

III. The Office of the Parliamentary Ombudsman

I. Topical discussion: extract from the Minutes of the Paris session, March 1994

Mr GRENFORs introduced his paper by indicating that Ombudsman was a Swedish word meaning "one who represents someone else". The Office had a long tradition in Sweden with the first one having been appointed in 1809. There were currently four Ombudsmen who were responsible between them for the different areas of public sector activity but were independent from each other. The Ombudsmen had a staff of 50, of whom 30 were lawyers. The lawyers were often career judges and the turnover of staff was relatively fast. The budget was determined by the Riksdag and the Ombudsmen were elected by Parliament for a four year period from amongst those eligible for the most senior judgeships.

The tasks of the Ombudsmen were laid down by the Swedish Constitution. An important part of the background was that in Sweden the Government Ministers were not the administrative head of the various Government agencies; a Minister could not therefore be held responsible for the activities of the agencies. The Ombudsman represented an important part of the way parliamentary control over public sector activity was ensured. The system was overseen by the Standing Committee on the Constitution. Members of the Riksdag or of local authorities were not subject to supervision of the Ombudsmen.

The sanctions available to the Ombudsmen included initiation of legal proceedings against an official, a report to the Agency recommending disciplinary action, a report involving criticism of officials or of the Agency (perhaps involving compensation), the making of recommendations about administration, reports to Parliament on suggestions to amend legislation, and the giving of publicity to its work through production of an annual report.

The Ombudsmen could work on their own initiative or on referral but their major task was in dealing with complaints from the public which now amounted to between 4,000 and 4,500 a year. The right to complain was not limited to Swedish citizens. An Ombudsman would not normally look at matters which were more than two years old or were mere trifles. In practice, the Ombudsmen decided broadly in favour of the complainant in about 50% of cases.

Although the Swedish model for the Ombudsman was closely related to the particular distinction in Sweden between Government and administration it had proved possible to adapt the institution in other circumstances. Finland had had an Ombudsman for some time but in the 1960s Denmark and Norway also introduced an Ombudsman. In the United Kingdom and in France (where the equivalent official was called the "*Médiateur*"), complaints could only be taken up by the Ombudsman on referral from a Member of Parliament. There were now Ombudsmen in over 60 countries and there were both international and European Conferences of Ombudsmen.

Dr ALZU'BI (Jordan) asked about the legal basis for the Ombudsman's authority. Mr GRENFORS replied that the Ombudsman system was part of the overall control system for the whole of the public sector provided for under the Constitution.

Mr PAVILONIS (Lithuania) asked about the coverage of the Ombudsman over parliamentary staff. Mr GRENFORS replied that although parliamentary staff (but not the Secretary General) were subject to the Ombudsman he could not recall a single case in which the Ombudsman had reported on parliamentary staff.

Mrs HUBER (Switzerland) asked about the relationship between the Ombudsman and parliamentary control as exercised by its Committees or in other ways. Mr GRENFORS indicated that while the Ombudsman was entirely independent from parliamentary committees, and their main source of complaint was from the public, this did not preclude a Committee being interested in a similar area.

Mr DAVIES (United Kingdom) and Mr ALBA (Spain) asked about the way in which an Ombudsman could lose the confidence of Parliament. Mr GRENFORS indicated that this was a matter for the Committee on the Constitution although a loss of confidence could only arise as a result of very serious cases — for example, law breaking by the Ombudsman — and not in general as a result simply of the way he conducted his office.

Mr ORBAN (Belgium) asked whether foreigners lodging a complaint were required to do so in Swedish. Mr GRENFORS indicated that while the complaint must be submitted in accordance with Swedish law they could use a foreign language. This was quite common in respect of complaints from refugees.

Mr SWEETMAN (United Kingdom) indicated that in the United Kingdom a key feature of the process was the role of the relevant House of Commons Committee (the Committee on the Parliamentary Commissioner for Administration) in picking up some of the more serious cases and acting as a focus for

publicity for the Ombudsman. Mr GRENFORs indicated that under the Swedish model the Constitution Committee did not look at specific cases.

Mr SOBOLEWSKI (Germany) gave some details on the procedure in Germany, which had had a system deriving from the Swedish model since 1956. 24,000 complaints had been referred under this system to the Bundestag in 1992. The relevant Committee, the Petitions Committee, had wide powers of inquiry and access to papers.

Mr THTINEN (Finland) reported that Finland had had a similar system to the Swedish system, since 1919. The Ombudsman formed part of the legal control function over Government exercised by Parliament. It was also important that Parliament properly supervised the Ombudsman, as happened in Finland through the Constitution Committee and the plenary activities of the House. In Finland, individual Members could refer matters to the Ombudsman but Committees of the House could not.

Mr SAWICKI (Poland) described how the post of Ombudsman was first created under the previous communist regime. The first Ombudsman had, however, begun to act in a genuinely independent way and had helped to make the Ombudsman an important part of the system. Many thousands of cases were dealt with each year. The Ombudsman was elected by the lower House with the approval of the Senate for a four year term with a maximum of two terms.

Mr NDIAYE (President) (Senegal) indicated that the equivalent official in his country, the "*Médiateur*", made his reports to the President of the Republic, reflecting the way in which the system was a presidential one more than a parliamentary one. The post had been established about four years earlier and its role was to receive complaints from the public leading to investigations by the *Médiateur* of the Government Department or Service concerned. The *Médiateur's* role was reduced to the extent that control over Government was already exercised in other ways, including parliamentary control.

Mr OLLÉ-LAPRUNE (France) indicated that the *Médiateur* in France was established by law and was appointed by the President of the Republic. He could deal with complaints from the public after all other legal avenues had been exhausted and references of cases to him had to be via a Member of Parliament.

Mr SABIO (Philippines) said that the post of Ombudsman was established under basic laws arising out of the Constitution. His Office was an independent one which received complaints from the public.

Mr GRENFORs suggested that these various examples showed the variety of different models which could be established, all centred around the theme of the Ombudsman being part of the overall control system over the Government.

Mr RAVAL (Philippines) asked whether the extent of the Ombudsman's role in investigating inefficiencies in Government implied a corresponding reduction in Parliament's own proper role and about the relationship between findings by a parliamentary Committee and an investigation by the Ombudsman. Mr GRENFORS indicated that Parliament saw its role as somewhat different from that of the Ombudsman and that this reflected the distinction in central government, which was peculiar to Sweden, between the role of the Minister and the Administration. Other parliamentary Committees were free to investigate matters within the remit of the Ombudsman but they tried not to interfere with his role.

Mr MOUFONDA (Congo) asked whether the Ombudsman enjoyed any particular immunities and about the extent to which the Ombudsman system could be adapted in respect of systems very different from that of Sweden. Mr GRENFORS replied that there were no special provisions relating to immunities for the Ombudsman and that, in respect of adaptability to other countries, the example of up to 60 other countries had shown that the model could be adapted.

