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Ombudsman

Workshop

Discussion Paper prepared by Clare Lewis, Q.C., Ombudsman of Ontario, Canada for a Seminar on the Establishment of an Ombudsman in Lebanon, June 2002

> "...the role of Ombudsmen (provides) a mechanism which can balance the fundamental requirement that governments must be able to govern but with appropriate accountability."
>
> International Ombudsman Institute,
> November 2000 – Communique

I applaud the Government of Lebanon for undertaking consideration of the establishment of an Ombudsman in Lebanon. It is my view that all democratic governments and their citizens benefit from an adequately empowered and resourced Ombudsman office. Government benefits from public recognition of its willingness to be transparent and accountable on an ongoing basis in its provision of services. Citizens benefit from a free, accessible means of remedy for public service maladministration, error or unfairness.

WHAT IS AN OMBUDSMAN?

Generally speaking, an Ombudsman is an independent official appointed to receive, investigate and resolve complaints from affected persons about government administration. An Ombudsman's jurisdiction may be very general extending to all areas of government service and all administrative conduct or it may be specialized; for instance, it may be restricted to consideration of human rights or language issues or to the provision of services by a particular government ministry. An Ombudsman is an impartial investigator with the power to recommend solutions. The Ombudsman's office is generally a place of last resort that investigates complaints after other statutory rights of recourse have been pursued.

Since the 1980's there has been a significant expansion in the number of Ombudsman offices globally. There are currently governmental Ombudsman offices in over 100 countries. The number of Ombudsman offices continues to grow as governments recognize the value and importance of this form of oversight of government administration for the purpose of serving the public, improving public service and enhancing democracy. A European Ombudsman was appointed in 1995 to counteract maladministration in the activities of European Community institutions and bodies and to improve relations between the European Union and its citizens. Eastern European, African and South American countries are increasingly turning to the concept of Ombudsman as a means of accelerating the transition from state bureaucracy to public service.

The essential and universally recognized features of ombudsmanship include: independence, flexibility, accessibility and credibility.

Independence can be strengthened by ensuring that the Ombudsman has a significant term of office extending beyond the lifetime of a particular government, that the manner of appointment indicates the confidence of all political parties and that the Ombudsman has legislated authority to hire staff independent of the public service and to contract for necessary services. Often the results of an investigation will find no grounds to support a complaint of maladministration, and

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this reality underlines the critical importance of independence, so that complainants will trust that they have been impartially heard and fairly treated even when the complaint is not supported.

The Ombudsman should be provided with broad investigative powers such as unrestricted access to government documents, officials, offices and institutions.
The Ombudsman should have the power to launch investigations arising from complaints from the public (individuals, corporations, associations) and from the Members of Parliament and further, to conduct investigations commenced on the Ombudsman's own initiative.

The Ombudsman's services should be free of charge and the Ombudsman should be able to deal effectively with complainants from diverse backgrounds and with a range of abilities and, when appropriate, languages. It is essential that the Ombudsman be provided with sufficient resources to function effectively. The Ombudsman must be able to reach out to the public and raise awareness of the office as well as efficiently investigate and resolve complaints once they are received.

The Ombudsman's process should be confidential and protected by provisions shielding the Ombudsman and his or her staff and information collected or produced by them from civil action or disclosure orders. However, it is important that the Ombudsman have the ability to issue reports when he or she is not satisfied with the conduct or response of a government organization. The Ombudsman should have the authority to make his or her reports public and there should be a process to allow for consideration of the Ombudsman's reports by Parliament.

An Ombudsman does not issue orders. The power of the Ombudsman comes from the ability to investigate and persuade. The Ombudsman provides a less formal, cheaper and more flexible and accessible method of dispute resolution than the courts. The Ombudsman can help promote good administration in a number of ways. The Ombudsman of general jurisdiction has a broad perspective across government that is not available from within any individual organization. The Ombudsman can resolve conflict through a cooperative, non-adversarial approach. An Ombudsman can identify and suggest resolutions to systemic problems, improve the overall quality of public administration, and often prevent future complaints relating to the same matter. Dealing fairly and effectively with public complaints is a means of preserving a high quality of government services to the public.

The willingness to subject government administration to independent scrutiny is a hallmark of a democratic society. Establishing an Ombudsman office demonstrates that a nation's leadership is committed to ensuring that government administrators provide fair, transparent and accountable services to the public.

The Ombudsman of Ontario

The first Ombudsman of Ontario was appointed in 1975. In Ontario, the Ombudsman is an officer of the Legislature, appointed by the Lieutenant Governor in Council on the address of the Assembly. Currently, the term of office for the Ontario Ombudsman is five years and that term may be renewed. As Ombudsman, I serve a provincial population of 11 million people and have jurisdiction over Ontario's provincial governmental organizations. However, I have no authority to investigate complaints about federal or municipal government, Crown legal advisors or counsel, judges, the functions of any court, or deliberations and proceedings of the Executive Council. I am also prevented from initiating an investigation when a statutory right of review or appeal on the merits exists until it has been exercised or the time for its exercise has expired.

I may receive complaints from affected persons, including corporations and any member of the Provincial Legislative Assembly to whom a complaint is made. I may also commence an investigation on my own motion.

Under the Ontario *Ombudsman Act* I have the power to require any officer, employee or member of any governmental organization, who I believe has relevant information, to provide that information or produce any relevant documents. I may inspect premises and I also have the power to compel any individual to testify before me under summons. Persons who obstruct my investigations, make false statements or fail to comply with the requirements of the *Ombudsman Act* are subject to prosecution and may be found guilty of an offence.

My investigations are conducted in private and I am bound by an oath of confidentiality subject only to my right to report to the Legislative Assembly. The identity of complainants remains confidential. My staff and I are insulated from being compelled to testify in court proceedings regarding my investigations. However, if an organization does not take adequate and appropriate steps to implement a recommendation I have made, I can ultimately make my investigative report public by tabling it with the Speaker of the Assembly. The Standing Committee on the Legislative Assembly considers my reports.

In my Annual Report to the Assembly for the fiscal year 2000/2001 I noted that my office received 26,538 complaints and inquiries. Almost a third of the complaints and inquiries received related to provincial correctional facilities. The vast majority of complaints and inquiries are resolved informally through telephone contacts, meetings and correspondence with governmental organizations. While 75 per cent of the jurisdictional complaints and inquiries against provincial government organizations were closed within 20 days of receipt, 50 per cent were actually closed within five days.

Although I have significant powers of investigation, generally my investigations are conducted on a co-operative basis. The Ontario Ombudsman has rarely resorted to compelling testimony through the issuance of a summons.

In recent years my office has engaged in strategic use of the ability to launch investigations on the Ombudsman's own motion to address issues of a systemic nature. The Ombudsman is uniquely placed to review government administration and prevent identified problems from recurring in future. My office has also acted as a resource for government when it is considering policy changes, providing general comments based on our oversight experience. For instance, recently I made submissions regarding a proposed Act to protect the privacy of personal information and have been asked to provide my comments regarding the establishment of a Patient Bill of Rights.

My office does not investigate every jurisdictional complaint it receives. The *Ombudsman Act* provides me with the discretion to refuse to investigate cases in which there appears to be an adequate alternative remedy or in cases in which it appears, having regard to all of the circumstances of the case, any further investigation is unnecessary. I can also refuse to investigate if a complaint relates to conduct of which the complainant has had knowledge for more than twelve months before the complaint is received by the Ombudsman or if the subject-matter of the complaint is trivial, the complaint is frivolous or vexatious or not made in good faith or the complainant has not a sufficient personal interest in the subject-matter of the complaint. This discretion enables the Ombudsman to be more focused and efficient with respect to the cases that are investigated.

During my term as Ombudsman my office has investigated many issues relating to various organizations. The following is a brief sample of some of the cases my office has dealt with.

I receive a high volume of complaints regarding the government organization mandated to enforce spousal and child support obligations in Ontario. I initiated an investigation on my own motion to examine the organization's computer system in relation to client service impact. I found that the organization continued to provide inadequate service because of the outdated and significantly ill-suited supporting technology, which in my view must be replaced. Following my recommendation that the responsible Ministry take steps to secure adequate resources to permit the enforcement organization to meet its mandate, funds were obtained by the Ministry to conduct a feasibility study to re-engineer business processes.

Our office investigated the timeliness of the government process for searching for birth relatives normally accessed by birth parents and adopted children. In April 1999 the Ombudsman tabled a final investigative report noting that there were in excess of 15,000 registrants waiting more than seven years for a search to be initiated. In response, in April 2000 the responsible Ministry was allocated an additional $2.4 million for the program. As of March 31, 2001 there were fewer than 2,000 individual registrants waiting for searches and the waiting period had been reduced to three years. There is a committment to eliminate the backlog in the near future. I monitor the progress of that undertaking.

My office was approached regarding a young man who had suffered a traumatic brain injury and was permanently hospitalized. The Ministry responsible for providing social assistance benefits failed to advise his family that he was entitled to apply for benefits and the family missed an opportunity to apply on his behalf. As a result of the Ombudsman's involvement, the Ministry permitted an application to be processed and provided the young man with benefits on a retroactive basis.

