistic protection (prohibiting discrimination in employment) was not available to counter prejudice arising at the establishment of employment, therefore we recommended for consideration, within the framework of anti-discrimination legislation, the Act on the Code of Civil Procedures and the Labour Code to be amended, and the amount of penalty which may be imposed for ‘anomalous employment’ . . . be increased.”

The Ombudsman received 352 complaints in 1997. The largest numbers were against: local governments, 145; Courts of justice, 37; Police, 33; Other, 25; Ministry of Culture and Education, 16; Institutes of public education, 11.

7.6. Office of the Ombudsman of Ireland

Irish Ombudsman Kevin Murphy issued his fourth Annual Report on 16 April 1998. The report contains a guide to public bodies on how to set up their own internal complaints systems and is accompanied by the booklet “Settling Complaints - The Ombudsman's Guide to Internal Complaints Systems.” The guide is designed to help public bodies deal with complaints more effectively and lead to improvements in the quality of local services.

During 1997, the busiest of Mr. Murphy's four years to date, he received 3,929 complaints compared to 3,181 complaints the previous year. This is an increase of 24%. Of these, 803 were outside the Ombudsman's competence leaving 3,126 valid complaints. In addition to the new complaints, 948 complaints were carried over from 1996 for a total of 4,074 to be dealt with in 1997. During the year, 2,981 of these were brought to a conclusion, an increase of 21% in the number of cases completed. This left 1,093 carried forward to 1998.

Of the 2,981 cases finalized in 1997, 523 were resolved and in 802 cases assistance was provided which means that in 1,325 (over 44%) of cases some form of redress was obtained for the complainant. Of the complaints within jurisdiction dealt with during the year, 50.2% concerned civil service departments and offices, 25% involved local authorities, 13.5% related to health boards, 9% concerned Telecom Éireann and 2.3% An Post.

7.7. Seimas Ombudsmen of the Republic of Lithuania

In their most recent annual report, the five Seimas Ombudsmen of Lithuania noted that they received 1,017 complaints in 1997 against state officials and 374 against municipal officials. The most complaints were against the Police Department (170) followed by the courts (127), the Prosecutor General's Office (96), the Correctional Affairs Department (87) and the State Social Insurance Fund's management (26). The Ombudsmen said that while they received quite a large number of complaints against the Correctional Affairs Department and institutions under it, there were considerably fewer than in prior years. They felt that was the result of "somewhat more openness in the activity of penal institutions, greater interest in them on the part of civil and international organizations and Seimas Ombudsman J. Jasaitis's visits to correctional facilities." On the other hand, they said, complaints against the Police Department have more than doubled since 1996 and quadrupled since 1995. "That could be connected with residents' decreasing fear of complaining openly about the 'power' structures' activities and with the ongoing reforms of the Internal Affairs system." Complaints against judges doubled while those against prosecutors, interrogators and investigators more than doubled.

7.8. Public Attorney of Macedonia

In a report on the Public Attorney's work from establishment of the office July 3, 1997, to March 31, 1998, the different subjects of complaints are listed:

"Most of the applications submitted, which claim protection of rights, are from the domain or urbanism, civil engineering and protection of human environment (41 or 20%), judiciary (28 or 14.14%), housing (21 or 10.24%), social protection (19 or 9.26%), legal property relationships (13 or 6.34%), public services (12 or 5.85%), constitutional freedoms and rights (8 or 3.90%), finances (4 or 1.95%), customs (1 or 0.48%) and others."

The Public Attorney listed examples from all of these categories. They included requests from citizens concerned with unfounded decisions which deprive them of using building land; violations of procedures for reassigning employees and managers; delay in the courts; violations in selling housing and office space; problems with establishing the right to public welfare, pensions and disability insurance; compensation for expropriated property; procedures for fixing the price of public utilities; abuse of authority of the Ministry of Internal Affairs; delay of approving or denial of citizenship.

7.9. National Ombudsman of the Netherlands

Marten Oosting, the National Ombudsman of the Netherlands, found in his 1997 annual report that the National Ombudsman received 7,210 written applications for investigations, as compared with 7,694 in 1996.

The Ombudsman received the greatest numbers of complaints about these agencies: Justice (26.7%), Finance (15.9%), Social Affairs and Employment (12.3%), the police (12.1%), and Education, Culture and Science (10.4%). Of the written applications, 2,812 (57.7%) related to government departments. Most concerned the Ministry of Justice—1,208 or 42.8% of all written applications about government departments. The Immigration and Naturalisation Service attracted large numbers of complaints. Of

the remaining applications, 25.3% related to independent agencies, 12.1% to the police and 4.7% to local authorities.

The following six criteria figured most frequently in complaints to his office: a. Promptness (30.3%); b. Active information provision (15.8%); c. Compliance with generally binding regulations (15.3%); d. Fairness/balance (12.4%); e. Administrative accuracy (5.9%); f. Correct treatment (3.3%).

a. Promptness: While government bodies should not take longer to deal with matters than is strictly necessary, promptness was involved in a third of all the Ombudsman's cases in 1997. Action by the relevant government body acknowledged that the complaint was justified. Where promptness was cited in reports, the complaint was found to be justified in 74.2% of cases.

b. Active information provision: Oosting wrote, "Members of the public dealing with government bodies have a right to know where they stand. Government should give them correct information about progress in dealing with their requests or applications and about their rights and duties. Where this criterion was cited in the reports, the complaint was found to be justified in 60.8% of cases."

c. Compliance with generally binding regulations: Oosting reported, "Government bodies should not only enforce the law, but also obey it themselves. This was the most frequently cited criterion (19.2%) in the reports issued in 1997 and the complaint was found to be justified in 40.1% of cases. The criterion was also involved in 10.8% of the cases which were discontinued."

d. Fairness/balance: The Ombudsman reported, "Government agencies are often compelled to weigh one interest against another. The result must be a judgement which can be seen as fair and balanced. This criterion of fairness and balance was cited in 17.3% of the reports, but in 73.1% of cases the complaint was found not to be justified."

e. Administrative accuracy: This was cited in 4.7% of the reports. In 58.2% of cases the complaint was found to be justified.

f. Correct treatment: This criterion was cited in 5.5% of the reports.

7.10. Parliamentary Ombudsman for Public Administration in Norway

In his Annual Report for 1996, Ombudsman Arne Fliflet revisited the Ombudsman and questions of human rights. He wrote:

"In my report for 1990 I took up the relationship of the Ombudsman to questions of human rights. It is my impression that the Ombudsman's focus on these questions has contributed to an increased awareness of our human rights obligations by the administration in recent years. In several cases, I have found cause to point out the significance of referring to our own constitutional provisions, as well as to international conventions for the protection of human rights, such as for example the European Convention on Human Rights and the UN International Covenant on Civil and Political Rights. An incorporation into Norwegian law of these human rights obligations, as proposed in the Official Norwegian Report 1993:18, will help create an even greater awareness of the significance of the international human rights, and thus be an important signal to the administration and to the public about the importance of human rights generally when it comes to the application, administration and enforcement of the law."

The Norwegian Ombudsman received 2, 072 cases and took up 44 cases on his own initiative in 1996.