Mr HOOPLOT (Suriname) and Mr KAITOUNI (Morocco) sought further clarification on the effective distinction between control of Government by Parliament and such control as exercised by the Ombudsman. Mr GRENFORS reiterated that the two forms of control were exercised in different ways but that both formed part of the overall control system.

2. Report prepared by Mr Gunnar Grenfors, Secretary General of the Riksdag of Sweden (adopted at the Istanbul session, April 1996)

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Appendix

1. Introduction

Ensuring by one means or another that private citizens are treated correctly by the authorities is an important task in a democracy. It is one of parliament's tasks to supervise the activities of the government and its subordinate authorities. Different techniques and institutions exist to exercise such supervision. This paper describes the institution known as the Parliamentary Ombudsman, an office which originated in Sweden just under two hundred years ago.

This paper reports the results of a written inquiry to which 39 countries replied; around half reported that they had a parliamentary ombudsman of the kind covered by the International Bar Association's definition:

"The features of the office shall be governed by the constitution or legislation, and the incumbent answers to the legislative assembly. The Ombudsman shall deal with complaints from the general public against authorities or public officials, or be able to act on his own initiative. The Ombudsman shall have the prerogative to make inquiries, recommend measures and disclose reports."

It emerged from the replies to the inquiry that the office of Ombudsman has been adapted to national constitutions in many different ways. The concept itself has proved flexible, and this is presumably one of the reasons why new Ombudsmen are constantly being created, often as a feature of democratic development. As an institution, the office of Ombudsman is clearly seen to be an effective method of guaranteeing civic rights.

Some of the replies received describe alternative means available to the Ombudsman to exercise supervision over the public authorities. Supervision may be exercised, for example, through bodies which enjoy independent status without therefore being directly answerable to parliament. Another form of supervision is through alternative complaints-handling parliamentary bodies, or Petitions Committees. An account is given below of some of this material.

In some countries – mainly countries with federal systems – conditions are such that I have chosen to deal with them separately instead of integrating them into the main body of my text (see Part B of the report).

Part A

2. The emergence of the Ombudsman

Sweden was the first country to have a Parliamentary Ombudsman. The office was established as long ago as 1809. The other Scandinavian countries followed over a century later: Finland in 1919, Denmark in 1953 and Norway in 1962. New Zealand became the first country outside Scandinavia to acquire an Ombudsman the same year. Britain followed in 1967. Many other countries followed suit in the 1970s: Israel, Zambia, Portugal, Spain and South Africa. Israel's State Comptroller, an office that had been in existence since 1949, was empowered in 1971 to receive complaints against the public administration from the general public.

Iceland, Ireland, the Netherlands and Poland all acquired Ombudsmen in the 1980s. The most recent recruits are Slovenia (1993), Burkino Faso (1994) and Belgium (1995). Slovenia's present Ombudsman was appointed in the autumn of 1994, but had not yet taken up his post at the time of the inquiry. The two Belgian Ombudsmen are due to be appointed in early 1996. On a supra-national level, an Ombudsman of the European Union was appointed in 1995.

3. The structure of the Office

(a) The legal basis

In just under half the countries with an Ombudsman, the Office was established under provisions of constitutional law. This is true of Austria, Burkino Faso, Denmark, Finland, the Netherlands, Poland, Portugal, Spain, and Sweden. In others, mainly countries belonging to the Anglo-Saxon legal tradi-

tion, the Office is generally regulated under ordinary statute law. Examples are Britain, Iceland, Ireland, Israel, New Zealand, Norway, Slovenia, South Africa and Zambia.

(b) How the Ombudsman is appointed

The usual procedure is for the Ombudsman to be elected by parliament. This is true of the Scandinavian countries, Austria, the Netherlands, Poland, Portugal, Slovenia, and Spain. The candidates are nominated in various different ways: in Denmark by a parliamentary committee; in Slovenia by the President; and in Spain by a committee of representatives drawn from both houses of parliament. In Austria, the Central Committee draws up a list of candidates on which the three largest Opposition parties have the right to nominate one candidate each.

In Sweden, the election of a Parliamentary Ombudsman is prepared by the Parliamentary Committee on the Constitution and in Iceland by the presiding body of the Althingi. The Netherlands has a Nominations Committee consisting of the vice-president of the Council of State, the president of the Supreme Court and the president of the General Chamber of Audit, who together put forward a list with at least three candidates. In Norway, the election of an Ombudsman is prepared by the Storting parliamentary parties, the presiding body of the Storting and the Storting Nominations Committee. In Finland, the election is not preceded by a nominations procedure: instead, the Ombudsman is elected in plenary session by a simple majority in a secret ballot. In Britain, the Parliamentary Commissioner is appointed by the Crown: the Prime Minister puts forward recommendations following consultations with the Leader of the Opposition and the chairman of the Committee on the Parliamentary Commissioner for Administration. In New Zealand, the Governor-General appoints the Ombudsman on the recommendation of the House of Representatives. The Irish Ombudsman is appointed by the President on the recommendation of the House Committee. In France, Burkino Faso and Zambia, the Ombudsman is appointed by the President. In South Africa, where the Ombudsman has been replaced by the new Public Protector, the President's choice has to be approved by a qualified majority of the National Assembly and the Senate.

(c) Number of Ombudsmen

Austria, Burkino Faso, New Zealand, and Sweden all have more than one Ombudsman. Sweden elects four, of whom one acts as Chief Ombudsman. Austria has three Ombudsmen and the presidency rotates between them. In Burkino Faso, there are several incumbents, but the number is not laid down in

law: instead, the President appoints as many as are required, after consulting the Prime Minister and others. Even although the majority of countries have only one incumbent, it is customary to appoint deputies, who vary in number from 1-4. In Britain, Denmark, Ireland, Norway, and South Africa, no deputies are appointed and the Ombudsman acts entirely on his own.

(d) Term of office

Ombudsmen are generally appointed for a limited period. In Britain and South Africa, however, the only limit is the age of the incumbent: the Ombudsman must be no more than 65 or 72 respectively. When the South African Ombudsman is replaced shortly by a Public Protector, his term of office will be limited to five years. The term of office varies generally between four and six years. In Zambia the term of office is three years and the incumbent is not eligible for re-election. The same is true of Burkino Faso. In other countries, the Parliamentary Ombudsman is eligible for re-election at least once.

(e) Arrangements for removing an Ombudsman

It is a characteristic that, once appointed, the position of an Ombudsman is strong for the duration of his term of office. Generally speaking, an Ombudsman is virtually irremovable. His position is strongest in Austria and Finland. In Finland, the only way to dislodge an Ombudsman is not to re-elect him. In countries where it is possible to dislodge an Ombudsman before the expiry of his term of office, criteria have to be met as regards grounds: serious ill-health, serious criminality, bankruptcy or the like. Manifest abuse of office may also offer grounds for removal.