Three separate investigations into correctional issues provided recurring evidence that there was a systemic problem in the lack of consistent application of official Ministry policy and standing orders across the forty-four correctional facilities in Ontario's prison system. The areas of concern related to the use of force by correctional staff against inmates, conditions of segregation of inmates and the storage of inmate property. My recommendations for necessary change and improvement were accepted by the responsible Ministry.

In another case a company had applied for a radio licence. The licencing body had received a letter from the appropriate Ministry stating it did not object to the licence. A hearing was scheduled to consider the matter. Another Ministry was contacted by a member of provincial parliament on a constituent's behalf complaining about the licence. The constituent operated another radio station. Just before the hearing, the second Minister filed a letter objecting to the licence application. This left the applicant company in the position of having less than 48 hours to inform the licencing body why its application should be allowed to proceed. With the assistance of legal counsel, the applicant company succeeded in having the application go to a hearing, but no decision was rendered because of the existence of contradictory letters from two different provincial ministries. It was later discovered that the objections raised by the second Ministry were not valid and were withdrawn. Based on the evidence gathered in my office's investigation, it appeared that the objecting Ministry had failed to verify the contentions of the complaining radio station and had inappropriately submitted a letter of objection. That Ministry accepted my recommendation that it apologize and compensate the applicant company for the additional costs it incurred as a result of the Ministry's conduct.

I recently investigated a Ministry's funding of expenses for individuals who had to travel long distances to obtain radiation treatment for breast and prostrate cancer. Persons with the same condition, obtaining the same treatment and travelling similar distances for that treatment, obtained substantially different levels of funding depending on which program was covering the costs. One program was temporary and was created to address concerns in Southern Ontario with long delays for radiation treatment. Patients who travelled to obtain radiation treatment under this program had all transportation, meals and accommodation costs fully paid for. Patients in Northern Ontario who had to travel long distances for radiation treatment because of lack of facilities in the North rather than treatment delays, were only entitled to receive reimbursement based on mileage one-way under a permanent program established to defray the costs of eligible northern residents who had to travel to obtain medical services unavailable locally. I reported my view that while the responsible Ministry understandably responded to a crisis with respect to medically unsound waiting times for radiation treatment by agreeing to fund the temporary program, the unintended consequence was inequity in the funding for patients who must travel long distances for radiation treatment. I found the Ministry's failure to provide equal funding to be improperly discriminatory. I tabled a final report regarding this matter with the Assembly. It was considered by the Standing Committee on the Legislative Assembly and by the Assembly. While the government majority did not support my position, the Ministry did announce that grants available under the program relating to medical travel for Northern residents would be increased.

The government of Ontario has embarked on a number of initiatives to transfer administration of certain programs and functions to the private sector. In one instance, a highway has been leased to and is being operated by a private company authorized to collect tolls. Under the relevant legislation, the responsible Ministry may suspend or deny vehicle permits of individuals who have not paid tolls to the private company. As a result of numerous complaints concerning disputes about the tolls charged and the denial of validation and issuance of vehicle permits by the Ministry, I initiated an own-motion investigation into the administration by the Ministry of those legislative sections dealing with the collection of tolls. The Ministry suspended the practice of vehicle permit denial on the basis of non-payment of tolls. My investigation revealed that notices sent by the private company to users of the highway did not contain information advising them of their right to access the dispute resolution process provided for in the legislation. The Ministry indicated that this failure was being corrected and that 80,000 individuals who had settled overdue accounts in order to renew their license plates would now have an opportunity to make use of the dispute resolution process. Another 110,000 vehicle permit holders who had been identified for permit denial would not be forced to settle accounts in order to renew. The Ministry had also responded to the problem by enacting a regulation to impose upon the private company accountability and compliance measures relating to toll collection, including the appointment of an independent auditor. I suggested to the Ministry that it was unfortunate that neither the legislation nor agreement with the private company had contained necessary accountability mechanisms regarding toll collection and compliance. I also recommended that the lessons learned in this case be shared with other public service agencies involved with similar privatization initiatives as a means of ensuring private sector partners act fairly with the public.

The government has recently commenced a pilot project involving privatization of one of its correctional facilities. Certain other privatization initiatives have resulted in the loss of Ombudsman jurisdiction and its attendant loss of accountability. Accordingly, I entered into discussions with the responsible Ministry regarding maintaining the right of complaint to the Ombudsman by inmates incarcerated in privatized facilities. The Ministry responded favourably by including provisions in the legislation enabling privatization and in the contract with the private contractor, in order to ensure that my full jurisdiction over complaints from inmates

within the privatized facility is retained. It is my respectful view that our intervention to ensure public accountability in these privatization measures will provide a template in future for requiring private corporations delivering government service to act fairly and transparently with the public.

COMMENTS ON "THE OMBUDSMAN" A DRAFT LAW

I encourage the Lebanese government in the creation of the office of an Ombudsman as a means of supporting democracy in Lebanon by providing an independent means of ensuring fairness and accountability in government service provision. The comments I make regarding the draft Ombudsman legislation reflect my experience in the role of Ombudsman of Ontario.

Article 1

It appears that the Ombudsman, if established, will have fairly broad jurisdiction over public organizations as well as authority to review natural persons from the private sector entrusted with the tasks of a public office. In Ontario, we have experienced an increase in the number of situations in which services previously administered directly by the government are contracted out or delegated to the private sector. In a number of cases corporations or self-governing bodies have taken over significant areas of public administration. In some such cases the public have lost the right to complain to the Ombudsman. I would suggest that the Government of Lebanon consider expanding the Ombudsman's jurisdiction to include private entities administering public services and programs.

Article 2

I note that under the draft Act, while Parliament will propose candidates for Ombudsman, it is the Council of Ministers that will make the ultimate selection. Consideration might be given to the Parliament actually making the selection. Most recently, I was appointed as Ombudsman after an open competition, the first such competition ever held for the position. There is no legislative requirement for a competition process. Applicants were screened and then interviewed by an all party Standing Committee of the Assembly. I was recommended by the Standing Committee and appointed by the Lieutenant Governor in Council after approval by the Legislative Assembly. This process reinforced the independent role of the Ombudsman.

Even the process actually required by the Ontario *Ombudsman Act* appears to provide for a greater appearance of independence for the Ombudsman than that currently contemplated by the draft Act. My four predecessors have each been proposed by the government to the opposition leaders, but then voted on by the whole House. Perhaps that process better ensures unanimous agreement, because the government has only gone forward previously when assured of agreement and those negotiations can be conducted in private. Nonetheless, the fact of an open vote by members of the Assembly enhances the appearance of independence.

Article 3

In Ontario, no proceedings can be commenced against the Ombudsman or his or her staff for anything said in a report or in the exercise of functions under the Act unless it is shown he or she acted in bad faith.

Article 4

In Ontario, the Ombudsman is similarly prevented from holding any other office under the Crown or engaging in other employment.

Article 5

It appears that complaints will not be accepted beyond one year. Some consideration might be given to making this limitation discretionary, in order that the Ombudsman may assess whether there are legitimate extenuating reasons for the delay in bringing a matter to his or her attention. Additional grounds for dismissing complaints without formal investigation might also be considered such as those set out in Ontario's *Ombudsman Act*.

I am not clear as to the circumstances in which the two-month limitation period would apply. However, once again, I suggest that some consideration be given to providing the Ombudsman with the discretion to pursue matters received beyond this period in appropriate cases.

Article 6

I note that the draft Act sets out a time frame for the Ombudsman to obtain clarifications from the competent administration. While this provision may assist in the timely resolution of matters, it may be impractical unless the Ombudsman is provided with sufficient resources to accomplish this result. The Ombudsman's ability to meet this standard may also fluctuate depending on the volume of complaints received. Some consideration might be given to providing the Ombudsman with the flexibility to set his or her own time lines for investigative action.

Article 7

Under the draft Act the Ombudsman has the authority to issue reports. However, there is no mention as to what happens with those reports other than that they are to be published and provided to the persons set out in Article 12. In order to be effective, there should be some process for consideration of the reports by Parliament. Many Ombudsman offices internationally have complained that once their reports are tabled with Parliament, they are not debated. The power of the Ombudsman is persuasive only, and debate on recommendations contested by government should receive public debate in Parliament.

Article 8

I note that government employees are prevented from complaining to the Ombudsman. In Ontario, government employees may complain to the Ombudsman about their employer or other government agencies. Consideration might be giving to allowing employees to complain, particularly about government organizations and programs that affect them as citizens in other than employment relationships. Our office has however received and criticized with positive effect, flawed government employment hiring and promotional policies and practices.

Article 9

In Ontario, the Ombudsman has the authority to refer issues relating to breach of duty and misconduct to the appropriate authority, including in some cases the police.

Article 10

The Ombudsman of Ontario cannot review judicial decisions. However, unless a court proceeding is a statutory appeal or review, the Ombudsman has the discretion to launch an investigation even while court proceedings are pending. The fact that a court may be considering the same matter as the Ombudsman is taken into consideration when determining whether to investigate. There may be cases when the issue is of great importance and the Ombudsman process presents a more expeditious way to resolve the matter. In such instances, the Ombudsman may chose to proceed with an investigation.