7.11. Commissioner for Civil Rights Protection of Poland

In his 1996-1997 report, Prof. Adam Zielinski informed the Polish parliament that his office, which celebrated its tenth anniversary this year, had received 29,769 requests, up 509 (1.02%) from the previous period, while total correspondence including that about cases previously undertaken reached 46,750, up 1,327 (1.03%) from 1995. The largest number of complaints concerned employment relations and social insurance (23.3%), economic, financial and tax issues (17%), operations of the judiciary, the public prosecutors and the Police (16.6%) and the housing sector (14.9%).

The Polish Ombudsman wrote, "It may be seen thus that the general social conditions affecting the CCRP's work did not change. The observance of civil rights of persons in a poor financial situation [the retired, the unemployed, the homeless, the disabled, families with many children] continued to raise concern. Against the emergence of the market economy, and in connection with the progress of organized crime, questions of the limits of state intervention in the citizens' privacy arise. State administration, although improving its efficiency, still undervalues the need for protecting justified interests of the citizen."

The Polish Ombudsman appealed 20 times to the Constitutional Tribunal, 96 times to the Supreme Court and four times to the High Administrative Court.

7.12. Provedor de Justiça (Ombudsman) of Portugal

In a presentation on the Portuguese Ombudsman at the Human Dimension Seminar in Warsaw, an office participant in the seminar detailed the agencies of the central administration that were the subject of complaints in 1996: Ministry of Education, 28%; Ministry of Finance, 18%; Ministry of Justice, 14%; Ministry of Labour and Social Security, 10%; Ministry of Health, 9%; Home Office, 6%; Ministry of Social Equipment and Planning, 3%; Ministry of Agriculture, 3%; Others, 9%.

The subjects most frequently complained about included: Labour relationships within central and regional administration, 32%; Justice, 9%; Social Security, 7%; Fundamental rights in general, 6%; Education, 5%; Taxes, 5%; Housing, 4%; City planning and public works, 4%; General administrative matters, 4%; Prisons, 4%; Labour relationships within the private sector, 2%; Police, 2%; General local administrative matters, 2%; Others, 14%.

7.13. People's Advocate of Romania

In the office's first report, the People's Advocate (Ombudsman) reported receiving 2,492 complaints and 1,500 applications for legal advice during the five months after the office began its work on December 9, 1997. The largest number of complaints were against court decisions or other issues outside the jurisdiction of the Ombudsman. The People's Advocate lamented that many Romanians do not understand the role and powers of the office and that "the expectations from so many people to obtain some form of redress for the massive abuses committed during 45 years of totalitarian rule are sky-rocketing, if seen in the light of the actual powers of the Ombudsman."

The Ombudsman suggested amending the organic act to limit those matters under his jurisdiction to complaints about events not more than one year old before the complainant petitions the Ombudsman. He also noted that people are most discontented with the administration of two laws on the restitution of land and house properties. "In many cases, petitioners complain about lengthy procedures or abuse on behalf of administrative officials, this partly because of flaws or gaps in existing legislation, or because of poor quality in administration. It also reflects the need to have more determined steps taken in bringing both central and local administration in line with the European standards."

7.14. Human Rights Ombudsman of Slovenia

In his 1997 report to parliament, the Human Rights Ombudsman of Slovenia, Ivan Bizjak, wrote that the general assessment of respect for fundamental human rights and freedoms in that country was good. That did not mean that individual irregularities did not occur. He also felt he needed to call attention to certain serious problems. They were: "legal order is not complete and stable, state bodies operate inefficiently and even unlawfully, identified irregularities are rectified too slowly, inadequate informing of the public about government intentions, co-ordination between departments for the solving of problems takes too long, the attitude of the state to the individual is frequently inappropriate, there is inadequate care for certain groups which bear the greatest burden for the economic transformation, some areas still have no effective complaints procedures, state and other bodies have an inadequate sense of proper operation."

Mr. Bizjak also offered the following statistics of the number of complaints out of 1,404 received from January to May 1998 in different areas of the ombudsman's work: constitutional rights: 18 (1.3%), restriction of personal freedom: 69 (4.9%); social security: 173 (12.3%); labour relations 96 (6.9%); administrative affairs: 322 (22.9%); court and police procedures: 379 (27%); environment: 23 (1.6%); public services: 17 (1.2%); housing matters 73 (5.2%); others: 234 (16.7%).

7.15. Parliamentary Commissioner for Administration of the United Kingdom

Michael Buckley, the Parliamentary Ombudsman (formally known as Parliamentary Commissioner for Administration) of the United Kingdom published his Annual Report to Parliament for 1997/98 on 2 July 1998. During 1997/98, the office issued to members of parliament 376 reports of full investigations of complaints by individuals against government departments and public bodies and concluded 2,055 cases, both more than any year since the office was created in 1967.

One of the Ombudsman's functions is to ensure appropriate redress is made by government agencies and public bodies to complainants who have suffered injustice from official errors or delays. Departments paid amounts from £6.02 to £50,044.30 as redress to complainants following investigations. In many cases they also offered apologies and agreed to change working practices to prevent errors.

Eleven departments and agencies have been the subject of the greatest number of complaints. The Child Support Agency was the subject of 30% of complaints reported on following full investigation. Cases against the Benefits Agency covered the mishandling of claims, misdirection, the consequences of wrong assessment of entitlement to benefit and mishandled benefit fraud investigations. The problems most commonly identified in complaints against other departments concerned delay, issuing misleading advice or guidance and making mistakes in handling grants or subsidies or in legal aid assessments.

Departments subject to most complaints to the Ombudsman 1997/98: DSS - Child Support Agency: 578; DSS - Benefits Agency: 468; DSS - Contributions Agency: 38; Inland Revenue: 217; Department of Environment, Transport and Regions: 161; Legal Aid Board: 147; Department for Education and Employment: 115; Customs and Excise: 33; Lord Chancellor's Department: 98; Department of Trade and Industry: 40; Ministry of Agriculture, Fisheries and Food: 39; Others: 617.

7.16. Ombudsman of Uzbekistan

The Ombudsman of Uzbekistan in 1997 examined compliance with a number of international conventions and laws of Uzbekistan. The examination of compliance with provisions of the Convention of Rights of the Child in Tashkent found: people and officials are not informed enough about the conventions which are not always observed; some children's institutions do not have enough medicine, facilities, food, or have no drinking water or sanitary and hygienic facilities; deficiencies at schools and

the shortage of skilled teachers caused growth of crime among children; some children were detained, arrested or kept in custody without observing or ensuring their rights for protection, dignified treatment or when illicit investigation methods were used. Recommendations were addressed to the Ministries of Health, Education, Welfare and the hokimiyat of the Tashkent Region.

The Ombudsman also examined compliance with the Convention on Elimination of All Forms of Discrimination Against Women in the Syrdarya Region and found that that some efforts are undertaken to protect the rights of women. The Ombudsman found among other things that not enough attention is given to raising the role of women in managing state and public affairs. Adequate conditions do not exist for women to combine household chores with employment because of problems finding a job or decreased numbers of pre-school establishments or schools where children may stay after classes. Women's social and economic rights are being violated through delays in paying wages or maternity leave and refusal to employ pregnant women or those with young children. The number of disabled women is growing and crime committed by women is increasing.

The Ombudsman examined compliance in Djizak Region with laws of Uzbekistan on Citizens Applications and on Appealing in Courts the Actions and Decisions that Violate the Rights and Freedoms of Citizens pointed out some enhanced compliance with the Law on Citizens Applications but also found delay and other problems. Examination of compliance with the labour law in Tashkent and the Tashkent Region identified violations of rights mainly linked with termination of work contracts, payment of overtime and provision of holidays.

