

The Ombudsman and the Judiciary: the Foreign Experience

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Albania

The People's Advocate may refuse to initiate or may terminate the investigation of a case if the same case has been decided or is being reviewed by a public prosecutor or a court. In such a case, he is entitled to request information by those authorities.

Statutes, other legal acts and court decisions are outside the jurisdiction of the People's Advocate; although the People's Advocate accepts complaints, requests or notifications of human right violations arising from the administration of the judiciary and judicial procedures. The investigations of the People's Advocate must not infringe the independence of the judiciary in deciding cases.

Azerbaijan

Investigation of the activities of judges of the Republic of Azerbaijan are not subjected to the powers of the Commissioner.

The Commissioner may examine complaints on violations of human rights relating to red tape, loss of or delayed delivery of documents in courts as well as delays in the execution of court judgments.

The Commissioner may refuse to investigate a complaint which is being examined within court proceedings. While investigating the circumstances indicated in a complaint, the Commissioner has the right to obtain court orders (judgments) in force concerning criminal, civil and administrative cases, as well as cases, the proceedings in respect of which were terminated.

The Commissioner may apply to a court of justice with a view to the protection of the rights and freedoms violated by decision or act (omission) of a governmental or municipal body, or an official. He may also apply to the Constitutional Court of the Republic of Azerbaijan in cases where the rights and freedoms of a person are violated by legislative acts in force.

Belgium

The examination of a complaint by the ombudsman is suspended when the facts are subject of judicial appeal or of organised administrative appeal. The administrative authority will inform the ombudsmen of legal proceedings.

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The lodgement and the examination of a complaint neither suspend nor stop time limits for judicial or organized administrative appeal.

Bosnia and Herzegovina

The Ombudsman competence comprise the power to investigate all complaints made about the poor functioning of the judicial system or the poor administration of an individual case and to recommend appropriate individual or general measures.

The Ombudsman do not interfere with the adjudicative functions of a court, but may initiate court proceedings or intervene in pending proceedings, whenever he or she finds that such action is necessary for the performance of his or her duties. An Ombudsman may also make recommendations to the government body party or be consulted by the parties.

The Ombudsmen may also intervene if they detect unjustified delay of the proceedings or obvious abuse of power.

The Ombudsman may refer cases of alleged human rights violations to the highest judicial authorities of Bosnia and Herzegovina competent in human rights matters, pursuant to the rules concerning appeals to these authorities, whenever he or she finds that this is necessary for the effective performance of his or her duties.

The Ombudsman is entitled to receive the assistance of the Judicial Police.

The Ombudsman does not accept the complaint for the protection of rights if an identical case is the subject of a procedure in the court or administrative body.

Serbia

The Ombudsman's competence include the power to investigate all cases about the poor functioning of the judicial system of the Republika Srpska and recommend the appropriate individual and/or general measures.

The Ombudsman must not interfere with the judicial functions of courts and tribunals in the Republika Srpska. The Ombudsman can make recommendations to a governmental body party to proceedings or be consulted by the parties.

In case of non-execution of a court judgment, the Ombudsman may recommend the department concerned to give effect to the judgment within a time limit indicated by the Ombudsman. If the recommendation is not followed, the non-execution of the court judgment is to be included in the annual or a special report.

Czech Republic

The scope of activity of the Defender does not encompass the authorities responsible

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for criminal proceedings, state prosecutors and courts, with the exception of state administration of courts.

The Defender may suspend a Complaint if the case that concerns the Complaint is before a court or has had a court decision passed upon it, or

Denmark

The jurisdiction of the Ombudsman does not extend to the courts of justice

The Ombudsman may subpoena persons to give evidence in court on any matter of importance to his investigations.

Estonia

The Legal Chancellor can make a proposal to the Riigikogu that criminal charges be brought against a member of the Riigikogu, the President of the Republic, a member of the Government of the Republic, the Auditor General, the Chief Justice of the Supreme Court or a justice of the Supreme Court pursuant to law.

No court judgment must have entered into force in the matter of the petition and the matter must not be concurrently subject to pre-trial complaint proceedings or judicial proceedings.

Finland

The duty of the Parliamentary Ombudsman is, in accordance with the regulations approved by Parliament for the Parliamentary Ombudsman, to oversee that the courts of law in the performance of their duties and in the discharge of public functions observe the law and fulfil their obligations.

The Parliamentary Ombudsman supervise that the courts and other authorities as well as civil servants in their tasks and the employees of public-law organizations as well as others in exercising a public function comply with the law and fulfill their duties. The Parliamentary Ombudsman undertake appropriate measures if a judge or other civil servant or employee of a public-law organization has made himself guilty of deceit, partiality or grave neglect, violated the right of a private citizen or exceeded his authority.

France

The Mediator of the French Republic may not intervene in any proceedings brought before a court nor question the soundness of a court decision, but he is entitled to make recommendations to the body or organization concerned.