Article 11

In Ontario, the Ombudsman has broad investigative powers. Government organizations and their staff must provide the Ombudsman with requested information and the Ombudsman has the right to compel the disclosure of information through summons. Ombudsman investigators often attend at institutions to review organizational files and interview staff. The Ombudsman also has the right to inspect premises. This authority can be particularly useful in the case of correctional facilities when complaints relate to conditions of confinement. Article 11 appears to contemplate that other bodies than the Ombudsman will actually carry out investigations. This may lead to the perception that while the Ombudsman is independent, his investigations are not. I would suggest that to enhance the Ombudsman's credibility, the Ombudsman should have a dedicated investigative staff under direct control rather than use the resources of other organizations.

In addition, while it is important to place a positive obligation on government to comply with Ombudsman requests for information, it would be useful for the Act to provide the Ombudsman with summons and inspection powers. Consideration might also be given to including a penalty provision setting out the consequences of non-compliance with the Ombudsman's lawful requirements.

The Ombudsman is a unique institution. In Ontario, the Ombudsman is entitled to information that is not generally available to the public. General principles of government secrecy do not prohibit the Ombudsman from obtaining relevant information. It is only in limited circumstances that the Attorney General can certify that documents or information not be disclosed to the Ombudsman. The relevant provision in the Ontario *Ombudsman Act* reads as follows:

> Disclosure of certain matters not to be required -- s. 20(1)
> 20. (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or thing,
> (a) might interfere with or impede investigation or detection of offences;
> (b) might involve the disclosure of the deliberations of the Executive Council; or
> (c) might involve the disclosure of proceedings of the Executive Council or of any committee of the Executive Council, relating to matters of a secret or confidential nature, and would be injurious to the public interest,

> the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or thing to be produced.
>
> Idem -- s. 20(2)
> (2) Subject to subsection (1), the rule of law which authorizes or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Ombudsman. R.S.O. 1980, c. 325, s. 21.

Any concerns regarding disclosure by the Ombudsman and his or her staff of confidential information can be addressed, by providing that the Ombudsman's investigations are confidential and that the Ombudsman can only disclose that information when he or she considers it necessary to support opinions and recommendations or in the public interest. In addition, the Ombudsman and his or her staff should be shielded from having to disclose information or reports in any court or other proceeding.

Article 12

As mentioned earlier, it may be useful to set out specifically, as is done in the Ontario *Ombudsman Act*, that the Ombudsman may make a report to the Assembly. In Ontario, the Ombudsman's reports are distributed to all members of the House through the Speaker and are considered by a Standing Committee. Although this specific process is not set out in the legislation in Ontario, there should be some mechanism in the draft Act or otherwise to ensure that the Ombudsman's reports are placed before the Parliament for consideration.

Article 13

It is appropriate that Ombudsman services be free of charge.

The Ontario Ombudsman has the authority to hire staff and determine their salary, remuneration and terms and conditions of employment subject to the approval of the Lieutenant Governor in Council. The Ombudsman also has the authority to contract for supplies and services. If the office is established, it may be useful to provide the Ombudsman in Lebanon with the authority to contract for premises, supplies and services as necessary. This would serve to enhance the appearance of the Ombudsman as independent from government. It is not clear in the proposed Act whether the Ombudsman would have independent control over staff or whether the primary reporting relationship is to a ministry. I respectfully recommend that Ombudsman staff, particularly investigative staff, should not to be civil servants.

In Ontario, the budgets of Officers of the Legislature, including the Ombudsman, are considered by the Board of Internal Economy, an all party committee chaired by the Speaker of the House. The Ontario Ombudsman's finances are also audited annually by the Provincial Auditor.

One question an Ombudsman often faces is how can you be independent from government if it is the government that is paying you? It is important to ensure that the Ombudsman has the ability to determine his or her own budgetary needs and that review of the Ombudsman's budget is as far removed from general government administration as possible. If the Ombudsman's budget is set

by individuals subject to the Ombudsman's jurisdiction or by government ministers, the credibility and effectiveness of the Ombudsman's office may be undermined.

Article 14

In Ontario, the Assembly has the authority to make general rules for the guidance of the Ombudsman and the exercise of Ombudsman functions under the Act. Subject to such rules, the Ombudsman may determine his or her procedures. In the draft Act, it is the Council of Ministers that shall specify the details of the law upon the recommendation of the Ombudsman. To strengthen the appearance of the Ombudsman's independence, consideration might be given to ensuring that the Ombudsman's recommendations are considered by Parliament as a whole or at least by a representative committee of Parliament.

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COLLOQUE SUR LA CRÉATION DU MÉDIATEUR AU LIBAN
3 ET 4 JUIN 2002

I

L'EXPÉRIENCE DU CANTON DE VAUD

INTRODUCTION

Comme vous le savez, la Suisse est un état fédéral : la Confédération helvétique. Notre pays compte 3000 communes groupées en 20 cantons et 6 demi-cantons souverains. Ces cantons exercent tous les droits d'états indépendants (notamment en matière de fiscalité, de droit d'établissement, de marchés publics). Ils ont leur propre constitution, leurs propres lois. Chaque canton est par conséquent doté d'un pouvoir législatif, d'un pouvoir exécutif et d'un ordre judiciaire. Ces états que sont les cantons ont cependant transféré certains de leurs droits à la Confédération, notamment en matière de défense nationale, de monnaie ou encore de représentation à l'étranger.

Chaque canton et chaque commune a ses armoiries (drapeaux).

Le pouvoir législatif fédéral est de la compétence d'un parlement, l'Assemblée fédérale, composé de deux chambres aux pouvoirs égaux: le Conseil des États (46 membres), représentation des cantons et le Conseil National (200 membres), représentation du peuple. L'accord des deux chambres est indispensable pour assurer la validité des lois et des arrêtés fédéraux. Le parlement siège à Berne.

Le pouvoir exécutif fédéral (Conseil fédéral) a également son siège à Berne ; il est composé de sept membres, les Conseillers fédéraux, élus tous les quatre ans par les deux chambres de l'Assemblée fédérale. Chaque année, les mêmes chambres élisent un Président de la Confédération choisi parmi les sept Conseillers en activité.

Les quatre langues nationales sont l'allemand, le français, l'italien et le romanche.

LES OMBUDSMEN PARLEMENTAIRES EN SUISSE

Dans un tel système, on pourrait imaginer que la Confédération s'est dotée d'un ombudsman fédéral ainsi que de 26 ombudsmen cantonaux. Il serait également possible que les grandes communes soient toutes dotées d'un médiateur administratif tandis que les petites communes se regrouperaient pour faire bénéficier leur population d'une telle institution.

Or l'ombudsman parlementaire (ou médiateur administratif) n'est pas une institution répandue dans notre pays ; il n'existe pas encore de bureau fédéral de médiation administrative

(*Ombudsman* fédéral). Le premier poste d'*Ombudsman* fut créé en 1970 par la ville (commune) de Zurich, suivie par le canton de Zurich en 1978, puis par les cantons de Bâle Ville en 1988 et de Bâle Campagne en 1989. Les villes de Berne et Winterthour ont mis en place de telles institutions en 1996 et 1997.

Trois cantons (dont deux demi-cantons) et trois communes offrent donc à leur population les services d'un ombudsman, lequel est élu par le parlement cantonal ou communal. Les ombudsmen ont été élus après que le canton, respectivement la commune, a promulgué une loi ou un règlement.

PRÉSENTATION DU BUREAU CANTONAL DE MÉDIATION ADMINISTRATIVE

BREF PORTRAIT DU CANTON DE VAUD

Sur une superficie de 3'212 km^2, le canton de Vaud compte 621'784 habitants dont 26,4% sont étrangers[1]. Il a des frontières avec la France et est limitrophe des cantons de Genève, de Fribourg, du Valais et de Neuchâtel, quatre états à majorité francophone. Il est composé de 19 districts et 384 communes. Au plan fédéral, il est représenté par 17 Conseillers nationaux et 2 Conseillers aux États.

LA NAISSANCE DU BUREAU ET LA QUESTION DES BASES LÉGALES

Le canton de Vaud est le seul à avoir entrepris, en 1998, la création d'une fonction de médiation administrative sous forme de projet. Voté par le Grand Conseil, et faisant partie du « Programme de réallocation[2] », ce projet, intitulé Bureau cantonal de médiation administrative, est intégré à la Modernisation des Institutions et élaboré dans une optique de qualité des prestations du service public.

Le Bureau cantonal de médiation administrative mène de front l'expérience de bons offices et l'élaboration d'une loi. Son activité est régie par un arrêté du Conseil d'État : l'*Arrêté du 21 octobre 1998 concernant la mise en activité à titre expérimental d'un bureau cantonal de médiation administrative.*

Cette phase expérimentale est programmée jusqu'à fin 2004 au plus tard. A cette date, le projet de loi devrait avoir été adopté par le parlement vaudois (Grand Conseil) et le médiateur être élu par le même Grand Conseil. L'élaboration de l'avant-projet de loi se base sur les législations des autres cantons mais aussi sur les expériences concrètes du bureau.