The Ombudsman noted in her annual report that the most frequent complaints are “violations of the right for individual freedoms and immunity, the right for a just investigation of a case before hearing and in court, to get information and also violations of social, economic, labour and ecological rights of citizens.”

The staff of the Authorised Person (Ombudsman) received 2,319 complaints in 1997 about: disagreement with a court judgement (586), illegal actions of law enforcement officers (398); ungrounded arrest and submission of accusation (253), housing and municipal matters (197), labour issues (126), domicile registration issues (97), disagreement with a court decision about the issues of housing (96), welfare issues (96), modification of a measure of punishment (81), indexation of bank deposits (64), non-execution of court decisions (34), violation of entrepreneurs' rights (25), educational issues (24), medical service for convicts (16), and other issues (226).

8. ODIHR ACTIVITIES IN SUPPORT OF OMBUDSMAN AND HUMAN RIGHTS PROTECTION INSTITUTIONS

ODIHR activities in support of Ombudsman and human rights protection institutions this past year have included the Human Dimension Seminar on Ombudsman and National Human Rights Protection Institutions on the regional level and activities in individual countries as well. Some activities were conducted solely by ODIHR; others were joint projects with other international organizations or with the support of bilateral donor nations.

8.1. Human Dimension Seminar on Ombudsman and National Human Rights Protection Institutions

A total of 242 participants attended the Human Dimension Seminar on Ombudsman and National Human Rights Protection Institutions held in Warsaw 25 to 28 May 1998. The Seminar was sponsored by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), the Regional Bureau for Europe and the CIS (RBEC) of the United Nations Development Programme (UNDP), and closely co-organized with the Polish

Ombudsman's Office and the Council of Europe (CoE). The United Nations High Commissioner of Human Rights provided moderators for two of the discussion groups as well. The Seminar was held during the 50th anniversary of the Universal Declaration of Human Rights and the 10th anniversary of the Polish Ombudsman's office.

Representatives from 43 participating States of the OSCE took part along with representatives from 11 international institutions and 29 non-governmental organizations. The participants included among others ombudsmen from Austria, Belgium, Bosnia-Herzegovina, Canada, Croatia, Denmark, Finland, Georgia, Germany, Hungary, Ireland, Italy, the Former Yugoslav Republic of Macedonia, Lithuania, Norway, Poland, Romania, the Russian Federation, Slovenia, the Ukraine, the United Kingdom and Uzbekistan.

Seminar participants shared experiences and participated in four discussion groups to draft recommendations to nations considering creating Ombudsman and human rights protection institutions, the institutions themselves and international organizations that assist those institutions. The four discussion groups and their discussion topics were:

Group 1: Practical and internal management of newly established ombudsman/human rights protection institutions. Topics included: budget and financial requirements; legal framework; office equipment; procedures for applications and complaints; confidentiality of applications and complaints; location(s) of the office; office structure and organigram.

Group 2: Ombudsman and human rights protection institutions and their relationships with public authorities and the judiciary. Topics included: relations with the judiciary, especially with the procurator and Constitutional Court; relations with the government, especially with police and prison officials; relations with Parliament.

Group 3: The preparation of national human rights education plans. Topics included: presentation of the guidelines for national plans of action for human rights education prepared by the office of the United Nations High Commissioner for Human Rights; the interest of having a national plan; principles governing a national plan; practical steps towards a national plan.

Group 4: The development of existing and emerging European and regional networks of ombudsman/national human rights protection institutions. Topics included: presentation of ongoing initiatives: the European Ombudsman Institute, the International Ombudsman Institute, the European Meeting of Human Rights Protection Institutions (steering group presently chaired by the Danish Centre for Human Rights), UNDP, UNHCHR, Council of Europe, bilateral contacts of institutions, the Office for Democratic Institutions and Human Rights; how to develop a common network and synergies: mutual training activities, a common Internet site, exchange of information.

The discussion groups made recommendations to:

- Create Ombudsman and human rights protection institutions that are truly independent with resources adequate to do their work.
- Develop co-ordinated training programs to serve the needs of both new and more established institutions.
- Prepare national plans for human rights education.
- Co-operate closely between Ombudsman and national human rights protection institutions and both non-governmental organizations and the mass media.
- Co-ordinate to determine what training opportunities currently exist, map out future training after consulting target audiences and develop programs to meet missing needs.

- Revise, update and expand ODIHR's status report on Ombudsman and human rights protection institutions in the participating States to become a document covering all OSCE countries.
- Develop a legal and human rights culture.
- Communicate more extensively with each other.
- Create a regional Internet World Wide Web page for Ombudsman and human rights protection institutions that is a comprehensive collection of materials on the subject and create list servers to increase communication between Ombudsman and human rights protection agencies around the world.
- Increase co-ordination of technical assistance among donor institutions that support Ombudsman and human rights protection institutions.

Through co-operation from UNDP, the participation of officials and NGOs from more than 20 countries was sponsored.

8.2. Albania

With assistance from ODIHR and the OSCE Presence in Albania, the Albanian Ministry of Legislative Reform has written a draft Ombudsman law. The Albanian Ombudsman will be called the People's Advocate and will have powers to investigate citizen complaints and issue non-binding recommendations to the state administration. The work of the People's Advocate will be expanded beyond human rights to include protecting individuals from abuses of state administration. The People's Advocate will likely have a constitutional basis since the current draft Albanian constitution scheduled for a referendum on November 22, 1998, contains four articles establishing the People's Advocate.

Late in September 1998, the Ministry of Legislative Reform, the OSCE Presence in Albania and ODIHR will present two roundtables, one for members of parliament and one for NGOs, on the draft law and the future work programme for the establishment of the institution. The Council of Europe and the UNDP may provide experts to speak at the seminar. The European Union and the United Nations High Commissioner for Human Rights have also been invited to participate. The roundtables will attempt to establish a "Group of Friends of the Ombudsman" as well.

8.3. Belarus

At the request of the OSCE Advisory and Monitoring Group Belarus, ODIHR provided an expert in Ombudsman laws who evaluated a number of drafts of the law to create an Ombudsman in Belarus and made recommendations on the legislation.

8.4. Azerbaijan

Representatives of the Danish Centre for Human Rights and an OSCE/ODIHR consultant on Ombudsman institutions visited Baku, Azerbaijan, on a needs assessment mission on non-governmental organizations, mass media and a national human rights institution in Azerbaijan.

The Ombudsman consultant met with government officials and the resident representative of the United Nations to discuss assistance in implementing a section of a presidential decree on human rights and freedoms that commissioned the Cabinet of Ministers and the Presidential Administration "to discuss the issue on setting up the institute of plenipotentiary of Republic of Azerbaijan on human rights as well as other structures carrying out human rights and freedoms protection."

The consultant recommended a seminar on Ombudsman and national human rights protection institutions sponsored jointly by the Council of Europe and the OSCE/ODIHR in Baku subject to a

request from the government at a time mutually agreed upon. The consultant also recommended providing expert consultants to advise the government on drafting a law to create an Ombudsman for Azerbaijan, sending copies of Ombudsman legislation to officials in Azerbaijan working on legislation, sending Azerbaijan experts to visit the Polish Ombudsman's office and attending the Human Dimension Seminar in Warsaw.