Denmark and Sweden differ from other countries in that their legislation gives no indication of the grounds on which an Ombudsman may be removed before his term of office has expired. Here the principle is that the Ombudsman may be relieved of his duties if he forfeits the confidence of parliament. In both Denmark and Sweden, the question has to be raised before a special committee. Resignation at his own request apart, the British rules permit the removal of an Ombudsman before the expiry of his term of office, on a joint motion of Lords and Commons. Israel's State Comptroller can only be removed by the Knesset.

(f) Immunity

Ombudsmen generally enjoy a measure of immunity in respect of their exercise of office. In Poland and Slovenia this immunity means that the consent of parliament has to be obtained before legal proceedings can be taken against

an Ombudsman. In Finland, any offence committed by an Ombudsman in the course of his duties must be tried before a special court, the High Court of Impeachment. Austria, Denmark, the Netherlands, South Africa and Iceland all lack immunity rules.

(g) Qualifications

It is clear from the replies that more general qualities such as high integrity, common sense and professional experience are generally regarded as desirable qualifications. In Denmark the preference is for an incumbent who is politically neutral. Half the countries that have Ombudsmen have formal requirements concerning the incumbent. Professional legal training is a common requirement, along with national citizenship and legal age. Norway, Sweden, Iceland and Zambia require the same qualifications as are required by a justice of the Supreme Court. In Zambia, this applies only to the Chief Ombudsman.

In South Africa there are no formal barriers to prevent the Ombudsman from holding another office or engaging in other employment alongside his appointment as Ombudsman. In Burkino Faso, Denmark, Norway and New Zealand, the Ombudsman may engage in other employment after obtaining special leave.

Under the legislation of certain countries, the Ombudsman may not at the same time be a member of parliament or hold a political appointment. This is true of Britain and the Netherlands. In Iceland, the Ombudsman may not be a member of the Althingi, but it has been possible to combine the office of Ombudsman with membership of the Council of Europe Human Rights Commission.

(h) Professional background

With two exceptions (Burkino Faso and Ireland), parliamentary Ombudsmen have either been members of the judiciary or possess a degree in law. In general, the incumbents come from high office in the public administration. Ireland's first Ombudsman was a journalist and his successor a government official.

Portugal's first Ombudsman had a military background, but the incumbents since then have all been former lawyers or justices of the Supreme Court. In both South Africa and Norway, the Ombudsman was previously a justice of the Supreme Court. In Sweden, the Ombudsmen have generally also been former judges. Another typical professional background is professor of law specialising in public law, with instances in Denmark, the Netherlands, Poland and

Spain. Iceland's present Ombudsman is a professor of law, a former justice of the Supreme Court and, as has already been noted, a member of the Council of Europe Human Rights Commission.

4. Relations with government and parliament

Reporting to parliament

Virtually all Ombudsmen report to parliament once a year. In countries with a bicameral system, a copy of the Ombudsman's report normally goes to both chambers. As a rule, the reports are considered by a committee before being submitted to a plenary session of parliament. In Iceland, for example, the report is submitted to the presiding body of the Althingi. It is prepared in the General Committee, where one member is appointed rapporteur and presents the Ombudsman's findings to the chamber, after which the report is debated. Similar procedures apply in Austria, Denmark, Norway, Portugal, and Sweden.

In the past, the Netherlands had a permanent committee of the lower house (the Standing Committee on the National Ombudsman), but preparation has now been split up between the Standing Committee on Home Affairs and the Petitions Committee. The Committee on Home Affairs deals with the constitutional aspects and the Petitions Committee with individual questions. Some questions may be referred to the minister concerned. Consideration ends with a debate of the lower house in plenary session, when the Minister for Home Affairs leads for the government. In addition to an annual report, the Ombudsman on his own initiative also reports quarterly on the way in which his recommendations have been followed up in individual cases.

The New Zealand Ombudsman reports to the House of Representatives. The report is then normally referred to the Officers of Parliament Committee for consideration.

The annual report of the Spanish Ombudsman is presented orally to the Congress-Senate Committee and to both houses in plenary session. The report is debated by the party groups. It is possible to relieve the Ombudsman of his duties if the party groups are dissatisfied with the way in which he exercises his office. Dismissal pre-supposes the concurrence of two-thirds of the membership of both chambers.

In Britain, the Ombudsman's reports are submitted to both houses of parliament, after which the Select Committee on the Parliamentary Commissioner for the Administration decides which reports the Committee will exam-

ine. There is no special procedure for approving the reports. South Africa has no such procedure either.

In Slovenia, the Ombudsman has to report to the National Assembly at least once a year. The Slovenian Ombudsman also has the right to submit special reports to the National Assembly and other agencies of the Assembly on his own initiative. The Finnish Ombudsman also has the right to submit such reports in addition to his regular annual reports. In Sweden, the annual reports of the Parliamentary Ombudsman are read with great interest by judges, government officials, and members of the law faculties at the universities. Reference is frequently made in legal doctrine to rulings by the Ombudsman. The Swedish Ombudsman also has the prerogative of submitting proposals for changes in the law to parliament direct.

In some countries, the Ombudsman also reports to the government or the President. This is the case in Burkina Faso, where the President, the head of government, the Chamber of Deputies and the president of the Supreme Court all receive copies of the Ombudsman's reports. In Zambia, a copy goes to the President as well as the National Assembly.

In Israel, the Ombudsman submits an annual report to the Minister of Economy and Interministerial Co-ordination, who scrutinises the report before forwarding it to the Knesset, under a covering report of his own, for examination by the State Control Committee. The material then goes forward, with the Committee's recommendations, for debate and a vote in the Knesset. Reports of the National Ombudsman of the Netherlands are frequently published in Law Journals.

5. Organisation

(a) Secretariat size

The average number of staff employed is 40. The size however varies widely from country to country. Only three people are employed in the smallest office, that of Iceland, whereas Poland, the largest, employs 148, of whom 92 are engaged in investigative work and 56 on administrative duties. Portugal and the Netherlands both employ large staffs of approximately 90 and 80 respectively. South Africa and Zambia have smaller staffs: 10 and 14 respectively.

(b) Broad lines of organisation

The most usual arrangement is for an Ombudsman to have one or more deputies, an administrative director and a number of desk-officers dealing with

different subject-areas, such as health or police matters. Sometimes there are also special staff to deal with information and PR. In countries where there are several Ombudsmen, one often acts as administrative director.

(c) Professional background of desk-officers

Desk-officers on the Ombudsman's staff usually have a degree in law, and not infrequently a postgraduate qualification (licenciate or doctor's degree) as well. In Norway, Iceland and Sweden, the officials in the Ombudsman's office frequently have judicial competence as well, and in Poland they have completed their legal apprenticeship. Iceland's acting Ombudsman is a lawyer specialising in administrative law and a former judge. The majority of desk-officers on the staff of the Swedish Ombudsman have judicial competence, either from one of the administrative courts or from a court of public jurisdiction, but also include some public prosecutors. In addition to judicial competence, the lawyers in the Norwegian office have past experience of the public administration or as counsel.