Il est nécessaire de préciser que, parallèlement, le Canton de Vaud révise sa constitution ; le 7 février 1999, le peuple vaudois a élu son Assemblée constituante (180 constituants). les citoyens se prononceront en automne 2002 sur la nouvelle constitution. Laquelle prévoit un article sur l'institution d'une médiation administrative, avec un médiateur élu par le Grand

[1] Pour la Suisse : 20.1% d'étrangers (sur une population de 7 millions 258500 habitants). Près de la moitié des quelque un million et demi d'étrangers qui vivent en Suisse y sont nés ou y résident depuis plus de quinze ans.

[2] Initié en janvier 1998, le programme de réallocations des ressources vise à investir, dans des projets innovateurs, une part des économies réalisées dans le cadre du programme d'économies et de modernisation de l'État de Vaud. L'ensemble de ces projets est soumis chaque fin d'année au vote du Grand Conseil (parlement).

Conseil. En cas d'adoption par le peuple de cette nouvelle constitution, le projet de loi actuel pourra donc se rattacher à un article constitutionnel.

L'ACTIVITÉ DU BUREAU CANTONAL DE MÉDIATION ADMINISTRATIVE[1]

Le bureau agit en deçà de la seule médiation administrative puisqu'il informe, oriente, aide les administrés dans leurs relations avec l'administration cantonale vaudoise et ce même avant qu'un quelconque problème se pose pour l'usager dans ses relations avec l'administration. L'administration cantonale vaudoise (ACV) est composée de 49 services et offices avec lesquels le bureau est habilité à traiter, en ayant accès à toute information utile, ceci par voie d'arrêté[2].

Le bureau est ouvert à toutes les personnes, indépendamment de leur domicile ou de leur nationalité, qui sont en relation avec l'administration cantonale vaudoise.

Prestations

- Accueillir les demandes émanant des usagers.
- Répondre aux demandes des services de l'ACV concernant leurs relations avec les usagers de l'administration.
- Exercer une activité de bons offices en ayant pour buts de :
  - ⇒ favoriser la prévention ainsi que la résolution à l'amiable des conflits entre le service public cantonal et les usagers ;
  - ⇒ aider les usagers dans leurs rapports avec le service public cantonal, notamment préserver leurs droits et leurs intérêts, et servir d'intermédiaire lors de différends ;
  - ⇒ contribuer à déceler les dysfonctionnements et proposer des améliorations du service public cantonal ;
  - ⇒ encourager le service public cantonal à instaurer des relations affables avec les usagers ;
  - ⇒ protéger le service public cantonal contre les reproches infondés.
- Donner aux acteurs du conflit la possibilité de se réunir.
- Établir un état des lieux complets de la situation conflictuelle lors de séances de médiation.
- Rechercher, dans la mesure du possible, avec l'autorité concernée et avec le requérant, une solution de nature à donner satisfaction aux deux parties.

Bénéficiaires des prestations

- Les usagers de l'administration cantonale vaudoise.
- Les personnes cherchant à être orientées vers la bonne instance, qu'elle soit privée ou publique.
- L'administration cantonale vaudoise.

[1] Ci-après : « le bureau »

[2] *Arrêté du 21 octobre 1998 concernant la mise en activité à titre expérimental d'un bureau cantonal de médiation administrative*

Fonctionnement du bureau

Le bureau est ouvert du lundi au vendredi. Nous avons une permanence téléphonique tous les jours de 9h30 à 13h. Les appels permettent aux usagers d'exposer leur demande, si besoin est d'être réorientés, de prendre rendez-vous. Depuis janvier 2000, une permanence sans rendez-vous est ouverte tous les mardis de 17h à 19h. La médiatrice et sa secrétaire occupent chacune un poste à 100%.

Toute personne qui fait appel aux services du bureau reçoit un prospectus, l'*Arrêté du 21 octobre 1998 concernant la mise en activité à titre expérimental d'un bureau cantonal de médiation administrative* et l'organigramme de l'État de Vaud. Le prospectus est mis à disposition des usagers dans certains services et à certains guichets de l'administration cantonale vaudoise.

Dossiers traités en 2001

Définitions

Dès avant la pratique, il a été décidé que toute demande serait prise en considération et ce même si elle ne concerne pas le champ d'action de la médiation administrative; ces demandes (classées sous « Hors champ d'action [1] ») sont réorientées vers des associations privées, des instances communales, la permanence de l'Ordre des avocats vaudois, etc. Il s'agit là d'offrir un service personnalisé et de proximité aux habitants du canton de Vaud. Il convient par ailleurs de signaler ici que nombre des situations définies comme « Hors champ d'action » concernent en réalité l'ACV, mais sont exclues du champ d'action. Il s'agit entre autres des *« litiges entre les fonctionnaires et autres employés de l'État et les autorités, dans la mesure où elles concernent les relations de travail.*[2] » Les demandes qui sont adressées au bureau pour des conflits de travail sont réorientées vers le Bureau de réinsertion professionnelle du service du personnel, les associations de personnel et le groupe Impact (médiation pour les conflits concernant les relations de travail à l'interne de l'ACV).

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[1] ***Arrêté du 21 octobre 1998 concernant la mise en activité à titre expérimental d'un bureau cantonal de médiation administrative,* article 3 :**

Le champ d'action de la médiation administrative à titre expérimental comprend le service public cantonal, par quoi il faut entendre : les services et établissements de l'administration cantonale.

Sont exclus de son champ d'action :

a) le Grand Conseil;
b) le Conseil d'État;
c) les communes;
d) les autorités judiciaires;
e) l'Église réformée du Canton de Vaud;
f) les institutions et entreprises cantonales ainsi que les personnes et organisations privées, et ce y compris si elles accomplissent des tâches de droit public, si elles sont chargées de tâches officielles ou si elles sont financées en majeure partie par le canton.

[2] *Ibid*, article 7, alinéa 3.

Concernant les situations entrant dans le champ d'action, le traitement des situations a été divisé en deux catégories :
« abouties » : situations qui ont été traitées jusqu'à résolution ;
« pendantes » : situations en traitement mais non encore résolues.

Dossiers de l'année 2001

Type de dossiers	**Entrés en 1999 et 2000[1], en traitement en 2001**	**Entrés en 2001**	**Dossiers traités en 2001**
Hors Champ d'action		77	77
***In* Champ d'action**			
Pendants	14	32	46
Aboutis	26	135	161
Total *In* Champ d'action	**40**	**167**	**207**
Total des dossiers	40	244	284

Moyennes mensuelles de l'année 2001

Type de dossiers	**Dossiers entrés en 2001**	**Dossiers traités en 2001**
Hors champ d'action	6,4	6,4
In Champ d'action		
Pendants	2,6	3,8
Aboutis	11,2	13,4
Moyenne mensuelle *In* Champ d'action	**13,91**	**17,25**
Moyenne mensuelle du total des dossiers	20,33	23,66

Nombre de demandes

A titre de comparaison, on signalera que, en 2001, nous avons eu 167 demandes entrant dans notre champ d'action, contre 151 en 2000 (+ 7%)

Dossiers traités

En 2000, nous avions traité 191 dossiers. Nous en avons traité 207 en 2001 (+ 8%).

Modalités de traitements

En 2001, nous avons fait aboutir 161 dossiers. Dans la majorité (141) des cas, une écoute attentive de l'usager et des compléments d'information fournis par le service (83 remontées administratives) ont permis de clore le dossier ; soit que l'usager n'ait pas compris la décision, soit que les contacts avec le service aient fait accélérer le traitement d'un dossier. L'administration a revu sa décision 20 fois. Une seule recommandation a été émise et un expert a été désigné dans un cas particulièrement complexe.

Relations du bureau avec l'administration cantonale

Avant d'ouvrir le bureau, pendant la phase de conception théorique et pratique de la fonction, la médiatrice a eu de nombreux contacts avec les services et les employés de l'administration. Puis, dès octobre 1998, étant entrée dans la phase d'expérimentation, elle mis en place un réseau de relations formelles et informelles au sein de l'administration. Cela permet de traiter très vite et très simplement certains dossiers, par simple coup de téléphone ou par échanges de messages électroniques.

Les relations entre le bureau et l'ACV sont donc bonnes ; certains services n'hésitent pas à demander l'avis de la médiatrice au sujet du traitement d'un dossier ou lorsqu'il s'agit de concevoir des documents (lettres-types, prospectus, etc.) à l'intention des usagers.

Conclusions

Le fait de mettre en place une telle fonction à titre expérimental est en l'occurrence un avantage : le bureau cantonal de médiation administrative n'a pas tant été perçu comme un nouvel organe de contrôle de l'administration que comme une prestation supplémentaire offerte aux citoyennes et aux citoyens, et comme un outil de communication mis au service des employés de l'administration.

On aura remarqué que les demandes des usagers ne concernent pas, dans leur grande majorité, des décisions qui exigent d'être modifiées. Pour autant, une telle institution répond aux buts qui lui sont fixés, entre autres :

- favoriser la prévention ainsi que la résolution à l'amiable des conflits entre le service public cantonal et les administrés;
- aider les administrés dans leurs rapports avec le service public cantonal, notamment préserver leurs droits et leurs intérêts, et servir d'intermédiaire lors de différends;
- encourager le service public cantonal à instaurer des relations affables avec les administrés et lui éviter des reproches infondés.