8.5. Estonia

ODIHR participated in a seminar on "Ombudsman: Defender of Human Rights," held in Tallinn, Estonia, on 18-19 September 1998. The seminar was organized by the Ministry of Justice in Estonia with the co-operation of the Council of Europe and UNDP. The seminar introduced the idea of Ombudsman to the people of Estonia and discussed the establishment of a similar institution in Estonia. The topics discussed included the general concept of Ombudsman systems and historical background of the institution, the Ombudsman as a defender of the most endangered and vulnerable groups and minorities, powers of the Ombudsman, working procedures and methods and problems in establishing Ombudsman offices, etc. Jenő Kaltenbach, the Hungarian Parliamentary Commissioner for National and Ethnic Minority Rights (Ombudsman), participated with the sponsorship of ODIHR.

8.6. Georgia

Public Defender David Salaridze and Head of Department Temur Vekua travelled to Warsaw for a one-week study tour sponsored by ODIHR at the invitation of the Polish Ombudsman and ODIHR. During the visit, they met with Prof. Adam Zielinski, heads of several departments of the Polish Ombudsman and with ODIHR's staff.

The OSCE/ODIHR consultant on Ombudsman institutions then visited Georgia to determine the state of development of the Public Defender's Office in Georgia, examine the assistance planned or being provided to the Public Defender, and develop recommendations for support to the Public Defender by OSCE/ODIHR. After considering a number of suggestions from the Public Defender and others, the consultant recommended funding an international expert/consultant experienced in Ombudsman office management to work with the Public Defender and his staff for four weeks to provide basic knowledge of how Ombudsman offices are structured and function while the office was still in its infancy. (See the section on **Georgia** below for a report of this mission.) The expert/consultant also recommended asking the Public Defender to develop a project proposal to fund writing and printing cards and brochures that explain people's rights clearly and simply in areas of law that the Office believes would be helpful based on the complaints it is now receiving.

Based on the recommendations of the mission to the Caucasus in February, the OSCE/ODIHR sent the Ombudsman expert/consultant to Tbilisi for four weeks in June 1998 to work with Mr. Salaridze and his staff to discuss the following subjects and offer suggestions and advice about how these activities are conducted in Ombudsman offices in other countries:

- Receipt of complaints.
- How complaints are registered, assigned for investigation, supervised while under investigation, reports written, recommendations developed, agencies persuaded to accept the recommendations.
- Determining how to handle complaints and which complaints will be investigated.
- Conduct a beginning course for staff in investigating complaints.
- How to design annual, special and investigative reports, what they should contain, how to make them public.
- How to establish good working relationships between the Public Defender and agencies under his jurisdiction, while preserving the integrity of the office's mission.
- Relationships with the mass media.

- Organization and management of the office.
- Relationships with NGOs, international organizations, international NGOs.
- How to publicise the work of the office.
- Work with UNDP on a project document.
- Study the office's statutes and rules of procedure and offer advice or recommendations to improve them.

The expert/consultant worked with the Public Defender, the Deputy Public Defender and the investigative staff on all of these matters, conducted training in investigations, began discussions to computerize the complaint registration system, held several meetings with NGOs and developed recommendations to improve the law governing the office as well as the statutes and rule of procedure.

8.7. Kazakstan

The Danish Centre for Human Rights conducted a mission for ODIHR and visited Almaty, Kazakstan, in late March 1998 to assess possibilities for establishing national human rights protection institutions. The mission recommended support for the establishment of an independent institution to conduct research and documentation on human rights issues in Kazakstan. Such an institution could analyse national legislation and practice from a human rights perspective, including case law and possibly also recommendations from the Human Rights Commission under the President. The institution could also serve as a focal point for information and documentation on human rights issues, for example by establishing a library and database with human rights materials.

During a June 1998 visit to Kazakstan, ODIHR was asked to provide technical assistance to establish a human rights institution there. The Human Rights Commission under the President of Kazakstan, which had recently established an expert group, informed ODIHR of its intention to launch the process of establishment of a national Ombudsman.

ODIHR agreed to facilitate the exchange of views between national and international experts on legal and technical requirements to establish a national Ombudsman institution in Kazakstan and to provide technical assistance to prepare the legal basis for establishment and functioning of an efficient and independent Ombudsman institution.

Pending final agreement with the Government, ODIHR will organize in the next year an expert roundtable with national experts from government and civil society and international experts to examine the requirements to establish a national Ombudsman and for its future working relations with others dealing with human rights (judiciary, relevant ministries, NGOs, media). Recommendations for legislation will be submitted to the government.

8.8. Kyrgyzstan

The Danish Centre for Human Rights conducted a mission for ODIHR and visited Bishkek, Kyrgyzstan, to assess the possibilities for establishing national human rights protection institutions, including an Ombudsman institution, and how to assist newly established institutions, i.e. the Commission for Human Rights under the President of the Kyrgyz Republic. The mission recommended that the Commission on Human Rights under the President be supported by a pilot project. If the pilot phase shows political commitment and willingness to solve areas of concern the mission recommended that the pilot project be followed by a main project.

8.9. Russian Federation

ODIHR participated in the seminar on “Democratic Institutions for the Protection of Human Rights in the Education” sphere in Moscow at the end of January 1998. The seminar was organized by the Union of the Education Administrators, an inter-regional association of the Russian heads of education institutions, in co-operation with the Open Society Institute. The seminar was designed to familiarise the heads of education administration institutions with experiences of the establishment and activities of Ombudsman institutions. Participants included Russian and international experts.

The new Russian Federation Ombudsman attended the Human Dimension Seminar on Ombudsman and Human Rights Protection Institutions in Warsaw three days after being selected for the post.

8.10. Turkey

At the invitation of the Turkish government, ODIHR and an international consultant in Ombudsman institutions participated in meetings in Ankara in mid-February 1998 to discuss human rights protection and the work of Ombudsman institutions and the creation of a Turkish Ombudsman who would have jurisdiction over complaints about violations of human rights. Ombudsmen from Sweden, Ireland and Finland also visited Turkey to discuss their institutions. The Turkish government has formed a working group drafting legislation to create an Ombudsman. The working group is chaired by Professor Zehra Odyakmaz, dean of the Faculty of Law of Gazi University in Ankara, who attended the Human Dimension Seminar on Ombudsman and Human Rights Protection Institutions in Warsaw. Some historians believe that a Turkish institution was the precursor of the Swedish Ombudsman and creation of an Ombudsman in Turkey would bring history full circle by creating the institution where its roots formed a model for the first Ombudsman.

8.11. Ukraine

To immediately assist the newly established institution of the Ukrainian Ombudsman, ODIHR provided funding for the purchase of a computer, printer and Xerox machine for the office with the assistance of the head of the OSCE Mission to Ukraine. ODIHR provided some of its publications—in both English and Russian—for the library of the Ukrainian Ombudsman office. The newly appointed Ombudsman, Ms. Kaprachova Nina, attended the Human Dimension Seminar on 25-28 May 1998, soon after taking office.

8.12. Uzbekistan

In late February 1998, an international Ombudsman expert travelled to Tashkent on a mission for ODIHR jointly with UNDP. The expert evaluated areas where ODIHR could assist the Ombudsman of Uzbekistan and the National Centre for Human Rights. The expert recommended assistance for the Ombudsman in management and investigative training, human rights training, organization of a human rights library, support to extend a study tour to Denmark, assistance for a seminar on military rights and sponsorship jointly with UNDP of a Central Asian conference on Ombudsman and human rights protection institutions. The expert also recommended that the Deputy Ombudsman be appointed prior to providing additional training or the study tour.