In addition to the judiciary, a common source of recruitment is the public administration. This is true, for example, of Britain, Iceland, New Zealand, Norway, and Sweden.

(d) Budget

The Ombudsman's budget is generally approved by the national parliament. Exceptions are Britain and Burkina Faso. In Britain, proposals have been put forward to the effect that henceforth the Ombudsman's budget should be approved by parliament direct instead of by the Treasury. In Burkina Faso, the budget forms part of the President's budget. Budget proposals are generally drawn up in the Ombudsman's office but cases exist in which budget proposals undergo scrutiny by government offices (Iceland, New Zealand, Zambia).

(e) Assistance from other bodies

Austria, Finland, Iceland, Israel, Poland, Slovenia and Sweden all report that their Ombudsmen have wide-ranging powers to call for information and assistance from other authorities.

In Iceland and Norway, evidence can be taken in courts of law at the request of the Ombudsman. The New Zealand Ombudsman cooperates with (government) departments and can employ expert assistance in investigative work should this be necessary. The Ombudsmen of Iceland, Denmark, the Nether-

lands, and Norway also have the right to employ expert assistance. The Zambian Ombudsman can apply to the President for assistance if required.

In the Netherlands, government bodies are obliged to appear before the Ombudsman to give information.

6. Tasking and procedural methods

(a) Application to the Ombudsman

Applications by members of the general public and spontaneous initiatives on the part of the Ombudsman himself are the most usual ways in which matters are raised. Another common practice is for members of parliament to report matters to the Ombudsman for investigation.

In Finland, the Justice Chancellor (an official of the government) refers complaints to the Ombudsman from the armed forces, prisons and other closed institutions. In Ireland, Iceland, the Netherlands, Spain, Poland and Zambia, complaints from members of the public also cover legal representatives, organisations and legal persons. In Austria, only those personally affected by an injustice on the part of the public administration are allowed to address themselves to the Ombudsman. In Sweden, foreign nationals may also apply to the Ombudsman.

In the United Kingdom and in France citizens do not have access to the Ombudsman. Only Members of Parliament may submit complaints.

(b) Procedural methods

Great similarities exist between the working procedures of the various national Ombudsmen who replied to the written inquiry. On receipt of a complaint, the general practice is to carry out a preliminary investigation in order to decide whether the matter should be gone into in more depth. This is the case when the Ombudsman is not obligated to examine all complaints. If the Ombudsman decides to proceed, contact is made with the administration concerned and the authority is given the opportunity to comment and explain its actions. Frequently, the Ombudsman asks for access to the authority's documentation in the matter. In Finland, an opinion is also sought from a superior authority if such exists. Occasionally, the complainant has a chance to comment on the authority's response. This is the case in the Netherlands where the complainant, as well as the government body concerned, always gets a chance to comment on the other party's viewpoints.

After this preliminary amassing of material, the case is examined in more detail if the Ombudsman deems it appropriate. In some cases, the matter will appear cut and dried already at the time of first scrutiny of the existing papers and documents. The work of examination may also include direct examination by an official of those involved.

When examination of the complaint is complete, the Ombudsman presents a report, presenting his findings and recommendations. In Slovenia and the Netherlands, both the complainant and the authority concerned have the chance to comment on the Ombudsman's draft report before it is finalised. In the Dutch case this draft report only contains the findings, not the judgements or recommendations of the Ombudsman. In Britain both the complainant and the authority see a copy of the report, as does the MP who referred the matter to the Ombudsman in the first instance.

In Portugal, cases are dealt with in rotation by officials at different levels within the Ombudsman's office, the final decision being taken by the *Provedor*.

The South African Ombudsman proceeds informally and tries to resolve issues between the parties concerned as quickly as possible, without resorting to formal routines unless absolutely necessary.

The picture presented by the replies to the written inquiry suggests that the Ombudsmen employ flexible work patterns and adapt their technique to the cases before them. This is true both of matters taken up following complaints from the general public and investigations initiated spontaneously by the Ombudsmen themselves. Ultimately, it is the detailed regulation of the Ombudsman's powers in each country that sets the limits for the choice of working procedures.

7. Publicity and media interest

The work of the Parliamentary Ombudsmen is generally carried out under the public eye. The activities of the Ombudsmen, and their reports, frequently attract media attention. In Norway and Iceland it is mostly the individual case that attracts attention, whereas the Ombudsman's annual reports attract attention more infrequently. New Zealand also reports that it is the concrete case that determines media interest.

In Finland, Ireland and the Netherlands, the Ombudsman holds a press conference in conjunction with the presentation of his annual report. In the Netherlands, the Ombudsman's contacts with the media are well-developed, with an information office to maintain contact with the media and issue press releases on cases of particular interest. For some years now, one of the major

Dutch newspapers has published a special weekly column which takes up different cases which have been submitted to the Ombudsman.

Britain's Parliamentary Commissioner also issues press releases, and in Denmark, the Ombudsman keeps a Danish national news agency informed of cases of general interest.

In Iceland, the Ombudsman's annual report is distributed to all members of the Althingi and is on sale to the general public. In both Poland and Portugal, the Ombudsman's reports are published and notices appear regularly in "The Bulletin of the Parliamentary Ombudsman" and the "Journal de l'Assemblée". Slovenia has a rule which states that rulings by the Ombudsman are to be published so as to make them available to a wider public.

It is not just the general public, however, that has an interest in what an Ombudsman has to say. His pronouncements are also of great importance to the authorities coming under the Ombudsman's supervision and to other public bodies. In Finland, the Ombudsman's annual report is distributed to the law courts and other interested bodies, and in Spain, the Ombudsman's reports are distributed within the administration and the universities as well as the media. In Sweden, the Ombudsman's annual report is greatly valued as an instrument to guide practice in the public administration. In Finland and Sweden, the official reports contain a summary in English.

Part B

8. Institutions in certain countries

(i) Belgium

Belgium adopted a law on the appointment of federal Ombudsmen, or *médiateurs fédéraux*, in March, 1995. The incumbents will be appointed in early 1996. Under this law there will be two Ombudsmen, one French-speaking and one Dutch-speaking. Their jurisdiction will extend to the whole of the country and will not be confined to their own language area.

The Ombudsmen will function collegially and they are tasked with investigating complaints against the federal authorities. Complaints may be made orally or in writing in any of the three official languages by any person with an interest, irrespective of whether the person is a Belgian citizen or not. Authorities which have their own Ombudsmen under the law are exempted from the Ombudsmen's scrutiny. The Ombudsmen will also carry out investigations

regarding conditions within the federal administration at the request of the House of Representatives. The Office of the Ombudsman is independent, however, in the sense that no other authority is entitled to tell it how it is to carry out its duties. The Ombudsmen will put forward recommendations and file reports on how the administration is functioning on the basis of their findings. The Ombudsman will also make an annual report to the Chamber of Representatives.