He is also entitled, in the event of failure to execute a court decision which has

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acquired force of *res iudicata*, to request that the body or organization concerned comply with the decision within a period stipulated by himself. If this injunction is not complied with, non-execution of the court decision must be the subject of a special report.

Georgia

The Ombudsman address recommendations to relevant judicial bodies to reconsider the court decisions which have entered into force, if he considers that violation of human rights occurring during the legal proceedings could have substantial impact on the final verdict of the court.

Germany

The Committee deal with petitions concerning legal proceedings only where at federal level the competent bodies as parties to the litigation are required to adopt a specific course of action in a lawsuit; or the legal provisions are demanded which would make it impossible in future for courts to hand down the rulings criticized in the petitions; or the competent bodies are called upon not to enforce a judgment in their favor.

Petitions demanding encroachment upon the independence of judges are rejected.

Greece

The Ombudsman does not investigate cases pending before a court or other judicial authority and does not have any jurisdiction over judicial authorities.

Hungary

The ombudsman may make a motion to the Constitutional Court for:

- the *ex post facts* examination of the unconstitutionality of a legal rule or any other legal instrument of state direction;
- the examination of whether a legal rule or any other legal instrument of state direction conflicts with an international agreement;
- the judgement of a constitutional complaint submitted for the infringement of rights ensured in the Constitution;
- the termination of unconstitutionality manifesting itself in an omission;
- the interpretation of the provisions of the Constitution.

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Iceland

The Ombudsman's jurisdiction does not extend to proceedings of the courts of law.

If a complaint involves a legal dispute which should, in principle, be decided by the courts of law the Ombudsman may conclude the matter by pointing this out.

Where a case can be appealed to a higher authority a complaint may only be lodged with the Ombudsman after this higher authority has given its ruling.

Ireland

The Attorney General, the Courts, or the Court officers mentioned in the Court Officers Acts are not subject to investigation by the ombudsman.

The Ombudsman does not investigate any action taken by on behalf of a person who has initiated in any court civil legal proceedings and the proceedings have not been dismissed for failure to disclose a cause of action or a complaint justiciable by that court whether the proceedings have been otherwise concluded or have not been concluded, or a person who has a right of appeal reference or review to or before a court in the State.

Republic Of Kazakhstan

The Commissioner do not consider complaints against actions and decisions of the courts of the Republic of Kazakhstan.

Republic of Kyrgyzstan

The Ombudsman may appeal to the Constitutional Court of the Kyrgyz Republic with the statement concerning the compliance of laws of the Kyrgyz Republic, other normative and legislative acts of the Jogorku Kenesh of the Kyrgyz Republic, acts of the President of the Kyrgyz Republic, and the Government of the Kyrgyz Republic concerning the human and civil rights;

The Ombudsman does not consider cases under complaints which already are subject to legal proceedings and terminates any actions if petitioner submits the complaint or appeal to the court of the Constitutional court.

Latvia

The Office of the Ombudsman does not investigate a complaint, if a Court verdict has already come into legal effect in a civil, criminal or administrative case concerning the violation of human rights indicated therein and reached against the same person and for the same violation.

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Lithuania

The activities of the judges of the Constitutional Court and other courts are outside the Seimas Ombudsman's powers of investigation.

The Seimas Ombudsmen does not investigate complaints that are subject to court investigation, complaints about the legality and validity of court decisions, judgments and rulings.

The Seimas Ombudsman refuses to investigate a complaint and return it to the complainant within 7 days if a complaint relating to the matter has already been resolved in court, has been brought up before a court of law for investigation or is subject under law to judicial investigation.

Moldova

The Parliamentary Advocates do not initiate an investigation of complaints to be considered by criminal or civil courts, administrative and labour courts.

Based on the results of complaint examination the Parliamentary Advocate has the right to apply to court with a statement defending the interests of the Complainant, whose constitutional rights and freedoms have been infringed;

The Parliamentary Advocates have the right to apply to the Constitutional Court with requests for a decision /opinion/ concerning the constitutionality of laws and resolutions of the Parliament, Decrees of the President of the Republic of Moldova, decisions and orders of the Government, their compliance with the generally accepted principles and international laws in the area of human rights.

Norway

The scope of the Ombudsman's powers does not include the functions of the Courts of Law.

Poland

The activities of the Commissioner may not infringe upon the independence of the judiciary.

Portugal

The Courts of Law are not subject to the Ombudsman's control and supervising powers, save insofar as their administrative activity, as well as the acts that they perform in supervising the administration, are concerned.

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Any claims relating to judicial activities, where they do not fall outside the Ombudsman's scope of activities, must be dealt with through the Higher Council of the Bench, the Higher Council of the Public Prosecution or the Higher Council of the Administrative and Fiscal Courts, as applicable.

The Ombudsman is empowered to request the Constitutional Court to pass a ruling on the unconstitutionality or illegality of any rules made by public entities or to take a stand and pass a ruling on unconstitutionality by default.

