

**THE PROTECTION OF CITIZENS AS "CONSUMERS"
OF GOVERNMENT SERVICES**

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OCCASIONAL PAPER #52
January 1995

ISSN 7116349

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Since the very successful Third Round Table held in Florence in 1991, there has been much activity within Europe and beyond which is related to the protection of citizens as consumers of government services. I will refer to the Conference organized in May 1992 by the Defensor del Pueblo of Spain in collaboration with the Conference on Security and Cooperation in Europe. The Austrian Ombudsman Board has produced a valuable record of the Fifth International Ombudsman Conference held in Vienna in October 1992. In 1993, there was a World Conference on Human Rights. The ratification of the Maastricht Treaty makes possible the appointment of a European Ombudsman charged with investigating maladministration by organs of the European Union.

All these events have special significance in relation to the dealings between governments and citizens. Perhaps of more immediate concern to citizens as consumers of government services have been the publication of Citizen's Charters in the United Kingdom and *La Charte des Services Publics* in France. In my report, I draw on documents emanating from some of these events and on the reports of other Ombudsmen which provide insight into problems on an international scale but with relevance to each national jurisdiction. I will mention the need to provide protection for those citizens who regard themselves as being in a minority or less favoured position. We are indebted as Ombudsmen to the Council of Europe for providing us with the opportunity once again of sharing our common experiences and of talking to those in the European Court and Commission for Human Rights.

The instruments and offices which exist to protect citizens as consumers of government services are: the courts, administrative tribunals, administrative courts in those countries where such entities exist, ombudsmen - both public sector and private sector, complaints adjudicators, citizens advice bureaux, commissions against corruption, and inspectors of prisons. I shall refer to some of these bodies and, perhaps surprisingly, I begin with corruption.

* Parliamentary Commissioner for Administration and Health Service Commissioner, United Kingdom. Report presented at the Fourth Round Table with European Ombudsmen, organized by the Secretariat General of the Council of Europe in cooperation with the "Provedor de Justiça" (Ombudsman) of Portugal, Lisbon, June 16 - 18, 1994. Also printed as Council of Europe Doc. H/Omb. (94) 2.

In a lecture about safeguarding integrity in government published in December 1993 by the Department of the Senate, Canberra, Ian Temby referred to the Independent Commission against Corruption (ICAC) set up in March 1989 in New South Wales to minimize corruption. It seeks to achieve its objective by a three-pronged approach. The first prong is investigations and reports which expose and measure problem areas. The second is corruption prevention by which administrative and other systems are improved so as to reduce corruption opportunities to a practicable minimum. The third is public education through which people are taught that each citizen can contribute, that each of us can make a difference. The ICAC did a lot of educational work, particularly with various ethnic minority groups. Newcomers to Australia, whatever their qualifications, tended to start off fairly low in the employment heap and very often in jobs needing a driving licence. A lot of effort was put into educating minority groups. It was done by devising a positive message, "Exercise your rights. If you can drive, the licence is a right and there is no need to go through any backdoor." For negative reasons, the ICAC did not say, "If you pay a bribe, you will get imprisoned." Negative messages do not work. People had to be empowered and have their own position reinforced.

Professor Temby considered that the most important thing in relation to an enquiry was to allay public anxiety and restore faith. "Some commissions of enquiry find and state that everything after examination has been found to be in order. Another way of restoring faith which is more frequent is to identify what has gone wrong and to say how the problem can be sorted out. If the point is to allay public anxiety, the public must know what is being done and have faith in the process. The approach must be open and visible. Most important, independence is paramount. There will be no public trust in decisions made by a body investigating Government if that body is perceived to be biased and if it is seen as a creature of Government."

After that example, I do not apologize for repeating two of the conclusions from the Madrid conference of May 1992. Conclusion 4 was that in any country it is important that the institution of ombudsman should be linked with parliamentary democracy (where there is such a system); its services should be free to the citizen wanting to complain about maladministration or violation of human rights; its functions should rest on a firm legal and statutory base; it should be completely independent of the administration; its findings and recommendations must be treated with the greatest of respect and responded to; and, ideally, no area of public administration should be immune from the jurisdiction of the ombudsman.