The expert also recommended assistance to the National Centre for Human Rights for creation of its library and training its staff in human rights either in Tashkent or as part of training efforts elsewhere.

9. ACTIVITIES OF INTERNATIONAL ORGANIZATIONS SUPPORTING OMBUDSMAN AND HUMAN RIGHTS PROTECTION INSTITUTIONS IN OSCE PARTICIPATING STATES

Activities discussed in this section are primarily those of international organizations other than OSCE and ODIHR. The main international organizations active in supporting Ombudsman and human rights

protection institutions along with OSCE/ODIHR are the Council of Europe and the United Nations Development Programme, and the United Nations High Commissioner for Human Rights.²

The work of the **Council of Europe** on the Ombudsman institution is based on the belief that the Ombudsman is closely related to the concept of the rule of law and that it finds its natural expression in a democratic society. In the course of contacts between the Council of Europe and the new member states it has become clear that there is a great interest in this institution, and a corresponding need for support and expertise both towards the initial steps for the establishment of an office and the running and administration of it. In co-operation with its member states, the Council of Europe has during the last seven years been working to assist with the setting up and running of Ombudsmen or similar institutions in the new member states, stressing continuously the link between the accountability of public officials and democracy. The CoE carries out a range of training activities in European human rights law, study visits to institutions in other member States and to Strasbourg, seminars in member States, and legislative counselling.

The **United Nations Development Programme through its Regional Bureau for Europe and the CIS (RBEC)** has conducted needs assessment missions and sponsored projects to support a number of Ombudsman and human rights protection institutions in Europe and the CIS. UNDP has sponsored an annual seminar on Ombudsman and human rights institutions and conducts various other projects in support of these institutions. UNDP and the Polish Ombudsman have discussed the creation of a training facility for Ombudsman and human rights protection institutions in Warsaw and agreed to implement it in 1999. In 1997, RBEC started activities in a regional Democracy, Governance and Participation (DGP) programme. Building on two years of preparatory assistance activities, the programme provides new directions for UNDP regional and national activities aimed to further strengthen democratic processes in the region. The project also has been decentralised by creating DGP focal points, for example in Warsaw for Ombudsman and human rights protection issues. These focal points are co-ordinated by the RBEC Regional Centre in Bratislava.

The programme started with several events by RBEC in close co-operation with UN organizations including UNHCHR, bilateral and multilateral partners (OSCE, EU, etc.) as well as different UNDP units. This programme includes regional activities and issues such as democratisation, human rights, the promotion of civil society and non-governmental organizations. The object is to support institutional transformation and capacity building in Europe and the CIS and to strengthen democratic practices and processes in those countries. Almost all UNDP country offices in the region have their own national DGP programme financed through the country office budgets including some or all the issues above.

The **United Nations High Commissioner for Human Rights** has supported many Ombudsman and human rights protection institutions in various countries around the world. The High Commissioner has a special adviser on national institutions who works solely in this arena in countries that ask for the High Commissioner's assistance. The High Commissioner also uses money from United Nations Voluntary Fund for Technical Co-operation in the Field of Human Rights to support national institutions in various parts of the world, including the Latvia National Human Rights Office, the Parliamentary Advocates of Moldova and in Azerbaijan and Kazakhstan.

The **Danish Centre for Human Rights** is active in supporting human rights institutions in the Balkans, the Baltics, Central Asia as well as Africa, Asia and Central America. The Centre receives funding

² With so many activities taking place internationally in support of Ombudsman and human rights protection institutions, it is impossible to know with certainty everything that international organizations have supported or undertaken. While this part of the report attempts to be comprehensive, it certainly is not complete. The author welcomes additional information to be included in future reports.

from the Danish government for its projects. It will present a 10-day pilot workshop in Copenhagen in 1999 on the role and functions of national human rights protection institutions. The workshop is planned to provide participants with concrete practical examples on how a national human rights institution can carry out its functions and be ensured of real independence.

9.1. Council of Europe Roundtable with European Ombudsmen in Malta

The Sixth Roundtable with European Ombudsman sponsored by the Council of Europe will be held in Malta on 7-9 October 1998. This is the most recent of a series of roundtables the Council of Europe has held with European Ombudsmen that began in Madrid (1985) and continued in Strasbourg (1988), Florence (1991), Lisbon (1994) and Limassol, Cyprus (1996). At the meetings, European Ombudsmen, judges of the European Court of Human Rights, members of the European Commission on Human Rights and members of the Steering Committee for Human Rights have discussed questions arising from the co-existence of national and European judicial and quasi-judicial means for the protection and promotion of human rights. In Malta they will discuss rights of refugees, asylum seekers and persons deprived of liberty, and co-operation between Ombudsmen of the member States and between them and the Council of Europe. This will be the first time the roundtable looks at topics beyond those of the Council of Europe court system such as rights of refugees, asylum seekers and persons deprived of liberty.

9.2. National European Institutions

The third meeting of National European Institutions is planned for the spring of 1999 to take place in Riga, hosted by the Latvian National Human Rights Office. The first meeting took place in Strasbourg in 1994 and the second in Copenhagen in January 1997. The European Co-ordinating Group was established to support organizations, share and exchange information on human rights activities in Europe and elsewhere, strengthen national institutions through closer co-operation with OSCE, CoE and relevant UN bodies and encourage the development of ideas and social currents that increase democracy and human rights awareness. The Co-ordinating Group is chaired by the Danish Centre for Human Rights and composed of the Latvian National Human Rights Office, the Human Rights Commission Under the President of the Russian Federation, the National Advisory Commission on Human Rights in France and the Ombudsman against Ethnic Discrimination of Sweden. OSCE/ODIHR, the UN, and the CoE have observer status.

9.3. Armenia

The Armenian Foreign Ministry and Council of Europe's Secretariat held a roundtable in Yerevan in early July 1998 to discuss establishment of an Ombudsman in Armenia. Paruyr Harikian, Presidential Adviser and Chairman of the Presidential Committee for Human Rights, said creating the Ombudsman is possible only by making amendments in the Constitution. He thought that would not be a problem "as the most pro-governmental and most oppositional organizations can't resist the establishment of the human rights institute."

9.4. Azerbaijan

In April 1998, the Government of Azerbaijan asked the United Nations Development Programme in Azerbaijan for technical assistance in promotion and protection of human rights and freedoms. UNDP brought the Office of United Nations High Commissioner for Human Rights, Geneva together with the President's Office.

At the end of July, the Office of the High Commissioner signed a two-year project document with the Ministry of Justice of Azerbaijan for US\$405,000 to strengthen capacities and infrastructures for the

promotion and protection of human rights in Azerbaijan. The project provides assistance to implement a national programme of human rights, preparation of legislation to establish an independent national human rights institution in Azerbaijan, and dissemination of UN Human Rights information to public institutions and civil society through training of trainers in human rights standards, and development and publishing of teaching materials.

9.5. Bulgaria

The feasibility of establishing an Ombudsman in Bulgaria was discussed in depth at a workshop on the Non-judicial means for Human Rights Protection, organized in Sofia in 1996 with the assistance of the Council of Europe. Two main options were debated: the creation of an Ombudsman Office and the establishment of a National Commission on Human Rights. The workshop did not reach any final conclusion.