II

LE PROJET DE LOI INTITULÉ « LE MÉDIATEUR DU LIBAN »

La médiatrice d'un modeste bureau cantonal de médiation à titre expérimental considère qu'il ne lui appartient pas de se prononcer sur un projet de loi visant à l'institutionnalisation d'un Médiateur de la République au Liban. C'est pourquoi je me suis contentée ici de mentionner quelques-uns des critères dont je pense qu'ils peuvent contribuer à définir la fonction de Médiateur (ou Ombudsman). Critères déjà posés et adoptés par une association internationale et auxquels on peut se référer quand il s'agit de légiférer sur la mise en place d'une telle institution. Il m'est apparu que les statuts de l'Association des Ombudsmans et Médiateurs de la Francophonie (AOMF), dont Monsieur Bernard Stasi est président, faisaient valoir des critères pertinents. Je me suis référée à l'article 7 de ces statuts (Catégorie de membres) et en

particulier à la partie 1 de cet article qui donne les critères permettant d'accéder à la qualité de membre votant.

C'est donc une simple grille de lecture que je me permets de suggérer ici, laquelle est mise en regard des articles du Projet de Loi « Le Médiateur de la République ».

Statuts de l'AOMF article 7.1	Projet de loi « Le Médiateur de la République »
7.1.1. A la qualité de membre votant l'institution publique dont le ou les mandataires exercent une fonction portant le titre de médiateur, d'ombudsman, de commissaire aux droits de la personne ou toute expression équivalente, dont la mission est de corriger et de prévenir les injustices causées aux citoyens par une autorité administrative publique et qui répond aux critères suivants :	**Article 1** Le Médiateur de la République (Ombudsman) est une autorité indépendante qui reçoit, dans le cadre des conditions fixées par la présente loi, les réclamations des citoyens résultant de leurs relations avec les administrations, les établissements publics, les municipalités et les personnes morales du secteur privé investies s d'une mission de service public. Le Médiateur ne reçoit d'instructions d'aucune autorité.
7.1.1.1 qui est créée en vertu d'une constitution ou de tout autre acte émanant d'un organe législatif;	**Article 2** Le Médiateur de la République est nommé par décret du Conseil des ministres pour un mandat de quatre ans non renouvelables. Il est choisi parmi une liste de cinq candidats proposés par le Parlement. [...] **Article 14** Les détails de cette loi seront déterminés par des décrets pris en Conseil des ministres sur proposition du Médiateur de la République.
7.1.1.2 qui est habilitée à recevoir les plaintes et les griefs, oralement ou par écrit, de personnes et d'organisations à l'égard d'une décision, d'une recommandation ou de tout acte administratif posé ou omis par les représentants d'une autorité administrative publique sur laquelle elle a compétence;	**Article 1** Le Médiateur de la République (Ombudsman) est une autorité indépendante qui reçoit, dans le cadre des conditions fixées par la présente loi, les réclamations des citoyens résultant de leurs relations avec les administrations, les établissements publics, les municipalités et les personnes morales du secteur privé investies s d'une mission de service public. [...] [Restrictions des compétences : **Articles 8 et 10**]

Statuts de l'AOMF article 7.1 (suite)	Projet de loi « Le Médiateur de la République » (suite)
7.1.1.3 qui ne reçoit d'inscription d'aucune autorité publique et qui est indépendante de l'administration sur laquelle elle a compétence;	**Article 1** Le Médiateur de la République (Ombudsman) est une autorité indépendante [...] Le Médiateur ne reçoit d'instructions d'aucune autorité.
7.1.1.4 dont le mandataire a un mandat d'une durée fixe et qui ne soit révocable qu'en cas d'empêchement dûment constaté;	**Article 2** Le Médiateur de la République est nommé par décret du Conseil des ministres pour un mandat de quatre ans non renouvelables. Il est choisi parmi une liste de cinq candidats proposés par le Parlement. Il ne peut être mis fin à ses fonctions avant l'expiration du délai sauf dans les cas suivants : a) Si le Médiateur présente lui-même une requête écrite ; b) Si le Médiateur est incapable de mener à bien sa fonction pour des raisons de santé ; c) Si le Médiateur a commis une grave erreur dans la pratique de ses fonctions, à condition de prouver l'erreur commise en vertu d'un rapport élaboré par un Comité présidé par le premier président de la Cour de Cassation, et constitué des membres suivants : le président du Conseil d'État et le président de la Cour des Comptes. [...] **Article 3** Le Médiateur ne peut être poursuivi ni pour les opinions qu'il émet ni pour les travaux qu'il accomplit dans l'exercice de ses fonctions.
7.1.1.5 qui a une compétence générale ou sectorielle sur l'administration publique;	**Article 1** Le Médiateur de la République (Ombudsman) est une autorité indépendante qui reçoit, dans le cadre des conditions fixées par la présente loi, les réclamations des citoyens résultant de leurs relations avec les administrations, les établissements publics, les municipalités et les personnes morales du secteur privé investies d'une mission de service public. [...]

Statuts de l'AOMF article 7.1 (suite)	Projet de loi « Le Médiateur de la République » (suite)
7.1.1.6 qui a le pouvoir d'enquêter sur les plaintes et griefs qui lui sont adressés dans les domaines de sa compétence;	**Article 6** [...] Lorsqu'une réclamation lui paraît justifiée, le Médiateur s'informe à son sujet auprès de l'administration concernée et lui demande d'y répondre dans un délai d'un mois. L'administration est alors tenue d'annexer à sa réponse les documents requis par le Médiateur ou ceux qu'elle considère elle-même utile d'y annexer de son propre chef.
7.1.1.7 qui a le pouvoir d'entreprendre des enquêtes de sa propre initiative;	**Article 5** c) Le Médiateur peut intervenir spontanément sans avoir reçu aucune réclamation dans les questions d'intérêt public.
7.1.1.8 qui a accès à toute information nécessaire pour mener à bien ses enquêtes;	**Article 11** Les administrations et les établissements publics prévus dans l'article premier de cette loi sont tenus de faciliter la tâche du Médiateur de la République et donner des directives à leurs subordonnés pour fournir toutes informations, explications et tout document requis, à l'exception de ceux considérés comme secrets par la loi. Ils sont aussi tenus de faciliter la tâche du Médiateur et de lui permettre de rencontrer et de se renseigner auprès de tous les fonctionnaires, quelle que soit leur catégorie. Le Médiateur de la République a le droit de demander aux organismes de contrôle et au Département de Législation et de Consultation au Ministère de la Justice, de mener les enquêtes ou d'effectuer les études qu'il demande dans le cadre de leurs prérogatives et de l'informer des résultats.

Statuts de l'AOMF article 7.1 (suite)	Projet de loi « Le Médiateur de la République » (suite)
7.1.1.9 qui a le pouvoir de faire des recommandations et de proposer des mesures correctives;	**Article 7** a) Lorsqu'une réclamation lui paraît justifiée, le Médiateur soumet à l'administration concernée les recommandations qu'il juge susceptibles de résoudre, de manière juste et équitable, le problème qui lui est présenté. b) Au cas où le Médiateur de la République considère que l'application de certaines dispositions juridiques et organisationnelles conduirait à des situations non équitables, il a le droit de recommander l'amendement de ces textes. c) L'administration concernée notifie le Médiateur de la République des mesures ou dispositions prises à l'issue des recommandations adressées. Au cas où l'administration ne se prononce pas dans un délai d'un mois, le Médiateur a le droit de formuler ses recommandations et ses propositions dans un rapport spécial ou dans son rapport annuel qui sera publié au Journal Officiel.
7.1.1.10 qui remet aux autorités un rapport public annuel de ses activités;	**Article 7** c) [...] le Médiateur a le droit de formuler ses recommandations et ses propositions dans un rapport spécial ou dans son rapport annuel qui sera publié au Journal Officiel. **Article 12** Le Médiateur présente une copie de son rapport annuel ou son rapport spécial au Président de la République, au Président de la Chambre des députés et au Président du Conseil des Ministres.
7.1.1.11 dont le mandataire n'est pas autorisé à participer à des activités qui pourraient le mettre en conflit d'intérêts;	**Article 4** Pendant la durée de ses fonctions, le Médiateur de la République ne peut se porter candidat à aucun mandat parlementaire ou municipal. Aussi il est tenu de démissionner de toute fonction ou poste au cas où il serait nommé Médiateur de la République.

Statuts de l'AOMF article 7.1 (suite et fin)	Projet de loi « Le Médiateur de la République » (suite)
7.1.1.12	**Article 13**
dont le mandataire a le libre choix de ses collaborateurs et la possibilité de leur déléguer des responsabilités administratives et des charges d'enquêtes.	[...] b) Le Médiateur détermine le nombre, les charges, les fonctions, et les conditions de recrutement des cadres de son appareil exécutif selon un règlement qu'il établit et dont il informe le Conseil des ministres. [...]

Je vous remercie de l'attention que vous aurez portée à cette modeste contribution.