The incumbents

The Ombudsmen are appointed by the Chamber of Representatives (*Chambre des Représentants*) for six years, with the option of re-election. The incumbents must possess certain qualifications. In the first place, they must be Belgian subjects: in addition, they must lead an irreproachable life, hold the diploma which confers access to the highest official level in the state administration, have five years' work experience in the administrative, social or judicial field and have a knowledge of Belgium's other official language. An Ombudsman cannot be removed on grounds of his exercise of his office.

The general public can address themselves to the Ombudsmen with complaints about the way the administrative authorities function or the way they have acted in a specific matter. Complaints may be made orally or in writing. The complainant must first contact the authority himself and attempt to have his case resolved. If this is unsuccessful, the Ombudsman can deal with the complaint. The Ombudsman does not take up complaints which concern events which are more than a year old or which are patently unfounded.

The Ombudsman informs the authority concerned and invites it to comment. The complainant is kept continuously informed of progress in the case. The object is to find a solution which is satisfactory both to the complainant and the authority.

Powers

In preparing a case, the Ombudsmen have powers to carry out investigations, obtain access to documents and information and question those involved. Officials possessing information classified secret or confidential may be released from their obligation of silence. The Ombudsmen may also solicit expert assistance. The Ombudsmen may not take up cases which are already the subject of judicial examination under another procedure.

The Belgian Ombudsmen act under oath. Before taking up their appointments, they swear an oath of loyalty before the Speaker. While holding office as

Ombudsmen, they are debarred from holding other offices or carrying out commissions which might lay their impartiality open to question. The law also establishes the titles to be used by women incumbents, namely *médiatrice* in French and *ombudsvrouw* in Dutch.

Procedural rules for the Ombudsmen have to be approved by the Chamber of Representatives. The two Ombudsmen appoint their own staff and direct activities in consultation.

(ii) *France*

France established the office of *Médiateur de la République* under an act of law in 1973. The office is an independent body which does not come under any other public authority. The *Médiateur* is appointed for six years. He appoints his own staff and is free to organise his work as he sees fit. His task is to examine complaints against national and local government administration, official bodies and other bodies providing some form of public service. The *Médiateur* enjoys immunity during his period in office and cannot be put on trial or deprived of liberty on grounds of his exercise of his office.

No formal requirements are laid down in respect of the incumbent. Those nominated so far have however generally been experienced politicians, in many cases former ministers. Nor is there any formal obstacle to holding other appointments alongside the office of *Médiateur*: exercise of the office is however a full-time job which in practice precludes the possibility of other employment. The *Médiateur* is not eligible for the Senate or the National Assembly, but he is free to stand for election in regional and local government elections if he has held elected office in the past.

Conduct of business

In order to have a complaint against the administration examined by the *Médiateur*, the complainant citizen must first approach a member of the National Assembly or the Senate. The member then forwards the complaint if he or she thinks it warrants investigation. The member can also ask the *Médiateur* to take up a question on his own initiative. Two thirds of all cases are referred by members of the National Assembly and one third by members of the Senate.

To assist him, the *Médiateur* has a secretariat of 80 persons, of whom half are administrative personnel. There is a referent from the *Médiateur* in every department of state. The desk-officers are generally senior civil servants with experience of the administration.

The Médiateur decides for himself which cases he will take up and there is no appeal against a decision not to examine a case. The work of the Médiateur is to mediate between citizens and public authorities. Authorities against whom criticisms have been made are sent written inquiries to answer and the Médiateur can issue recommendations to authorities as he thinks fit. Officials can also be held responsible for their actions; however, the Médiateur has no powers to reverse administrative decisions once they have been taken.

Powers

The Médiateur is not empowered to carry out investigations of his own or to solicit the assistance of other authorities. He is however able to obtain information by approaching the responsible minister. If he decides that the rules are defective, he can put forward proposals for the law to be amended.

President and parliament receive a report from the Médiateur each year. The report is also distributed to members of the National Assembly and the Senate and is available for purchase by the general public. The reports attract a fair amount of media attention when they come out, but trigger no action in parliament.

(iii) Australia

Australia set up an Ombudsman's office in 1976. The purpose of the office is to improve the quality of federal administration and provide private citizens with an opportunity for redress if they have been treated incorrectly by the federal authorities. There are three incumbents, the Commonwealth and Defence Ombudsman, the Deputy Ombudsman, and, since 1995, the Special Adviser (Tax). All the States and Territories also have State Ombudsmen of their own, who enjoy independent jurisdiction. The budget of the federal Ombudsmen is determined by parliament.

Incumbents

The Ombudsmen are appointed by the Governor-General on advice from the government. The term of office is seven years, with an option of re-election. The maximum age for an Ombudsman is 65. If an Ombudsman abuses his office, suffers physical or mental disability or is declared a bankrupt, the Governor-General can dismiss him. An Ombudsman cannot be held responsible or sued for actions undertaken in good faith in the exercise of his office.

Qualifications

The Ombudsman Act lays down no formal qualifications for incumbents. In practice, a legal training, a good knowledge of the federal administration, common sense and good administrative abilities are required. Nor are there any formal obstacles to prevent the holding of other appointments or offices at the same time, although this has proved difficult in practice.

Approximately 70 persons are employed in the Ombudsmen's office. Most of the desk-officers have experience of the administration and possess the ability to communicate easily with the general public. Judicial experience and a knowledge of government bureaucracy are desirable.

Business

Cases may be submitted to the Ombudsmen orally or in writing. In practice, oral submission is the norm. The bulk of cases concern social insurance matters, which accounted for a quarter of all cases in 1993-94. Members of parliament, parliamentary assemblies, the government and members of the general public all have the right to address themselves to the Ombudsman, who is also able to take up cases on his own initiative.

Powers

The Ombudsmen do not take up every case that is submitted. Actions dating back more than one year are rejected, as are complaints that are patently unfounded. There is no appeal against a decision by an Ombudsman not to take up a case. The Ombudsmen have the right to call for documents and information and to examine under oath.

The federal Ombudsmen have the right to delegate powers to a State Ombudsman in conjunction with an investigation. The Ombudsmen cannot reverse a decision taken by an administrative authority: they can only make recommendations. In some Territories, action by ministers, judges, justices of the peace and coroners cannot be investigated by an Ombudsman.

Conduct of business

Attempts are made to improve the working of the federal administration *inter alia* by independent investigation of federal authorities and by encouraging authorities to try and find solutions that will help private citizens who have suffered in some way as a result of shortcomings in the administration.

Reporting

The Ombudsmen submit an annual report to the Prime Minister. They may also draw up special reports on investigations for the President of the Senate and the Speaker of the House of Representatives for presentation in both Houses of Parliament. On Prime Ministerial advice, the Ombudsmen may also report direct to parliament.

Publicity and the media

Statistics are published concerning complaints, and material about the work of the Ombudsmen is published in various languages for the information of the general public. The media cover the Ombudsmen's work and their reports. Cases relating to certain controversial subjects attract great interest.