The discussion continued and a working group of experts was created at the initiative of the Information and Documentation Centre of the Council of Europe in Sofia to elaborate proposals to introduce an Ombudsman institution in Bulgaria. The working group presented its preliminary report on 14 May 1998 at a meeting in Sofia, organized with the assistance of the Council of Europe. The participants in that meeting were representatives of the executive, judicial and legislative branches as well as NGOs. Their views will be taken into consideration by the Working Group in fulfilment of its tasks.

9.6. Estonia

As noted above, a seminar on "Ombudsman: Defender of Human Rights" was held in Tallinn, Estonia, on 18-19 September 1998. The seminar was organized by the Ministry of Justice in Estonia with the co-operation of the OSCE Mission in Estonia, ODIHR, the Council of Europe and the UNDP. The seminar introduced the idea of Ombudsman to the people of Estonia and discussed the establishment of a similar institution in Estonia. The topics discussed included the general concept of Ombudsman systems and historical background of the institution, the Ombudsman as a defender of the most endangered and vulnerable groups and minorities, powers of the Ombudsman, working procedures and methods, problems in establishing Ombudsman offices, etc.

9.7. Georgia

A Seminar on European Ombudsman Institutions and Human Rights was sponsored by the Office of the Ombudsman of Georgia and the Council of Europe in early June 1998. The seminar discussed Ombudsman institutions and human rights and acquainted government officials and leaders with Ombudsman institutions and how they function in other parts of the world. International seminar participants included two ombudsmen, the deputy director of a human rights office, an academic and an OSCE/ODIHR Ombudsman expert/consultant.

UNDP Georgia has developed a project document in support of the Public Defender (Ombudsman) of Georgia. UNDP is seeking support from donors to fund the US\$1.2 million, four-year project. The project is designed to assist the government and people in protecting and promoting human rights in Georgia and focuses on strengthening the Public Defender's Office to build internal capacities in three primary areas: receiving, investigating and, where appropriate, acting upon complaints of human rights violations; human rights education; and advice and assistance to the government on human rights matters, including human rights implications of existing and proposed legislation and development of a National Human Rights Plan.

9.8. Latvia

International financial support for the Latvian National Human Rights Office was provided through a United Nations Development Programme project providing US\$1.7 million over four years with contributions from UNDP (US\$240,000) Sweden (US\$400,000), the Netherlands (US\$350,000), Finland (US\$150,000) and the UN Centre for Human Rights (US\$695,000 over two years).

9.9. Lithuania

International financial support for the Seimas Ombudsmen was provided through a United Nations Development Programme project. The project assisted the Lithuanian Government to establish and strengthen an independent Ombudsman institution. Governments of the Netherlands, Finland and Norway contributed to the project's US\$270,000 budget to acquaint the Lithuanian ombudsmen with the functioning of Ombudsman institutions abroad; improve the management and skills of the office staff for the institution's smooth running; inform the public of the purposes and potential of the Ombudsman's office and build trust. The project supported the institution by funding equipment, seminars, study visits to similar institutions abroad, and public relations.

9.10. The Former Yugoslav Republic of Macedonia

A seminar with the Ombudsman and the staff of his office will be conducted 29 October 1998 by the Council of Europe in Skopje to discuss the role of the Ombudsman in a democratic society in general, as well as different models for dealing with complaints, the organization of the office, and relations with the media. Experts from Slovenia and Denmark are expected to participate, together with the Council of Europe Secretariat.

9.11. Moldova

International financial support for the Parliamentary Advocates was provided through a United Nations Development Programme project providing financing from a variety of sources including UNDP, the UN High Commissioner for Human Rights and other donors.

9.12. Romania

The United Nations Development Programme has provided the printing of brochures, leaflets and posters to be distributed nationally by the Romanian Advocate of the People (Ombudsman). UNDP will also organize an assessment mission by officials from sister institutions to evaluate procedures of the Romanian Ombudsman. Two training events, one in 1998 and one in 1999, will target newly recruited staff members of the Romanian Ombudsman. UNDP has sponsored and will facilitate participation of senior officials of the Romanian Ombudsman to attend international events and conferences. UNDP Romania will conduct these activities with US\$20,000 from the RBEC programme in Democracy, Governance and Participation with additional funds from UNDP Romania.

9.13. Russian Federation

UNDP initiated a project to create an Ombudsman institution at the Moscow State University Institute of Foreign Relations (MGIMO). This is the first university Ombudsman institution in the CIS countries. An Ombudsman was selected. The Ombudsman and university rector received training at several universities in California, USA, in the work of university Ombudsmen to protect and promote human rights in a university. The institution will likely be a model for additional university Ombudsmen in the Russian Federation and other countries of the CIS.

9.14. Tajikistan

UNDP sent an Ombudsman expert consultant to Tajikistan in February 1998 to determine whether the time was right to resume consultations to determine whether Tajikistan was ready to pursue the Ombudsman legislation it developed in conjunction with OSCE/ODIHR efforts. Because of the civil situation in the country, the expert recommended that other avenues be pursued to further advances in human rights in the country until such time as the moment is right to continue the discussions on creating an Ombudsman institution.

9.15. Uzbekistan

The United Nations Development Programme has provided support for the Ombudsman of Uzbekistan in addition to support from ODIHR that has included continuing visits by an Ombudsman expert/consultant who has helped with development of the Law of the Republic of Uzbekistan on the Authorised Person of the Oliy Majlis for Human Rights (Ombudsman), regulations governing the office, organization of the Ombudsman's Secretariat, regulations on the Committee on Constitutional Rights and Freedoms, which works with and advises the Ombudsman, and a strategic plan for the office. The project, supported by a donation from the Swedish Government, also plans for additional training in Uzbekistan, a study tour and development of an additional phase of support.

10. INTERNATIONAL ASSISTANCE NEEDED BY OMBUDSMAN AND HUMAN RIGHTS PROTECTION INSTITUTIONS

One of the first steps in creating an Ombudsman or human rights institution is **educating the country's leadership** about what these institutions are, what they do, how they are organized, and what kind of support they need. That is most frequently done at a roundtable to which are invited leaders in government, courts, parliament, human rights experts, NGOs, the mass media, etc. International participants are invited from Ombudsman and human rights protection institutions to discuss different aspects of the purpose, structure, work, and organization of Ombudsman and human rights protection institutions. Most often the participants are Ombudsman or human rights commissioners and occasionally academics who have studied the work of these institutions. Roundtables such as this have been sponsored by organizations such as ODIHR, UNDP and CoE.

The next stage, once the country has decided to create such an institution, is to **draft legislation**. Frequently a consultant who is expert in the laws creating such institutions is contracted by an international organization to assist national experts in this work. If that is not done, international organizations will engage one or more consultants to comment on the draft law.

Once a law is passed, the person or persons to head the institution are selected. Then international organizations will often offer **study tours** to other countries for the new head of the institution to meet with peers and learn first hand how offices operate, function, are staffed and organized.

Once the head of the institution is chosen, one or more of the international organizations may develop a **project for assistance** to the new institution, gather agreement from the government on the project and begin to seek funds from donor governments or agencies. Projects exist in a number of countries. They often include:

- a chief senior adviser, generally a foreign national experienced in human rights or the work of such institutions;
- international expertise on draft laws and statutes;
- technical assistance to help create an initial operating capacity for the office;
- assistance in obtaining equipment such as computers, modems, faxes, and photocopiers;
- development of a computerized case registration and management system;

- development of staff organizational structure, job descriptions, regulations and manuals of policies and procedures;
- training for staff in human rights and techniques of investigation;
- co-ordination and co-operation with international and national NGOs;
- public awareness and outreach campaigns to educate the country's population about the office, its functions, how to file complaints and what to expect once a complaint has been lodged;
- planning and development of a public human rights library in the office that also provides reference materials for the staff;
- developing and implementing education campaigns to teach the people and government officials, civil servants and employees about human rights, how to protect them and how to observe them;
- developing and implementing a comprehensive national human rights plan;
- training in evaluating legislative proposals, draft laws and existing legislation to bring them into compliance with the country's international human rights obligations.