The Ombudsman is not empowered to quash, repeal or reform decisions of public authorities. His interventions do not suspend the computation of time limits, in particular procedural time limits established for judicial or administrative appeals.

Romania

The Advocate of the People must notify the Constitutional Court on the unconstitutionality of laws before their promulgation. He also brings directly in front of the Constitutional Court the exception of unconstitutionality of laws and ordinances.

Any complaints dealing with acts issued by the Constitutional Court and the judicial authority cannot be subjected to the Advocate of the People Institution, therefore must be rejected without indicating a reason.

Montenegro

The Protector has no powers concerning the work of courts except in cases of delay, if an obvious abuse of procedural powers occurred or if court decisions have not been executed.

The Protector may propose the initiation of proceedings before the Constitutional Court of the Republic of Montenegro for the purpose of assessing the constitutionality and legality of the legislation and general enactment relating to human rights and freedoms.

The Protector may request that, prior to his or her consideration of the complaint, other legal actions be exhausted in order to remedy the violation which the complainant refers to, if he or she finds such procedure more efficient. The Protector must not act upon the complaint if other legal actions to remedy the violation have not been exhausted, when the complainant has been directed to do so by the Protector.

The Protector does not continue with the consideration of a complaint if he or she has determined that court proceedings were initiated after the complaint had been filed with the Protector.

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Slovak Republic

The competence of the public defender does not extend to the Constitutional Court of the Slovak Republic and the Prosecution and Courts, with the exception of state administration of courts and the reasons which presuppose disciplinary misdemeanour of the judge.

The public defender of rights may put off the complaint if he discovers that the matter which the complaint concerns is being heard by the court and there are no obstructions in the proceedings, or if the case has already been decided by the court.

Slovenia

The Ombudsman must not interfere in the cases in which court or some other legal proceedings are being conducted, except in case of undue delay in the proceedings or evident abuse of authority.

The Ombudsman rejects a petition when proceedings are being conducted in the case before the judicial bodies, except in case of undue delay in the proceedings or evident abuse of authority.

The Ombudsman may lodge a constitutional complaint with the Constitutional Court in relation to an individual case he is dealing with.

Spain

The Defender of the People does not examine the case aspects of complaints pending judicial resolution, and suspends his action if once he has commenced it a claim or appeal is lodged by the person concerned to the Ordinary Courts or the Constitutional Court.

However, this will not prevent investigations on general problems posed in the complaints presented. In any event, he supervises the administration's express resolution, in time and form, of the petitions and appeals which have been formulated to him.

The Defender of the People is empowered to lodge appeals for unconstitutionality and for relief, in accordance with the provisions of the Constitution and of the Organic Act of the Constitutional Court.

When the Defender of the People receives complaints regarding the performance of the Administration of Justice, he must address them to the Public Prosecutor who will investigate whether they are justified and adopt the relevant measures according to the law, or will forward them to the General Council of Judicial Power, according to the type of claim concerned; this is all notwithstanding the reference the Defender of the People may make to the subject in his general report to the Parliament.

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Sweden

The Ombudsmen are to ensure in particular that the courts in the course of their activities obey the injunction of the Instrument of Government about objectivity and impartiality and that the fundamental rights and freedoms of citizens are not encroached upon in public administration.

Netherlands

The Ombudsman is not entitled to institute an investigation if:

- a judgment has been given by a judicial body in respect of the action in question pursuant to a statutory provision of administrative law; or
- if proceedings concerning the action in question have been instituted before a judicial body other than pursuant to a statutory provision of administrative law, or if appeal lies from a judgment given in such proceedings; or
- concerning actions which are subject to the jurisdiction of the courts.

The Ombudsman is not obliged to institute or to continue an investigation if:

- judgment has been given by a judicial tribunal other than pursuant to a statutory provision of administrative law; or
- if the petition relates to an action which is closely related to an issue concerning which proceedings are pending before a court or tribunal other than pursuant to a statutory provision of administrative law.

Ukraine

The Commissioner is entitled to

- appeal to the Constitutional Court of Ukraine with regard to: the issue of conformity between the Constitution of Ukraine and the laws of Ukraine and other legal acts issued by the Verkhovna Rada of Ukraine, acts issued by the President of Ukraine, acts issued by the Cabinet of Ministers of Ukraine, and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea concerning human and citizens' rights and freedoms; the official interpretation of the Constitution of Ukraine and the laws of Ukraine;
- attend court sessions of all instances, including court sessions held behind closed doors, in the event that the subject of the legal case at hand, in whose interest the judicial proceedings have been ruled to be held behind closed doors, has given consent;
- appeal to the court about protecting human and citizens' rights and freedoms of persons who cannot do this on their own due to reasons of health or any other

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appropriate reason, and also attend judicial proceedings personally or through a delegate in accordance with the instances and procedure established by law;

The Commissioner does not consider appeals which are under review in courts, terminates legal proceedings that have been initiated if the person concerned has filed an appeal, statement or complaint with the court.