(iv) Canada

In Canada there is at the national level no Ombudsman with a general jurisdiction, but six so called speciality Ombudsmen are appointed. Each of them has his own area of responsibility within which functions similar to those of a Parliamentary Ombudsman are performed. The six are the Chief Electoral Officer, the Commissioner of Official Languages, the Auditor General, the Human Rights Commissioner, the Information Commissioner and the Privacy Commissioner. These offices were established each by virtue of its own act of law. The general public may approach any of them with complaints.

Several Provinces have appointed their own regional Ombudsmen with general jurisdiction.

Appointments and organisation

All the national Ombudsmen have this in common, that they are appointed by the Governor-General in Council. The Auditor General and the Human Rights Commissioner apart, appointments have to be approved by the Senate and the House of Commons. Each Ombudsman has his own staff. In general, they report to parliament on their activities.

The Chief Electoral Officer

ensures that the rules of the Canadian Elections Act are observed and is assisted in so doing by officials from the various constituencies. He also handles other

complaints relating to elections. The Chief Electoral Officer reports to parliament.

The Commissioner of Official Languages

is responsible *inter alia* for maintaining the parity of French and English as official languages. He has powers to investigate reports of offences against the Official Languages Act and to initiate investigations of possible offences himself. The result of such investigations is reported direct to the individuals and authorities concerned. As well as submitting an annual report on his activities, he submits special reports to parliament on certain individual cases. The Commissioner of Official Languages also makes recommendations in his annual reports.

The Auditor General

scrutinises the budgets of federal departments of state and public administrations. The Auditor General works independently of the government and reports to the House of Commons on the result of his annual scrutinies.

The Information Commissioner

accepts complaints from persons alleging that public authorities have failed in their obligations in respect of the right to information and investigates, reports and submits recommendations.

The Human Rights Commission

is an independent body tasked with ensuring that the ban on discrimination is observed. The Commission investigates cases of alleged discrimination, for example on grounds of race, nationality, religion, sex or sexual disposition. The Commission also works with public information and influence over attitudes in society. The Human Rights Commission does not report direct to parliament but instead submits a report to the Attorney-General for forwarding.

The Privacy Commissioner

scrutinises registration etc by the authorities of personal information concerning private citizens. The Commissioner submits an annual report to parliament.

(v) *The Philippines, Senegal and Zimbabwe*

An office of Ombudsman was established in the Philippines in 1987 by virtue of provisions in the Constitution. In addition to the Ombudsman himself (the *Tanodbayan*), the Office comprises a general deputy and at least one representative from each of the three largest regions. The armed forces and the federal police also have one representative each. The office of Ombudsman in Zimbabwe was also established under provisions of constitutional law and there is a special Ombudsman Act dated 1982. The Ombudsman acts alone and has one deputy. Senegal's *Médiateur de la République* was established in 1991 by virtue of law and the *Médiateur* is the sole incumbent of the office, but has several staff to assist him.

Functions

The functions of the Ombudsmen are to protect the interests of the general public and to investigate errors and alleged anomalies in the official administration. The general public are entitled to address themselves to the Ombudsman direct with complaints: in Zimbabwe, provided that redress through the courts is not an option. In Senegal, the President can ask the *Médiateur* to take up a case and in The Philippines, the *Tanodbayan* is able to initiate inquiries himself.

Election procedure

In The Philippines, the *Tanodbayan* and his deputy are appointed by the President for a seven-year period, and in Senegal, the *Médiateur* is appointed for six years. They are not eligible for re-election. In The Philippines, the Judicial and Bar Council nominates candidates by drawing up a short-list of at least six names. The term of office of the Zimbabwean Ombudsman is open-ended, and the President consults the Judicial Commission before making the appointment.

Removal

The position of both the *Tanodbayan* and the *Médiateur* is strong. The *Médiateur* has immunity and cannot be convicted or deprived of liberty on grounds of statements or actions made in the exercise of his office. The *Tanodbayan* can be removed from office for violating the Constitution or on grounds of fraud, bribery, corruption or other serious crimes or for abuse of public confidence. The Zimbabwean Ombudsman can be relieved of his responsibilities on grounds of incapacity, caused either by ill-health or unsuitable behaviour.

Qualifications

In Senegal, no formal requirements are laid down for an appointee Ombudsman, but in practice the incumbent has to have long experience of the public administration. The qualifications required of an Ombudsman vary from country to country. In Zimbabwe, the Ombudsman has to be a lawyer with several years' practical experience of both the private and the public sector. In The Philippines, the Tanodbayan must be a native citizen, at least 40 years of age, and able to produce proof of honesty and independence. In addition, he has to be a member of the Philippine Bar.

Complaints

In practice, the Ombudsman's office in The Philippines devotes most of its attention to public bodies with a reputation for corruption. In the case of the Senegal Médiateur de la République, the commonest cases are those which concern the central administration of the state and its relations with private citizens. The Zimbabwean Ombudsman spends much of his time on complaints about the Army and the Ministry of Education.

Every case must be investigated in both The Philippines and Zimbabwe. If the Tanodbayan fails to take up a case, the Supreme Court can order him to act. A decision by the Médiateur of Senegal not to act cannot be appealed.

Powers

In all three countries, the Ombudsman has the right to call for information from other authorities and ask to see documents.

The Zimbabwean Ombudsman can intervene when errors have been committed within the administration and help citizens affected. In Senegal and The Philippines, the Ombudsman issues recommendations to the authorities concerned with how errors may be rectified and flawed routines improved. In The Philippines, the Ombudsman's office can also, for example, recommend the transfer or suspension of an offending official and report improprieties to the Commission of Audit, which takes action within its remit. The Philippines has a prosecutor arrangement, the Special Prosecutor, who comes under the Ombudsman. This special prosecutor argues cases before the anti-corruption court (the Sandiganbayan) to which the Tanodbayan has the right to submit cases.

Independence

The governments of none of these three countries have any influence over the work of the Ombudsman. The Zimbabwean Ombudsman and the Senegal-

ese Médiateur report to the national president. In Zimbabwe, the President has to confirm the report. In The Philippines, it is deemed incompatible with the Tanodbayan's independent status for him to report to an official body.

The Philippines has detailed rules about how the Ombudsman and his deputies are to avoid conflicts of interest capable of affecting their exercise of their office. They are banned from holding any other office or appointment, and they may not maintain financial interests in companies over which the government exerts an influence.

Organisation

The Ombudsman's secretariat in The Philippines had a staff of 787 persons in 1994. Most of the desk-officers were lawyers. In Zimbabwe, the Ombudsman has ten desk-officers in his secretariat, the bulk of them being lawyers and political scientists. The Médiateur's staff are judges, prosecutors and officials drawn from the civil and military administrations.

Media

In all three countries, the media cover the activities and reporting of the Ombudsmen.