La médiatrice et chargée de projet
Véronique Jobin

Annexes :

1. ***Arrêté du 21 octobre 1998 concernant la mise en activité à titre expérimental d'un bureau cantonal de médiation administrative***
2. ***Organigramme de l'État de Vaud***
3. ***Annonce qui paraît régulièrement dans la Feuille des avis officiels du canton de Vaud***
4. ***Portrait statistique du canton de Vaud***

L'annonce qui paraît régulièrement dans la *Feuille des avis officiels du canton de Vaud*

BUREAU CANTONAL
DE MÉDIATION
ADMINISTRATIVE

Vous ne comprenez pas une demande ou une décision de l'administration cantonale vaudoise…

Vous vous posez des questions quant à vos démarches concernant l'administration cantonale vaudoise …

Vous avez un problème avec l'administration cantonale vaudoise …

Vous pouvez nous appeler au 021 351 26 91 pendant la permanence téléphonique.

Vous pouvez passer à notre bureau le mardi de 17h à 19h.

Les services du Bureau cantonal de médiation administrative sont gratuits.

Le Bureau cantonal de médiation administrative est ouvert à toutes les personnes, indépendamment de leur domicile ou de leur nationalité, qui désirent exposer un problème qu'elles rencontrent avec l'administration cantonale vaudoise.

Tous les mardis de 17h à 19h Permanence sans rendez-vous directement à notre bureau, Lausanne, Place Riponne 5, 2e étage à droite en sortant de l'ascenseur

Le bureau cantonal de médiation administrative reçoit également sur rendez-vous et renseigne par téléphone. Permanence téléphonique du lundi au vendredi de 9 h 30 à 13 h au 021 351 26 91

BUREAU CANTONAL DE MEDIATION ADMINISTRATIVE
Place Riponne 5 Case postale 139
1000 Lausanne 17 Tél : 021 351 26 91
Fax : 021 351 26 92
E-mail : contact@mediation-vaud.ch
Site Internet : www.mediation-vaud.ch

Portrait statistique du canton de Vaud

Service de recherche et d'information statistiques
de l'administration cantonale vaudoise http:www.vd.ch

	Année/période de référence	Unité de mesure	Vaud	Suisse
Population				
Population résidante	31.12.2001	nombre	621,784	7 258500
- Suisses	31.12.2001	en %	73.6	79.9
- Etrangers	31.12.2001	en %	26.4	20.1
Structure par âge				
- 0-19 ans	31.12.2000	en %	23.3	23.2
- 20-64 ans	31.12.2000	en %	61.0	61.5
- 65 ans et plus	31.12.2000	en %	15.7	15.3
Population résidante selon la langue				
- Français	1990	en %	77.0	19.2
- Allemand	1990	en %	6.0	63.6
- Italien	1990	en %	4.4	7.6
- Autres langues	1990	en %	12.5	9.5
Naissances	2000	nombre	7,587	78,458
Décès	2000	nombre	5,398	62,528
Excédent des naissances	2000	nombre	2,189	15,930
Solde migratoire	2000	nombre	1,513	...
Espérance de vie des hommes	1997-2000	nombre	76.3	...
Espérance de vie des femmes	1997-2000	nombre	82.8	...
Densité de la population	2000	par km2	192	174
Espace et environnement				
Superficie (1)	1990/1993	km2	3,212	41,285
- surface agricole utile	1990/1993	en %	43.4	37.8
- surface boisée	1990/1993	en %	31.8	30.3
- surface d'habitat et d'infrastructure	1990/1993	en %	8.4	6.4
- surface improductive	1990/1993	en %	16.4	25.5
Emploi et vie active				
Population active totale (ESPA)	2000	nombre	324,600	3,985,000
Etablissements, en tout	1996/1998	nombre	38,152	462,271
- secteur primaire	1996/1998	en %	17.1	17.9
- secteur secondaire	1998	en %	15.8	17.6
- secteur tertiaire	1998	en %	67.1	64.5
Emplois, en tout	1996/1998	nombre	289,785	3,713,970
- secteur primaire	1996/1998	en %	7.5	6.5
- secteur secondaire	1998	en %	20.8	27.6
- secteur tertiaire	1998	en %	71.7	65.9
Demandeurs d'emplois (moyenne annuelle)	2001	nombre	13,709	109,423
Chômeurs (moyenne annuelle)	2001	nombre	8,842	67,197
Taux de chômage (moyenne annuelle)	2001	en %	2.8	1.9
Comptes nationaux				
Revenu cantonal	1999 (p)	en mio. fr	28,977	334,114
Revenu cantonal par habitant	1999 (p)	en francs	46,445	46,620
Production, commerce et consommation				
Exportations de marchandises	2000	en mio. fr	5,314	136,015
Importations de marchandises	2000	en mio. fr	5,142	139,402

Construction et logements

Investissements de construction	2000	en mio. fr.	2,546	40,594
Demandes de permis de construire	2001	nombre	3,919	...
dont habitations	2001	nombre	2,547	...
Parc de logements	31.12.2000	nombre	318,991	3,574,988
Nouveaux logements construits	2000	nombre	2,199	32,214
Logements vacants	01.06.2001	nombre	3,204	47,739
Taux de logements vacants	01.06.2001	en %	1.0	1.3

Tourisme

Nuitées dans l'hôtellerie (2) (moyenne annuelle)	2000	nombre	2,483,614	35,019,702
dont hôtes de l'étranger	2000	en %	63.3	57.6

Banques

Comptoirs bancaires (au sens large)	2000	nombre	239	3,809
Epargne bancaire par habitant	2000	en francs	30 298 (p)	
Endettement hypothécaire par habitant	2000	en francs	50 749 (p)	

Santé

Médecins pour 10 000 habitants	2000	nombre	23.7	19.3
Dentistes pour 10 000 habitants	2000	nombre	5.3	4.8
Pharmacies pour 10 000 habitants	2000	nombre	3.7	2.3
Lits dans les hôpitaux et cliniques	1999	nombre	3,896	
Lits dans les homes pour personnes âgées	07.2000	nombre	5,658	

Education et science

Elèves dans la scolarité obligatoire (3)	1999/2000	nombre	64,307	
Elèves dans le secondaire supérieur	1999/2000	nombre	7,501	
Etudiants de l'Université de Lausanne	2000/2001	nombre	9,896	
Etudiants de l'Ecole polytechn. de Lausanne	2000/2001	nombre	5,140	
Apprentis	2000/2001	nombre	14,027	

Politique

Entrée dans la Confédération	1803			
Communes politiques	2001	nombre	384	2,880
Districts	2001	nombre	19	
Grand Conseil (députés)	2001	nombre	180	
Conseil d'Etat (Conseillers d'Etat)	2001	nombre	7	
Sièges au Conseil national	2001	nombre	17	200
Sièges au Conseil des Etats	2001	nombre	2	46

Finances publiques

Dépenses courantes du canton	2000	en mios. fr.	5,088	
Recettes courantes du canton	2000	en mios. fr.	4,894	
Marge d'autofinancement	2000	en mios. fr.	-194	
Dépenses d'investissement	2000	en mios. fr.	361	
Endettement	2000	en mios. fr.	7,182	
Charge fiscale (4) pour un célibataire				
- revenu brut de 30 000 frs.	2000	en %	4.16	6.55
- revenu brut de 50 000 frs.	2000	en %	12.73	10.88
- revenu brut de 100 000 frs.	2000	en %	19.35	17.44
- revenu brut de 200 000 frs.	2000	en %	27.94	25.25
Charge fiscale (4) pour un couple marié sans enfant				
- revenu brut de 30 000 frs.	2000	en %	0.51	2.60
- revenu brut de 50 000 frs.	2000	en %	7.31	6.77
- revenu brut de 100 000 frs.	2000	en %	14.82	13.28
- revenu brut de 200 000 frs.	2000	en %	23.32	22.09
Charge fiscale (4) pour un couple marié avec 2 enfants				
- revenu brut de 30 000 frs.	2000	en %	0.00	0.42
- revenu brut de 50 000 frs.	2000	en %	1.94	3.97
- revenu brut de 100 000 frs.	2000	en %	11.55	10.85
- revenu brut de 200 000 frs.	2000	en %	19.59	20.32

1) Pour l'ensemble de la Suisse le relevé est effectué en 1979/1985.
2) Y compris établissements de cure.
3) Non compris les élèves de l'enseignement spécialisé.
4) Impôt fédéral, cantonal et communal sur le revenu brut d'un contribuable domicilié à Lausanne.
Pour la Suisse, il s'agit de la moyenne des cantons plus la charge due à l'impôt fédéral.

