

**OSCE Supplementary Human Dimension Meeting on National Human Rights Institutions  
(ombudsinstitutions, commissions, institutes and other mechanisms)**

**14-15 April 2011, Vienna**

**HUMAN RIGHTS DEFENDER IN RELATION TO PUBLIC AUTHORITIES  
- INDEPENDENCE AND EFFECTIVENESS OF ACTION**

**Prof. Irena Lipowicz**

**Human Rights Defender, Republic of Poland**

- THESES

The Ombudsman institutions from different countries have many common characteristics. In spite of this fact, the solutions adopted in individual countries vary significantly. **The position of the Polish Ombudsman in relation to public authorities is very strong**, which is the Human Rights Defender's distinguishing feature. The Defender's power and effectiveness are determined by **the ability to appeal against legal acts and rulings in individual cases** to the Constitutional Tribunal, the Supreme Administrative Court, Supreme Court and common courts of law, respectively, as well as by the right to challenge court rulings under the procedures in place.

In institutional terms, **the Defender is located outside the tripartite system of power**, although the body has some association with the Sejm. The **independence** from other state authorities is tantamount to **the prohibition of creating structural and functional relationships between the Defender and other bodies**, which could make the Defender dependent on these bodies. The independence from other bodies also means that **none of these bodies can order the Defender to do anything or prohibit him from doing anything** that falls within the scope of the Defender's constitutional tasks and statutory competences.

Recently, **the Polish Constitutional Tribunal has confirmed this principle by judging that the provision of the Act on the Human Rights Defender**, stating that the adoption of **the statute of the Office of the Human Rights Defender** is decided by the Marshal of the Sejm, is **illegal**.

In the course of Human Rights Defender's practical activity, a principle has been established that the Ombudsman **may neither enter the legislator's area of competence nor interfere with the Government's policy**. Moreover, the Defender may not overtake the tasks of state administration in any way.

With regard to public authorities, apart from the control function, the Defender also performs an **educational function** that should focus on **explaining the difference between apparent (bureaucratic) legalism and the legalism resulting from the democratic rule of law** which respects the rights of an individual (human rights) and in which the fundamental rights of the individual mark the boundaries of positive law.

It is a consequence of the **active approach to law** taken by the Human Rights Defender, who executes the law and at the same time interprets it – usually on the basis of a **procivil interpretation** – by finding grounds for enhancing the protection of human and civil rights and freedoms.

The statutory permission to use by the Defender's assessments not only the criterion relating to compliance with the law, but also **the criterion regarding compliance with the principles of social coexistence and social justice**, provides the Defender with a certain advantage over other public authorities since in some situations it makes the Defender's control and protective functions stronger or even the only ones that public authorities are allowed to perform.

With regard to the cases considered, the Defender may submit to the relevant bodies, organisations and institutions assessments and conclusions aimed at ensuring appropriate protection of human and civil rights and freedoms.

In 2010, the Polish Ombudsman presented public authorities with **95 interventions containing requests for undertaking legislative initiative** or for adopting or amending legal acts, as well as **10 motions to the Constitutional Tribunal** for declaring non-compliance of provisions with a higherlevel act. The Defender also participated in **10 proceedings instituted upon constitutional appeal**.

As regards the effectiveness of the Human Rights Defender, in **17.4% of cases accepted for consideration the resolution requested by the applicant and by the Defender was reached**, and in **13.6%** of cases handled the Defender's general intervention was not taken into account. In nearly **60%** of cases the applicant's claims were not substantiated.

In order to increase the effectiveness of the Polish Ombudsman, **regular meetings with particular ministers** are envisaged with the aim of drawing attention to the most important problems in the functioning of a given ministry. It is also necessary to initiate stable and comprehensive cooperation with **other bodies performing control functions**, such as the Supreme Audit Office or the Ombudsman for Children.

In relations with public authorities, the Human Rights Defender willingly and actively **collaborates with social organisations**. To this end, three social Expert Commissions were established within the Office of the Human Rights Defender: for the elderly, for the disabled and for migrants, respectively, along with the Social Council, an opinion-giving and advisory body for the Polish Ombudsman.