9. Regional Ombudsmen

In countries where there is no Ombudsman at federal level, states and regions sometimes appoint their own Ombudsmen with functions similar to those of federal ombudsmen.

(i) Switzerland and India

In Switzerland, three out of 26 cantons have an Ombudsman, and some of the Indian states have institutions resembling an Ombudsman. The supervisory functions of the *Lokayukta* generally embrace local authorities, state-controlled organisations and firms. The rules vary from state to state.

(ii) Italy

By virtue of the Italian Constitution, several of the Italian regions have appointed a *Défenseur civique* under regional laws. The Scandinavian Ombudsmen provided the model, but the office varies from region to region. The

Défenseur civique has as his main function the defence of citizens' interests vis-à-vis the local administration.

The Défenseur's task is to counter anomalies in the administration and give citizens confidence in administrative procedures. He is also tasked with the inspection and supervision of the administration and with reporting on it to the regional assembly. The office enjoys independent status but there is a presumption that the incumbent will have the confidence of the regional assembly.

(iii) Other

As mentioned earlier there are regional Ombudsmen in several Canadian Provinces. Regional Ombudsmen do also exist in a number of countries with national Ombudsmen. Argentina, Australia, Mexico and Spain all belong to this group of countries. In Germany all 16 States have their own petition committees and two of them – Rhineland-Palatinate and Mecklenburg-Western Pomerania – also have Ombudsmen.

10. Parliamentary committees as supervisory bodies

In Brazil, Germany, Luxembourg, Mali, Switzerland, and Sudan, parliamentary committees deal with complaints from the general public against the public administration. The citizens of these countries can address themselves direct to these committees with their complaints. In Luxembourg, complaints are however addressed to the Speaker.

(i) Luxembourg

The right to petition is a civic right in Luxembourg and is enshrined in the Constitution. The formal rules governing the right to petition are contained in the Chamber of Deputies rule-book, where the responsibilities of the Petitions Committee (*la Commission des Pétitions*) resemble those of a parliamentary Ombudsman. The Petitions Committee currently consists of 11 members appointed by the Chamber of Deputies, the seats being distributed proportionally among all the political groups. The chairman is a member of the Opposition. Members are elected for the electoral period of the Chamber, that is, for five years. The Committee is assisted by the staff of the Chamber of Deputies.

Complaints are addressed to the Speaker of the Chamber of Deputies, who refers them to the Petitions Committee, which in its turn can refer complaints to another committee of the Chamber, a minister, the secretariat (Bureau) of the Chamber or simply shelve them. A report is drawn up following receipt of a

petition but not necessarily by the Petitions Committee. On the other hand, an account is drawn up of petitions and rulings and distributed each month to the members of the Chamber of Deputies.

The government has no influence over the work of the Committee.

(ii) Germany

The Petitions Committee of the Bundestag performs functions similar to those of a parliamentary ombudsman. In addition to the Petitions Committee, Germany also has a special parliamentary ombudsman on the Swedish model to deal with complaints from the armed forces (the Parliamentary Commissioner for the Armed Forces).

Petitions Committee

The Petitions Committee handles requests and complaints received from private citizens. The Committee deals with petitions relating to the whole of the federal administration and to constitutional agencies of the federation, with the exception of courts of law. The Committee prepares lists of petitions dealt with. These lists are put before the chamber in plenary session together with draft resolutions. The Committee's recommendations for resolutions are generally approved without debate.

At present, the Petitions Committee is made up of 33 members of parliament. Its composition reflects the strengths of the political groups in the Bundestag. 80 persons are currently employed in the Committee Secretariat. Most have a legal training.

If a petition is taken up in substance, the secretariat may prepare recommendations as to how the matter should be dealt with. These recommendations are then placed before at least two members of the committee, the referees, who can either approve them or put forward recommendations of their own. Recommendations are put forward in the form of motions.

The Petitions Committee has several options to choose between in dealing with a case. The petition can be referred for example to the federal government for action, or used as background information for legislation. If a case lies within the competency of the European Parliament it can be referred there. The Committee can call for information from the federal authorities, demand access to documents and take evidence from experts and witnesses.

An official report is submitted each year to the Bundestag. A press conference is held in conjunction with submission of the report, and a debate

takes place in the Bundestag. The media report regularly on the work of the Committee. Approximately 20,000 petitions were received in 1994. A large part of the Committee's work is concerned with the effects of German reunification. One important area has been the re-calculation of current pensions.

The Parliamentary Commissioner for the Armed Forces

The Commissioner is appointed for five years by secret ballot of the Bundestag. His functions are rooted in the Basic Law, but are described in more detail in the Law on the Parliamentary Commissioner for the Armed Forces. The Commissioner is tasked with supervising the armed forces on behalf of the Bundestag and can intervene when circumstances suggest that servicemen's fundamental rights may have been violated. The Commissioner deals with over 8,000 complaints a year from military personnel. Certain other circumstances within the national defence system are also investigated by order of the Bundestag conveyed via the Defence Committee.

The Commissioner has powers to demand information, see documents, interview persons and visit military units unannounced. He can also contact the federal Minister of Defence or other authorities to resolve problems that have come to his attention. A report is submitted to the Bundestag on the work of the Commissioner and this annual report is considered by the Defence Committee and then debated by the chamber in plenary session.

(iii) Switzerland

The statutory task of detailed supervision and examination of the conduct of the Swiss administration and the administration of justice rests with the Executive Committees of the National Council and the Council of States (*Commissions de gestion*). These bodies also deal with petitions from private citizens.

Switzerland has no national Ombudsman, but the question has been debated and various measures of draft legislation have been drawn up. In 1994, government and parliament decided however to abandon work on the project because first priority was then being given to bringing order into the country's finances.

Additionally, the federal Constitution entrenches the right of petition. A petition addressed to the federal Parliament is first of all examined by a Committee in each chamber. The Committee's report is then submitted for the approval of the relevant chamber.

(iv) *Mali*

In Mali, the National Assembly has special committees of investigation which perform tasks similar to those of an Ombudsman. Under National Assembly rules, abuses of authority and incorrect behaviour by the public administration can be investigated. The special committees have no sanctions at their disposal in their work of investigation. Complaints and reports from private citizens may give rise to investigations if the National Assembly finds it necessary and refers them to special committees of investigation.

(v) *Sudan*

The Sudanese National Assembly also has a subject committee which looks into abuses of authority and incorrect behaviour by the public administration. The committee is made up of ten members, and the chairman is a member of parliament with legal training. The committee is also free to consult experts outside the Assembly. Members of the National Assembly, private citizens, and private groups and organisations have the right to complain to the committee, which is under an obligation to investigate complaints. The committee is also able to initiate inquiries of its own accord. It is entitled to call witnesses or to take other action in its investigation of a case. Findings are referred to the National Assembly for approval. The media frequently take an interest in the statements and reports of the committee.