Pour des comparaisons intercantonales, le site de l'Office fédéral de la statistique présente les chiffres-clé de tous les cantons.
http://www.statistik.admin.ch/findex.htm

ETAT DE VAUD

LIBERTÉ ET PATRIE

Organigramme de l'Etat

Etat au mois de mai 2002

• = service
º = office

Ordre judiciaire

Tribunal cantonal
Signal 8 - 1014 Lausanne
Tél. 021 316 15 11 - fax 021 316 13 28

Tribunal administratif
Eugène Rambert 15 - 1014 Lausanne
Tél. 021 316 12 50 - fax 021 316 12 51

Ministère public
Av. de l'Université 24 - 1014 Lausanne
Tél. 021 316 65 25 - fax 021 316 65 33

Conseil d'Etat

Château cantonal - 1014 Lausanne

Chancellerie d'Etat
Château cantonal - 1014 Lausanne
Tél. 021 316 40 40 - fax 021 316 40 33

Médiation administrative
Riponne 5 - cp 139, 1000 Lausanne 17
Tél. 021 351 26 91 - fax 021 351 26 92

Contrôle cantonal des finances
Trabandan 28 - 1014 Lausanne
Tél. 021 316 19 70 - fax 021 316 19 90

Grand Conseil

Secrétariat: place du Château 6
1014 Lausanne
Tél. 021/316 40 10 - fax 316 40 19

M. Jean-Claude Mermoud

Département de la sécurité et de l'environnement (DSE)

Secrétariat général
Château 1 - 1014 Lausanne
Tél. 021 316 45 15 – fax 021 316 45 27

- **º Sécurité informatique**
  St-Martin 26 - 1014 Lausanne
  Tél. 021 316 27 80 - fax 021 316 03 11
- **• Police cantonale**
  Centre Blécherette - 1014 Lausanne
  Tél. 021 644 44 44 - fax 021 644 81 56
- **• Pénitentiaire**
  Cité-Devant 14 - 1014 Lausanne
  Tél. 021 316 48 00 - fax 021 316 48 44
- **• Automobiles et navigation**
  Grey 110 - 1014 Lausanne
  Tél. 021 316 82 10 - fax 021 316 82 11
- **• Sécurité civile et militaire**
  1124 Gollion
  Tél. 021 316 51 00 - fax 021 316 51 05
- **• Eaux, sols et assainissement**
  Valentin 10 - 1014 Lausanne
  Tél. 021 316 75 00 - fax 021 316 75 12
- **• Forêts, faune et nature**
  Vuilette 4 - 1014 Lausanne
  Tél. 021 316 61 61 - fax 021 316 61 62
- **• Environnement et énergie**
  Boveresses 155 - 1066 Epalinges
  Tél. 021 316 43 60 - fax 021 316 43 95
- **• Laboratoire cantonal, contrôle des denrées alimentaires**
  Boveresses 155 - 1066 Epalinges
  Tél. 021 316 43 43 - fax 021 316 43 00

Mme Anne-Catherine Lyon

Département de la formation et de la jeunesse (DFJ)

Secrétariat général
Barre 8 - 1014 Lausanne
Tél. 021 316 30 30 - fax 021 316 30 41

- **º Bourses d'études et d'apprentissage**
  Mornex 38 - 1014 Lausanne
  Tél. 021 316 33 70 - fax 021 316 33 78
- **º Orientation scolaire et professionnelle**
  Borde 3D - 1018 Lausanne
  Tél. 021 315 65 25 - fax 021 315 65 91
- **º Ecoles en santé**
  Av. de Provence 4 - 1014 Lausanne
  Tél. 021 623 37 80 - fax 021 623 37 81
- **º Personnel enseignant**
  Rue de la Barre 8 - 1014 Lausanne
  Tél. 021 316 32 03 - fax 021 316 630 55
- **• Protection de la jeunesse**
  Bâtiment de la Pontaise - 1014 Lausanne
  Tél. 021 316 53 53 - fax 021 316 53 30
- **• Direction générale de l'enseignement obligatoire**
  Barre 8 - 1014 Lausanne
  Tél. 021 316 32 01 - fax 021 316 32 19
- **• Enseignement spécialisé**
  Bâtiment de la Pontaise - 1014 Lausanne
  Tél. 021 316 54 00 - fax 021 316 54 17
- **• Formation professionnelle**
  Saint-Martin 24 - 1014 Lausanne
  Tél. 021 316 63 04 - fax 021 316 63 17
- **• Enseignement secondaire supérieur et formation**
  Couvaloup 13 - 1014 Lausanne
  Tél. 021 316 34 02 - fax 021 316 32 08
- **• Affaires universitaires**
  Barre 8 - 1014 Lausanne
  Tél. 021 316 35 01 - fax 021 316 35 06

M. Pierre Chiffelle

Département des institutions et des relations extérieures (DIRE)

Secrétariat général
Château cantonal - 1014 Lausanne
Tél. 021 316 40 04 - fax 021 316 41 67

- **• Justice, intérieur et cultes**
  Place du Château 1 - 1014 Lausanne
  Tél. 021 316 45 45 - fax 021 316 45 59
- **• Affaires extérieures**
  Barre 2 - 1014 Lausanne
  Tél. 021 316 44 11 - fax 021 316 44 14
- **• Affaires culturelles**
  Barre 8 - 1014 Lausanne
  Tél. 021 316 33 00 - fax 021 316 33 06
- **• Population**
  Beaulieu 19 - 1014 Lausanne
  Tél. 021 316 46 46 - fax 021 316 46 45
- **• Direction, planification et stratégie informatique**
  Paix 4 - 1014 Lausanne
  Tél. 021 316 25 51 - fax 021 316 25 52
- **º Démarche de modernisation**
  Bâtiment de la Pontaise - 1014 Lausanne
  Tél. 021 316 25 46 - fax 021 316 25 69

M. Charles-Louis Rochat

Département de la santé et de l'action sociale (DSAS)

Secrétariat général
Bât. Pontaise - 1014 Lausanne
Tél. 021 316 50 40 - fax 021 316 50 69

- **• Assurances sociales et hébergement**
  Bâtiment de la Pontaise - 1014 Lausanne
  Tél. 021 316 51 45 - fax 021 316 52 60
- **• Prévoyance et aide sociales**
  Bâtiment de la Pontaise -1014 Lausanne
  Tél. 021 316 52 21 - fax 021 316 52 38
- **• Santé publique**
  Cité-Devant 11 - 1014 Lausanne
  Tél. 021 316 42 00 - fax 021 316 42 78
- **• Hospices cantonaux**
  Bugnon 21 - 1005 Lausanne
  Tél. 021 314 70 00 - fax 021 314 70 11

Mme Jacqueline Maurer-Mayor

Département de l'économie (DEC)

Secrétariat général
Caroline 11 - 1014 Lausanne
Tél. 021 316 60 19 - fax 021 316 60 37

- **º Bureau de l'égalité entre femmes et hommes**
  Caroline 4 - 1014 Lausanne
  Tél. 021 316 61 24 - fax 021 316 59 87
- **• Economie et tourisme**
  Caroline 11 - 1014 Lausanne
  Tél. 021 316 60 21 - fax 021 316 61 52
- **• Emploi**
  Caroline 11 - 1014 Lausanne
  Tél. 021 316 61 04 - fax 021 316 60 36
- **• Agriculture**
  Caroline 11 - 1014 Lausanne
  Tél. 021 316 62 00 - fax 021 316 62 07
- **º Viticulture**
  Marcelin, c.p. 57 - 1110 Morges
  Tél. 021 803 08 33 - fax 021 803 08 36
- **• Vétérinaire**
  César-Roux 37 - 1014 Lausanne
  Tél. 021 316 38 70 - fax 021 316 38 71
- **• Logement**
  St-Martin 2 - 1014 Lausanne
  Tél. 021 316 64 00 - fax 021 316 63 97
- **• Education physique et sport**
  Maillefer 35 - 1014 Lausanne
  Tél. 021 316 39 39 - fax 021 316 39 48

M. Philippe Biéler

Département des infrastructures (DINF)

Secrétariat général
Riponne 10 - 1014 Lausanne
Tél. 021 316 70 07 - fax 021 316 70 34

- **• Routes**
  Université 3 - 1014 Lausanne
  Tél. 021 316 71 10 - fax 021 316 71 19
- **• Aménagement du territoire**
  Université 3 - 1014 Lausanne
  Tél. 021 316 74 11 - fax 021 316 74 48
- **• Information sur le territoire**
  Université 3 - 1014 Lausanne
  Tél. 021 316 24 60 - fax 021 316 24 84
- **• Bâtiments, monuments et archéologie**
  Riponne 10 - 1014 Lausanne
  Tél. 021/316 73 00 - fax 316 73 47
- **• Transports**
  Valentin 10 - 1014 Lausanne
  Tél. 021 316 73 73 - fax 021 316 73 76
- **• Améliorations foncières**
  Nord 7 - 1014 Lausanne
  Tél. 021 316 64 64 - fax 021 316 64 58

M. Pascal Broulis

Département des finances (DFIN)

Secrétariat général
Paix 6 - 1014 Lausanne
Tél. 021 316 20 10 - fax 021 316 20 09

- **º Registre foncier**
  Paix 6 - 1014 Lausanne
  Tél. 021 316 24 80 - fax 021 316 20 09
- **• Impôts**
  Chavannes 37 - 1014 Lausanne
  Tél. 021 316 21 21 - fax 021 316 21 40
- **• Finances**
  Paix 6 - 1014 Lausanne
  Tél. 021 316 25 50 - fax 021 316 25 65
- **• Personnel**
  Caroline 4 - 1014 Lausanne
  Tél. 021 316 19 19 - fax 021 316 19 26
- **• Recherche et information statistiques**
  Paix 6 - 1014 Lausanne
  Tél. 021 316 29 99 - fax 021 316 29 50
- **• Immobilier et logistique**
  Université 5 - 1014 Lausanne
  Tél. 021 316 74 74 - fax 021 316 74 71

Site internet de l'Etat
Renseignements pratiques, législation vaudoise, actualités: une seul adresse, www.vaud.ch

• = service
º = office

Arrêté

du 21 octobre 1998

concernant la mise en activité à titre expérimental d'un bureau cantonal de médiation administrative

R 1998, p.380.