Projects will also support additional travel to conferences, seminars and workshops where Ombudsman and human rights institution heads can meet and discuss common problems and needs.

International organizations are most willing to help with one-time, non-recurring costs that will increase the capacity of Ombudsman and human rights protection institutions to promote and protect human rights and least willing to finance operational and on-going costs that are most properly paid for from national budgets.

11. RECOMMENDATIONS FOR ODIHR SUPPORT OF OMBUDSMAN AND HUMAN RIGHTS PROTECTION INSTITUTIONS

ODIHR should consider support for Ombudsman and human rights protection institutions in the following areas in the coming year:

- Support and participation in roundtables and development of legislation in countries in the OSCE participating States that have expressed interest in creating an Ombudsman and human rights institution. Provide Ombudsman and human rights institution experts or consultants to help develop legislation or evaluate drafts.
- Train Ombudsman and human rights protection institutions in the OSCE participating States in all aspects of the work of those institutions, particularly to educate staff about human rights and how to investigate complaints about violation of human rights.
- Implement the recommendations of Human Dimension Seminar on Ombudsman and National Human Rights Protection Institutions.
- ODIHR should set priorities to determine what is most important since ODIHR has limited resources in kind and manpower and ODIHR cannot assist all countries that would seek its support even for just some of the projects that might otherwise be considered important or worthy. ODIHR should continue to focus its support activities mostly on newly established institutions as its comparative advantage lies in its rapid response capacity. Other international organizations have an assistance capacity of long duration which takes as well more time to be implemented.
- While assisting newly created offices, it is not always easy to ascertain their genuine independence. This gives ODIHR an additional role for monitoring such recent institutions.

12. PLANS FOR 1999

ODIHR should consider planning a number of major activities for next year that focus on two or three countries that show the most promise for creating or developing Ombudsman and human rights protection institutions. It should also continue more modest activities in a broader number of countries.

Other international organizations have missions distinctly different from that of ODIHR. The Council of Europe has devoted its efforts to supporting countries wishing to create Ombudsman and human rights protection institutions through roundtables and training workshops on European human rights conventions and the court system. The UNDP and the UNHCHR have devoted their efforts to medium and long-term projects of technical assistance to institutions that have already been established. ODIHR's comparative advantage in this area is its ability to be flexible and respond quickly to needs as they arise. It should continue to fulfil this part of the assistance mission to Ombudsman and human rights protection institutions. ODIHR should also consider employing an adviser whose primary and perhaps sole responsibility is to support Ombudsman and human rights protection institutions. This additional resource would enable ODIHR to emphasize this important part of its support to these human rights institutions and to continue the co-ordination and co-operation of activities and the useful exchange of information with other international organizations active in this field.

The ODIHR should continue to focus its assistance on newly established institutions in OSCE participating States. For this purpose the ODIHR should further develop exchange of information and co-operation with other international organizations, NGOs and Ombudsman federations. Activities in 1999 should include the follow-up to the 1998 Human Dimension seminar, i.e. training activities for Ombudsman institution staff and management as well as the establishment of a homepage for human rights protection institutions in the OSCE region. Country specific projects may be implemented in Albania, Ukraine, Kazakstan, Uzbekistan, Estonia, and Belarus.

ANNEX I: ESSENTIAL CHARACTERISTICS OF A CLASSICAL OMBUDSMAN

By Dean M. Gottehrer and Michael Hostina

A paper soon to be published sets out the functions of a classical Ombudsman in government as receiving and investigating complaints.³ The irreducible minimum characteristics such an Ombudsman must have are: independence, impartiality and fairness, credibility of the review process, and confidentiality

Each of the minimum characteristics are effectuated by a number of essential provisions found in the laws creating such ombudsmen. The following is a summary of this article.

A. Independence

a The Ombudsman's Office is created in the Constitution or a law of the jurisdiction to establish its permanence.

Ombudsmen established in a Constitution are more likely to be permanent. An Ombudsman can also be established solely in law. Some provisions require a super majority of two-thirds or greater of members of the legislative body to enact and amend. The more difficult it is to change the legal basis for the Ombudsman's office, the more likely the office will be permanently established. The Ombudsman is free to criticize without fear that the office will be abolished or unnecessarily restricted.

b. The Ombudsman acts as an officer of a legislative body or on behalf of the legislative body, and is independent of the organizations the Ombudsman reviews.

³ The paper will be published by the International Institute of Administrative Sciences and was written by Dean M. Gottehrer, a former president of the United States Ombudsman Association and former regional director of the State of Alaska Ombudsman's Anchorage office and Michael Hostina, a former Deputy Ombudsman of the State of Alaska and director of its Fairbanks Office who is now an attorney with the University of Alaska in Fairbanks.

The Ombudsman is part of the legislative body to achieve independence from the agencies the Ombudsman reviews. Ombudsmen are independent so they may be impartial. Their findings and decisions are based on examination and analysis of the facts and law. The Ombudsman is also free of functional control by the legislative body. Legislative control is exercised instead through appointment, re-appointment and removal. Independence creates credibility for the office among the people, particularly those who complain.

c. The Ombudsman is appointed or confirmed preferably by a super majority of a legislative body through a process designed to prevent political appointments.

Appointment or confirmation by a super majority ensures that the candidate is one who has wide respect among different political parties and even parties that oppose one another or the government. The best Ombudsman appointment processes are designed to yield one candidate, broadly approved by political parties representing a super majority of the legislative body. The successful result is appointment of a widely respected individual seen by diverse political groups as fair and impartial.

d. The Ombudsman has a fixed, long term of office and may be reappointed.

A long term of office at least a year more than the term of the legislative body members with the longer term removes the Ombudsman from political winds of the moment.

e. Removal of the Ombudsman is for cause and by a super majority of the parliament.

Ombudsmen are subject to removal for specified causes to guarantee they will not be removed for political reasons or because investigations have offended those in political power in the legislative body. Requiring the same super majority to remove as appoint ensures that the reasons for removal are as widely appreciated and valid as those for appointment.

f. The Ombudsman has a high, fixed salary.

Ombudsmen investigate and make recommendations to the highest officials of the government. They are paid at a level commensurate with that responsibility. Pay is often equated with judges, justices of supreme courts, or heads of ministries or government agencies.

g. The office has a budget funded at a level sufficient to carry out the purposes established in law and spends and accounts for its funds directly to the legislative body.

An inadequately funded office will not be able to perform the functions required by law, and thus will lack true independence. The Ombudsman spends budgeted funds independent of any approving authority and accounts for its expenses directly to the legislative body.

h. The Ombudsman has the sole power to appoint and remove staff.

The Ombudsman has the power to delegate responsibilities to staff. Staff often perform work that is sensitive, delicate or confidential. The Ombudsman must have confidence in them and the sole power to appoint and remove them to ensure that staff will have the Ombudsman's full confidence.

i. Someone is always capable of exercising all the Ombudsman's powers.