Conclusion 5 was that, "while the primary objective 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 suggested changes in the law, but it is for the Government and Parliament to make such changes through the Parliamentary process; and similarly, when the Ombudsman recommends redress, it is for the body which has created injustice to provide the remedy." In recent years, there has been a proliferation of appointments to jobs which are similar to that of an ombudsman. The object of all these is to assist the citizen as a consumer to do battle with the administration. Some of these new creations have been set up by law, some have been established by a general agreement among banks or insurance companies or other private sector enterprises which are no less immune from complaint than are government departments. This concept is not necessarily new nor is the figure of speech of doing battle new. One of the best descriptions of citizens who require protection as consumers of government services was given by Pierre Daninos in his *Les Carnets du Major Thompson* in which he compared a citizen preparing to take up a complaint with the French bureaucracy to an archer setting out for the 100 Years War.

The Citizen's Charter was published in 1991 after a period when all the main political parties in the United Kingdom issued charter documents. That Charter and the French *Charte des Services publics* are a response to the feeling well described by the Ombudsman for Ontario, herself the representative of an ethnic minority, when she wrote:

There are tensions between the expectation that decision makers will make decisions and the expectation that the public be involved in making decisions. The public want to be consulted. The public is making increased demands for higher standards in the administration of Government. The public is demanding accountability as never before and is increasingly impatient for improvements in public service.

A Charter is not, therefore, a partisan concept in the context of explaining to citizens how to complain. The Charter has stimulated public bodies to set up or enhance internal complaints procedures or improve their quality. These procedures can take a variety of forms: the appointment of customer complaints managers or directors of nursing quality, of lay conciliators and mediators. They can be the appointment of quasi-independent investigators usually called complaints adjudicators appointed by a government department or service to look, as independently as possible, at complaints. Even so, they lack the complete independence of an ombudsman. As the Citizen's Charter stated:

Where internal complaints procedures fail, there must be an external route for taking things further. On behalf of the citizen, ombudsmen already deal with complaints if the redress recommended is not forthcoming. The Parliamentary and Health Service Commissioners have a power to report to Parliament, in

effect laying their recommendations before the highest court in the land. As a result, recommendations on compensation cannot be ignored.

There is more and growing specialization among ombudsmen. There are national ombudsmen, local government ombudsmen, and there are ombudsmen for pensions, legal services and housing. In addressing British and Irish Ombudsmen in November 1993, Sir John Robertson, Chief Ombudsman of New Zealand, said:

The creation of a single purpose specialist ombudsman for such areas of activity as the environment, indigenous peoples, ethnic minorities, police, prisons, immigration, education, revenue collection, privacy and information have all taken jurisdiction away from the general ombudsman and substantially reduced public contact between that position and the public. Many of the special purpose ombudsmen are not necessarily complaint-driven, and have functions and processes additional to those which were previously held by the parliamentary ombudsman in the general jurisdiction. They tend very effectively to satisfy special interest organisations which had much to do with the political drive which led to them being set up. They have to be continually vigilant to avoid organisational capture arising from their close association with the special public and the organisation subject to jurisdiction. But they are a form of watchdog which is here to stay. The public will require them to stay. Another type of ombudsman is beginning to arrive in the form of internal complaint mechanisms forming part of governmental or local government organisations. Hence the question of independence and the freedom to resolve grievances free of the policy of the organisation is very much in doubt, but the user public are not good at perceiving these distinctions when the name 'Ombudsman' is used. The credits built up by the generalist ombudsman, before the name became so popular and before proliferation of functions took place, still remain in the public's mind. Internal complaints mechanisms are an area where the public should be enabled to see the process clearly for what it is - an internal complaints mechanism which may or may not give a fair and just answer, and which should be subject to independent overview by the parliamentary ombudsman.

Those were the views expressed by the President of the International Ombudsman Institute.

The duty of an ombudsman seems to me to be, *first*, to investigate a legitimate complaint impartially and without fear to see if it is justified. *Second*, the duty is to secure redress for the citizen, if the complaint is justified, and that redress may simply be an explanation and apology. It may also, and

frequently does, have a financial consequence. *Third*, the duty is to try to ensure that the same maladministration leading to injustice does not recur: it is to recommend improvements in systems or, if there are no systems, to recommend that there should be, in order to minimize the risk of the same mistake being repeated. All complaints, whether or not in the end they prove to be justified, should prompt a review of procedures, communications or attitudes to the public. What the service feels like to the customer is a dimension of audit, which all managers and providers of services to the public should acknowledge.