(vi) *Brazil*

Brazil has two institutions resembling a parliamentary ombudsman. Since 1988, the permanent committees of the Senate have been empowered to function as petitions committees on the German model. Little use is made of the opportunity, however. In 1992 another official was appointed, *Ouvidor General da Uniao*, to act as an Ombudsman within the administration, with the task of exercising supervision over the federal government. The institution has not yet taken form.

11. Other supervisory bodies

Greece

The right of recourse to parliament by means of a petition is enshrined in the Greek Constitution. Greece has elected to create a special body to look into shortcomings in the public administration. The *Corps des Inspecteurs*

d'Administration Publique (CIAP) is tasked with investigating citizens' complaints and examining proposals for improvements within the public administration.

The CIAP was set up under law in 1987 and has been active since 1991. It comes under the Prime Minister's Office and includes representatives from the government, the political parties, the local administration and employers' and employees' organisations. The government has some influence over the CIAP since its president is also Under-Secretary in the Prime Minister's Office. The CIAP employs a staff of 110.

Business may be initiated both by private citizens who have encountered shortcomings in the administration and by the government. Applications to the CIAP, whose competence extends to the whole of the public sector, are normally made by private citizens. In practice, attention is directed primarily towards the social sector. The CIAP is obliged to deal with all complaints received.

The CIAP can apply to the public prosecutor for assistance if a crime is suspected. An authority against which a complaint has been lodged is obliged to take the action recommended by the CIAP in its case report. If no action is forthcoming within six months, the CIAP reports the matter to the responsible minister.

The CIAP's annual report is printed and is available to the general public. The report frequently attracts media attention.

12. Planned Ombudsmen

(i) Bangladesh

Bangladesh has an Ombudsman Act, but no Ombudsman has yet been appointed. The Ombudsman Act was adopted in 1980. The Act establishes the following pattern:

The Ombudsman is appointed by the President on the recommendation of parliament, and has a three-year term of office. It will be possible to remove an Ombudsman on grounds of mismanagement or physical incapacity. The decision to discharge an Ombudsman will be taken by the President, but will have to be submitted to parliament for approval by a two thirds majority.

The Ombudsman's task will be to review action taken within the public administration which has resulted in injury or unlawful advantage to a private citizen. The Ombudsman will be allowed to investigate complaints, as well as to act on his own initiative. One area expressly excluded from the competence of the Ombudsman in the Ombudsman Act is the law courts.

The Ombudsman is also tasked with indicating what an authority must do to rectify a fault. A report on the work of the Ombudsman must be submitted each year to the President, who in turn refers it to parliament. The Ombudsman will also be able to propose changes in the legislation if he detects deficiencies.

(ii) FYR of Macedonia

Under the 1991 Constitution, the Assembly of the Republic of Macedonia can elect an Ombudsman to protect citizens against errors made by the public administration. The term of office is eight years and the Ombudsman is eligible for re-election for a second term. Further provisions concerning the office of Ombudsman are to be laid down in a separate act of law. According to the draft legislation, the Ombudsman is to have three deputies, who will be elected, like the Ombudsman himself, by the Assembly of the Republic of Macedonia, on the recommendation of the Commission for Elections and Nominations.

The Ombudsman must have at least 12 years' professional experience as a lawyer. During his period in office, neither the Ombudsman nor his deputy may hold any other official appointment, engage in any other employment or be a member of any political party.

The Ombudsman will have immunity. It is proposed that it will be possible to force an Ombudsman to resign in certain circumstances.

(iii) Botswana

Botswana plans to appoint an Ombudsman and draft legislation was presented in 1994 in the form of an Ombudsman Bill. It is proposed that the Ombudsman shall be responsible for reviewing action by the President or other authorities which has resulted in injustice to a private citizen. The Ombudsman will be appointed by the President for a four-year period after consultation with the Leader of the Opposition in the National Assembly. Members of the National Assembly or a local authority will not be eligible for election as Ombudsman.

The right to complain to the Ombudsman is not restricted to the individual who considers himself aggrieved: with the complainant's consent, the President or a member of the National Assembly can also lodge a complaint. Complaints must be lodged in writing with the Ombudsman direct.

The Ombudsman will have the same rights as the Supreme Court when it comes to examining witnesses and documents. A report will go to the senior official of the department of state or other authority concerned after the investi-

gation has been completed. If the Ombudsman considers an injury has been done, he will prepare recommendations indicating how the error is to be rectified. The Ombudsman's exercise of his office will not be subject to outside supervision and it will not be possible to test the actions of the Ombudsman before a court of law.

(iv) South Africa

As has been indicated, South Africa already has an Ombudsman. As a result of the new Constitution, the Advocate General is to be replaced by a Public Protector. If the draft Public Protector Bill is adopted, the links with parliament will be strengthened. The Public Protector will be appointed by the President, but the candidate will have to be approved by the National Assembly and the Senate. Approval will take the form of a resolution supported by at least 75 percent of those members present and voting. The Public Prosecutor will report direct to parliament.

The Protector's term of office will be seven years. He will have to be a South African citizen and a qualified lawyer. He will have powers to appoint a Deputy and an Assistant Ombudsman.

APPENDIX:

Countries which replied to the inquiry

Countries which have an Ombudsman falling within the International Bar Association's definition:

Austria	Volkswirtschaft
Burkina Faso	Ombudsman parlementaire
Denmark	Justitieombudsmannen
Finland	Justitieombudsmannen

Iceland	The Althingi Parliamentary Commissioner
Ireland	The Irish Office of the Ombudsman
Netherlands	National Ombudsman
New Zealand	The Parliamentary Ombudsman
Norway	The Parliamentary Ombudsman for Public Administration
Poland	The Commissioner for Citizens' Rights
Portugal	Provedor de Justicia
Slovenia	The Human Rights Ombudsman
Spain	The High Commissioner of Parliament
Sweden	Riksdagens Ombudsmän
South Africa	The Ombudsman, to be replaced shortly by the Public Protector
United Kingdom	The Parliamentary Commissioner for Administration
Zambia	The Commission for Investigations

Countries which plan an Ombudsman or have some other supervisory arrangement:

Australia	The Commonwealth and Defence Force Ombudsman
Bangladesh	Ombudsman (legislation in place)
Belgium	Les Médiateurs fédéraux/ De federale ombudsmannen
Botswana	Ombudsman (draft legislation)
Brazil	Petitions Committee
Canada	Ombudsman (several)
France	Médiateur de la République
Germany	Parliamentary Commissioner for the Armed Forces/ Petitions Committee
Greece	Corps des Inspecteurs d'Administration Publique
India	The Lokayukta
Italy	Défenseur civique
Japan	—
Luxembourg	La Commission des Pétitions
FYR of Macedonia	Ombudsman (draft legislation)
Mali	Les Commissions Spéciales
Nigeria	—
The Philippines	The Tanodbayan
Switzerland	Commission de gestion
Senegal	Médiateur de la République
Sudan	Parliamentary committee
Zimbabwe	Ombudsman