An office without someone to exercise the Ombudsman's powers is paralysed. Ombudsmen name deputies or acting ombudsmen who can always exercise the powers of the office while the Ombudsman is out of the country, ill, unable to serve or when the office is vacant.

j. The Ombudsman is provided immunity from liability and criminal prosecution for acts performed under the law.

The Ombudsman is immune from liability for acts performed under the law. Immunity allows the Ombudsman to focus resources on receiving and investigating complaints rather than defending suits. The Ombudsman may not be prosecuted criminally for acts performed under the law.

k. Ombudsman actions may not be reviewed in court except to determine the Ombudsman's jurisdiction.

Since no one receives anything by right from the Ombudsman and the Ombudsman cannot issue a binding order, judicial review serves mainly to harass and delay the Ombudsman. However, when jurisdiction is in question, judicial review is appropriate.

l. The Ombudsman may appeal to courts to enforce the powers granted by the act.

Ombudsman acts give the Ombudsman certain powers, such as the right to summon or subpoena testimony or documents, that on occasion may not be honoured by agencies under the Ombudsman's jurisdiction. Litigation is a necessary option for the Ombudsman to enforce those powers. Some acts also give the Ombudsman the authority to appeal to a Constitutional Court or the Supreme Court to consider cases growing from complaints.

B. Impartiality and Fairness

a. Qualifications to serve are imposed and designed to select an Ombudsman widely respected among different political, ethnic and social groups as impartial and fair.

Qualifications are normally the minimum needed to serve as Ombudsman and designed to select someone viewed as impartial and fair among many different political and interest groups.

b. A super majority is required for the Ombudsman's appointment.

Appointment of the Ombudsman by a super majority helps ensure that the person selected is fair and impartial.

c. The Ombudsman's political and other activities are restricted to remove the office from the political arena and make the Ombudsman accessible to complainants from any political group. The Ombudsman must resign from all political parties.

The Ombudsman is normally restricted from party political activity. Ombudsmen are also restricted from earning other income. Outside income could be used to influence an Ombudsman.

d. Legislation creating the Ombudsman's Office or internal written policy states how conflicts of interest will be handled.

Complaints occasionally will be filed by an individual who has had some prior relationship outside the office with an investigator or with the Ombudsman. Legislation requires the complaint and investigation to be handled by someone who does not have a prior relationship.

e. Anyone may bring a complaint directly to the Ombudsman, without paying a fee or having first to present the complaint to someone else such as a member of parliament.

No limitations are placed on the individuals or groups who may complain to the Ombudsman. While some Ombudsmen will accept complaints when the complainant has no personal interest, others will not. No fee is charged for complaints.

f. The Ombudsman may criticize any agency or person under the office's jurisdiction and may make recommendations to resolve specific situations or prevent their reoccurrence.

Investigations may determine that a complaint was justified and that agencies or persons under the office's jurisdiction need to be criticized for their acts. The Ombudsman may criticize any agency or person under the office's jurisdiction so the public will know where responsibility rests. The Ombudsman makes recommendations to solve problems or prevent them from reoccurring.

g. The Ombudsman is required to consult before criticising an agency or person and allow the agency or person criticized to reply.

Reports are more accurate and criticism more easily accepted if the agency or people being criticized have an opportunity to know what the criticism will be before it is made public. Any agency or person criticized may respond and have the response or a summary published in the report.

h. The Ombudsman is not an advocate for any individual or group although the Ombudsman may, after an investigation has been conducted, advocate for recommendations that would benefit a complainant.

Ombudsmen are impartial. They examine complaints without prejudging who is right. Where the Ombudsman determines a complaint is justified, the Ombudsman makes recommendations to an agency to remedy the situation. These recommendations are normally followed by the agency. When they are not followed, the Ombudsman may advocate for the recommendations.

C. Credible Review and Investigation Process

a. The Ombudsman has general jurisdiction in the government that is broadly defined and not restricted to one agency or one particular type of grievance.

Ombudsmen with a broadly defined, general jurisdiction are not as subject to pressure or influence as those with jurisdiction over only one agency or one type of complaint. Their review process is made more credible by the breadth of their jurisdiction.

Ombudsmen generally do not have jurisdiction over those who appoint them, elected officials or judges. Ombudsmen in a number of countries where the institution has been created in recent years do have some jurisdiction over the court system, especially when the courts have not been an independent branch of government equal with the legislative and executive.

b. The Ombudsman may investigate grievances of anyone concerning any decision, recommendation, or any act done or omitted relating to a matter of administration or human rights, by any organization or person over whom jurisdiction exists.

Ombudsman legislation often indicates the acts that can be the subject of complaints. As long as the agency or person who is the subject of the complaint is under the Ombudsman's jurisdiction, few limits are placed on what may be investigated. Almost all Ombudsmen are precluded from reviewing judicial decisions.

c. The Ombudsman may investigate complaints against government or semi-government departments and agencies.

Ombudsmen have jurisdiction over government agencies or those that are completely or partially financed by public funds.

d. The Ombudsman may initiate an investigation without a complaint.

While most investigations will arise from a complaint to the Ombudsman, some matters will only be considered if the Ombudsman initiates an investigation.

e. Administration and agency staff are required to co-operate with the Ombudsman and the Ombudsman is given access to records and agency premises; the Ombudsman has subpoena power or the ability to compel individuals to testify or produce evidence in countries where subpoena power does not exist.

The co-operation of staff and access to records and premises are critical to effective and credible review. The Ombudsman may compel testimony and evidence through subpoena or through a summons.

f. The grounds for Ombudsman review are stated broadly and include "fairness."

Ombudsman legislation states grounds or standards under which complaints are investigated. Fairness is one of the standards and Ombudsmen are often the only place in government where the fairness of an act can be assessed.

g. After investigation, the Ombudsman has the responsibility to make findings and recommendations to organizations under the office's jurisdiction and has the ability to publish and publicise them.

The Ombudsman makes a report to the agency or organization that is the subject of the complaint and may publish and publicise them so the office will be accountable and so results may be widely known.

h. The Ombudsman's findings are not reviewable.

Because the Ombudsman may not issue a binding order, no one may take the Ombudsman to court to appeal the findings. This ensures that office resources are not diverted to litigation.

i. The Ombudsman may not make binding orders.

This limitation on Ombudsman powers, seen by some as a weakness, is seen by most Ombudsmen as a strength. Government agencies persuaded to act are more likely to act effectively and efficiently and do a better job than those forced to act. Binding orders would establish appeal rights. That would subject the office to litigation and the need to spend resources defending in court.

D. Confidentiality

a. The Ombudsman may maintain confidentiality.

Complainants may bring matters to the Ombudsman that are confidential by law, delicate or about which they wish the Ombudsman to do nothing. Ombudsmen have the power to maintain the confidentiality of complainants where that is needed. Officials who are the subject of a complaint may

also need protection during an investigation. Confidentiality allows investigation without publicity and speculation.

Ombudsmen may make investigations public along with other information that does not violate confidentiality requirements or disclose the complainant's identity without authorisation. Complainants could be subjected to persecution, intimidation, retribution, withholding of benefits, etc., by a department or government agency. Confidentiality protects against such abuse.

b. The Ombudsman may not be forced to testify or produce records.

The integrity of the Ombudsman's confidentiality depends on this provision. It also prevents complainants from using the office to discover evidence for a court case and prevents using resources to defend against subpoenas or testifying.