At Madrid, emphasis was laid on the linkage between the ombudsman and parliament in a parliamentary democracy. The sanction of the Select Committee on the Parliamentary Commissioner for Administration in the U.K. Parliament ensures that my recommendations are accepted when I find that appropriate redress should be given for maladministration. The Select Committee has invited me to publish guidance on good practice like local government ombudsmen who have produced guides for local authorities on good practice in handling complaints. The publicity given to reports of investigations undertaken by ombudsmen is likely to encourage bodies within their jurisdiction to give more consideration to citizens in future as the consumers of their services. If the relevant government department has been required by the ombudsman to pay for its mistakes and has had to reimburse not just the individual citizen who has complained to the ombudsman but all other citizens who have been dealt with unjustly in the same manner, that financial sanction will begin to hurt. The government body concerned will not want to continue to have to put its hand in its pocket to provide redress and it should therefore improve its systems and ensure that the maladministration that has affected one citizen or a class of citizens in the past will not do so in the future. The courts, through a process of judicial review of what a government department has done, may annul or overturn a decision; they cannot, in Britain, recommend redress - which is the particular mark of the ombudsman. The European Court of Human Rights can undertake both actions.

By publishing the results of investigation which have had far reaching consequences for whole classes of citizens, it should be possible for an ombudsman to enhance the standard of public service to citizens in the area investigated. As our Dutch colleague observed at Vienna in 1992, "the Ombudsman gives an opinion, a recommendation, and it is very important that he has an authority - his office and he himself personally - that is so strong that the Government sees no other way than to follow the judgment and to follow the recommendation." That means, as Marten Oosting has said, that a very strong emphasis should be laid on the quality of the procedure, of the fact-finding on the one hand and, on the other hand, the quality of the reasoning in reaching the judgment and also in underpinning the recommendation of the ombudsman. In the Netherlands and in the United Kingdom,

departments are reported to Parliament if they have been found maladministrative and have not provided redress; consequent publicity and parliamentary pressure then take over and have the effect of producing the desired redress for the consumer of the government service in question. What Michael Mills, the Ombudsman of the Republic of Ireland, has called possibly the most important aspect of the ombudsman's work is securing implementation of his or her recommendations. That is particularly significant if the ombudsman is invoking equity to remedy the unfair outcome for the citizen of a strict application of the law. As Jacques Pelletier has observed:

La juridiction administrative n'a que le pouvoir de contrôler la légalité de l'action des services publics ... L'expérience avait montré que le respect littéral d'une loi ou d'un règlement n'empêche pas toujours le citoyen, l'administré, de subir un traitement inéquitable. [Original text in French, translation: The administrative judicial organs only have the power to review the legality of the action of public services ... Experience had shown that respect for the letter of the law or regulation does not always prevent citizens from being subjected to inequitable treatment.]

Every ombudsman will find that poor communications lie at the root of many complaints. Information has not been made available. Information has been unclear. Information about appeal rights has not been given. Information has been withheld or given in an unhelpful way. All these are matters which an ombudsman can investigate - but he is useless if the citizen cannot contact him or does not know how to complain. For that reason I publicly welcomed the issue of leaflets to households in the United Kingdom explaining how to complain about the National Health Service. I welcome leaflets which are produced by government departments setting out, first, the standard of service which a particular government department has as its objectives; second, what the citizen consuming those services can expect the standard of service to be; and, third, telling the citizen who finds that the service is not matching the advertised standard that the citizen can complain, how to complain and to whom to complain. Obviously, it helps if a complaint can be dealt with locally and quickly. If the body dealing with the complaint can tell the complainant what is being done to provide a reply and redress, that is excellent. If the citizen is dissatisfied with the way in which the complaint has been handled locally or internally, however, the citizen must be told how to go to an independent tribunal, adjudicator or ombudsman for a completely dispassionate investigation of the complaint. Too often, leaflets, explaining what standard of service can be expected and how to complain about faults, are silent about recourse to an external investigation. That is not good enough. It deprives the citizen of possible redress. It is the duty of the body providing the service to give full information about complaint handling and not to confine such information to

internal mechanisms. When I intervene after a local investigation into a complaint has been undertaken, too frequently I have to criticize the unmethodical inadequate way in which the complaint has been dealt with locally at too low a level in the organization by a complaints officer without adequate training or supervision. Complaints should be regarded by those at the top of an organization as a valuable external expression of quality of service by the citizen, as an opportunity to enhance and improve that quality of service, as a challenge to remove the cause of the complaint. Only by constant pressure will the attitude of an administration to complaints be changed from irritation to improved service, and ready redress, cheerfully given and not extracted under threat of court proceedings or of reference to Parliament.

When I received a visit in March from a former member of the Russian Parliament who had helped to draft the law setting up a Human Rights Ombudsman in Russia, he observed the Select Committee of the United Kingdom Parliament examining the representatives of departments which I had criticized for maladministration. He was most impressed by the fact that, when answering for their mistakes and maladministration, the departmental officials never gave lack of resources as an excuse for the maladministration which had occurred. This anecdote helps to underline the point made graphically by the Defensor del Pueblo of Spain in 1992, Alvaro Gil Robles, when he said at Vienna, "It is one thing to import and transplant institutions in a calculated laboratory operation and quite another matter to make them become established in the new legal medium or habitat ... it would be rather like importing African elephants to pull sledges in the polar regions."

Just as our French colleague, Jacques Pelletier, the Médiateur de la République, has very helpfully illustrated in his recent annual reports how the concept of equity can produce a remedy that would not be obtainable simply by the processes of law, so I have also spelled out in the Citizen's Charter emphasis on service to the customer and on departmental efficiency as a reason for changing compensation arrangements which, in the past, insulated the government too much from the consequences of its own errors and inadequacies, the losers being disadvantaged claimants and members of their families. Like our French colleague, I have assisted the disabled through my investigations.

That brings us to the question whether ombudsmen should go out of their way to care for citizens who are particularly at a disadvantage by contrast with their fellows. Through positive discrimination, should we ensure that the message we send to the generality of citizens is specially directed at those who are handicapped by a physical disability or by inadequate knowledge of the main language of the country in which they reside? Is it sufficient simply to translate documents into minority languages? As Mr. Brent Parfitt expressed it at Vienna, "Having a pamphlet

explaining a process (of taking a child into the care of social workers), just translating it from English into some other language is not enough - people must understand the concepts and the principles." Mrs. Flekkoy, in her book, *A Voice for Children: Speaking out as their Ombudsman*, published by the United Nations Children's Fund in 1991, mentioned her concern that the relevant Norwegian ministries had not agreed to translate material about the Ombudsman into languages other than Norwegian. She regretted that such a very small number of complaints had been received from the children of immigrant families. A specialized ombudsman can more appropriately regard positive discrimination as an objective than a multipurpose ombudsman. But it leaves the multipurpose ombudsman with the worry that the services of his office may not be known to those citizens whose need of them is greatest.

Let me put it in the words of Philippa Smith, the Australian Commonwealth Ombudsman, in her Report for 1992-93:

One of my primary goals as Ombudsman is to ensure that we are accessible to those who need us most. Given limited resources, it is important that we are focused in our approach. Initially, I propose contacting key community groups about the major issues - administrative practices and procedures - that are affecting their members and clients. This process needs to be carefully managed to avoid any impression that my office is an 'advocate', but it will provide feedback to me about the experiences and priorities of certain groups in our community and will provide further information about the extent to which my office is known and used. This, in turn, will enable us to devise relevant access and equity strategies.

I am, in addition, seeking the cooperation of government agencies to include advice about the role of my office in the information material *they provide* to their clients, particularly at times when such clients (or potential clients) might wish to seek review of a decision.

Another priority is the identification and correction of the underlying causes of complaint. The Ombudsman has a good insight into and overview of the operation of agencies. By looking at the pattern and nature of complaints my office can often identify trouble spots and the practices and procedures which may need to be changed as a result. To my mind this approach uses the experience of complaints to enable us to take a more constructive and preventative role, as opposed to the merely critical. ...

We Ombudsmen must never forget that we owe our existence to the fact that citizens have cause to complain. We must provide

them with protection by investigating their complaints and recommending redress if we find the complaints justified. We can give better protection to citizens as consumers if we assume the responsibility of insisting that all public bodies which provide services to the citizen endeavour to improve their services and provide a better and more sympathetic standard of service for the future. They need to learn from complaints. They need to train their staff to look on complaints positively instead of negatively. They need to provide as rapid redress as is consistent with a fair and dispassionate investigation of a complaint. They could learn from the Emperor Julian described by Edward Gibbon, the historian of the *Decline and Fall of the Roman Empire*, as, "deriving from his philosophic studies an inflexible regard for justice, tempered by a disposition to clemency; the knowledge of the general principles of equity and evidence and the faculty of patiently investigating the most intricate and tedious questions which could be proposed for his discussion."