LE CONSEIL D'ÉTAT DU CANTON DE VAUD

vu le décret du 10 novembre 1997 accordant un crédit pour le programme de réallocations de ressources[1]

vu le préavis de la Chancellerie d'Etat et du Département des institutions et des relations extérieures

[1] *R 1997, p. 652.*

arrête

CHAPITRE PREMIER

Dispositions générales

Objectifs

Article premier. – Le bureau cantonal de médiation administrative à titre expérimental a pour but de:

a) expérimenter et évaluer l'opportunité de la mise en place d'une fonction de médiation administrative dans le Canton de Vaud;

b) favoriser la prévention ainsi que la résolution à l'amiable des conflits entre le service public cantonal et les administrés;

c) aider les administrés dans leurs rapports avec le service public cantonal, notamment préserver leurs droits et leurs intérêts, et servir d'intermédiaire lors de différends;

d) encourager le service public cantonal à instaurer des relations affables avec les administrés et lui éviter des reproches infondés;

e) contribuer à déceler les dysfonctionnements du service public;

f) proposer des améliorations du service public cantonal.

Egalité entre femmes et hommes

Art. 2. – Toute désignation de personne, de statut ou de fonction dans le présent arrêté vise indifféremment une femme ou un homme.

Champ d'action

Art. 3. – Le champ d'action de la médiation administrative à titre expérimental comprend le service public cantonal, par quoi il faut entendre:

les services et établissements de l'administration cantonale.

Sont exclus de son champ d'action:

a) le Grand Conseil;

b) le Conseil d'Etat;

c) les communes;

d) les autorités judiciaires;

e) l'Eglise réformée du Canton de Vaud;

f) les institutions et entreprises cantonales ainsi que les personnes et organisations privées, et ce y compris si elles accomplissent des tâches de droit public, si elles sont chargées de tâches officielles ou si elles sont financées en majeure partie par le canton.

CHAPITRE II

Organisation

Bureau cantonal de médiation administrative à titre expérimental

Art. 4. – Le chargé de projet et le chancelier d'Etat sont responsables du bureau cantonal de médiation administrative à titre expérimental.

Locaux

Art. 5. – Afin de garantir la confidentialité, les locaux de la médiation sont situés hors d'un bâtiment de l'administration.

Indépendance

Art. 6. – Le bureau cantonal de médiation administrative à titre expérimental est indépendant dans ses interventions.

CHAPITRE III

Procédure

Saisine

Art. 7. – Toute personne physique ou morale, ainsi que toute

autorité peut saisir le chargé de projet d'une requête orale ou écrite faisant apparaître son objet et l'identité de son auteur.

Sont soustraits à la compétence du chargé de projet:

les litiges entre les fonctionnaires et autres employés de l'Etat, et les autorités, dans la mesure où ils concernent les relations de travail.

Devoir d'informer

Art. 8. – Aussitôt qu'il décide d'entrer en matière sur une requête, le chargé de projet en informe l'autorité ou l'administré concernés, qui lui font parvenir toute information utile.

Relation avec des procédures administratives

Art. 9. – Le chargé de projet peut agir en dehors de toute procédure ou dans une procédure clôturée. Dans une affaire pendante, il ne peut agir qu'avec l'accord des parties et de l'autorité concernée.

Son intervention n'a pas d'effet suspensif sur les délais de recours dans les procédures en cours. L'autorité compétente reste libre de sa décision.

Enquête

Art. 10. – Le chargé de projet décide de l'ouverture et de l'ampleur des enquêtes qu'il estime justifiées.

L'enquête a pour but:

a) de permettre au chargé de projet de connaître les faits;

b) de permettre aux parties de communiquer;

c) de permettre au chargé de projet de se faire une idée de la légalité, de l'opportunité et de l'équité de la mesure critiquée, ainsi que de la correction du comportement incriminé.

Accès à l'information

Art. 11. – Le chargé de projet a le droit, sans que lui soit opposable le secret de fonction:

a) de requérir en tout temps des renseignements oraux ou écrits et d'exiger l'accès au dossier concernant la personne qui l'a saisi;

b) de s'entretenir avec les personnes dont l'audition est nécessaire;

c) de faire des inspections;

d) de s'adjoindre - et ce à titre exceptionnel - des experts pour

les affaires dont l'évaluation nécessite des connaissances particulières.

Sont réservés:

a) le secret professionnel au sens des articles 321 et 321a du Code pénal suisse;

b) le droit de refuser de témoigner conformément aux articles 196 à 201 hormis ce qui concerne le secret de fonction à l'article 198 du code de procédure civile[1];

c) la protection des intérêts personnels de tiers.

[1]*Code de procédure civile du 14 décembre 1966, RSV 2.7.*

Prise de position du chargé de projet

Art. 12. – En fonction des résultats de ses investigations, le chargé de projet prend position sur l'affaire et informe les parties du résultat de son examen.

Il recherche, dans la mesure du possible, avec l'autorité concernée et avec le requérant, une solution de nature à donner satisfaction aux deux parties.

Il a le droit, selon sa libre appréciation:

a) de donner des conseils au requérant;

b) de faire une recommandation orale ou écrite à l'intention du service ou du fonctionnaire concerné, aussi bien dans le cadre de la recherche d'une solution qu'en vue de contribuer à éliminer des cas de dysfonctionnement de l'administration;

c) d'en informer les supérieurs hiérarchiques ou d'autres personnes ou autorités concernées.

En revanche, il n'a pas la compétence de donner des directives concrètes, de prendre des décisions, d'en suspendre ou d'en modifier ou de donner des instructions.

Rapport du service ou de la personne concernée

Art. 13. – L'autorité qui a reçu une recommandation du chargé du projet lui fait parvenir un rapport circonstancié dans un délai de trois mois.

Gratuité

Art. 14. – La procédure de médiation est gratuite.

Obligation de garder le secret

Art. 15. – Le chargé de projet, sa secrétaire et le cas échéant les experts prévus à l'article 11 du présent arrêté sont tenus de garder

le secret sur les informations et les pièces dont ils ont eu connaissance au cours de leurs enquêtes; les articles 26 et 27 de la loi du 9 juin 1947 sur le statut général des fonctions publiques cantonales[1] sont applicables.

[1] *RSV 1.6.*

CHAPITRE IV

Dispositions finales

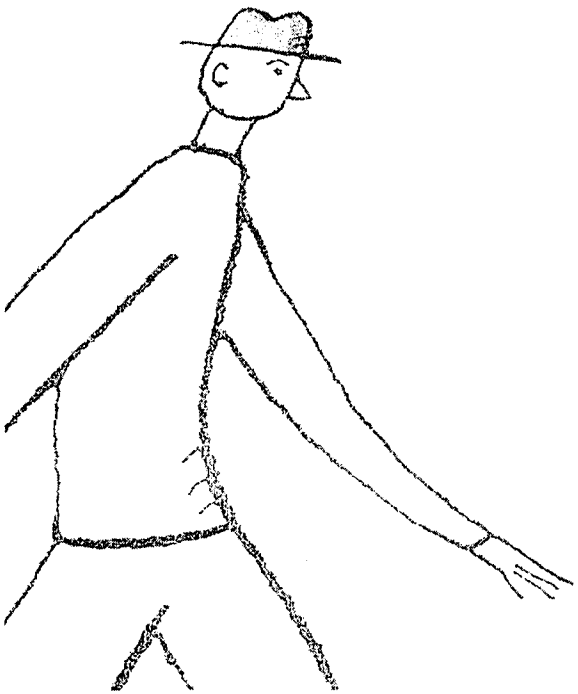
Art. 16. – Le Département des institutions et des relations extérieures est chargé de l'exécution du présent arrêté qui entre immédiatement en vigueur.

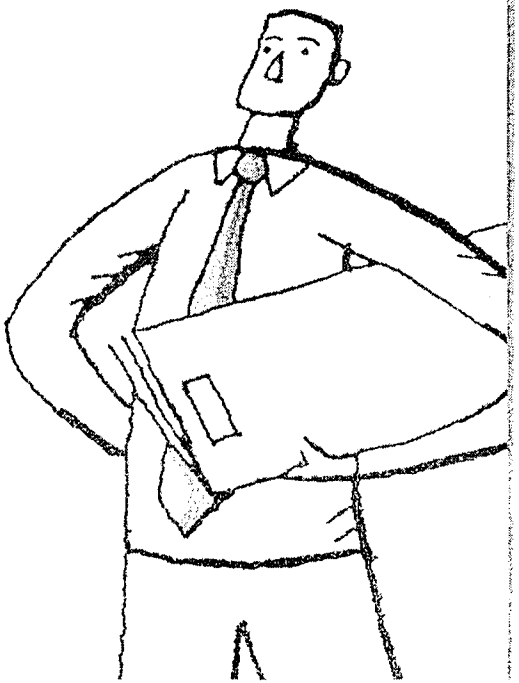
Belgique – M. Pierre–Yves Monette

Le Collège des médiateurs fédéraux

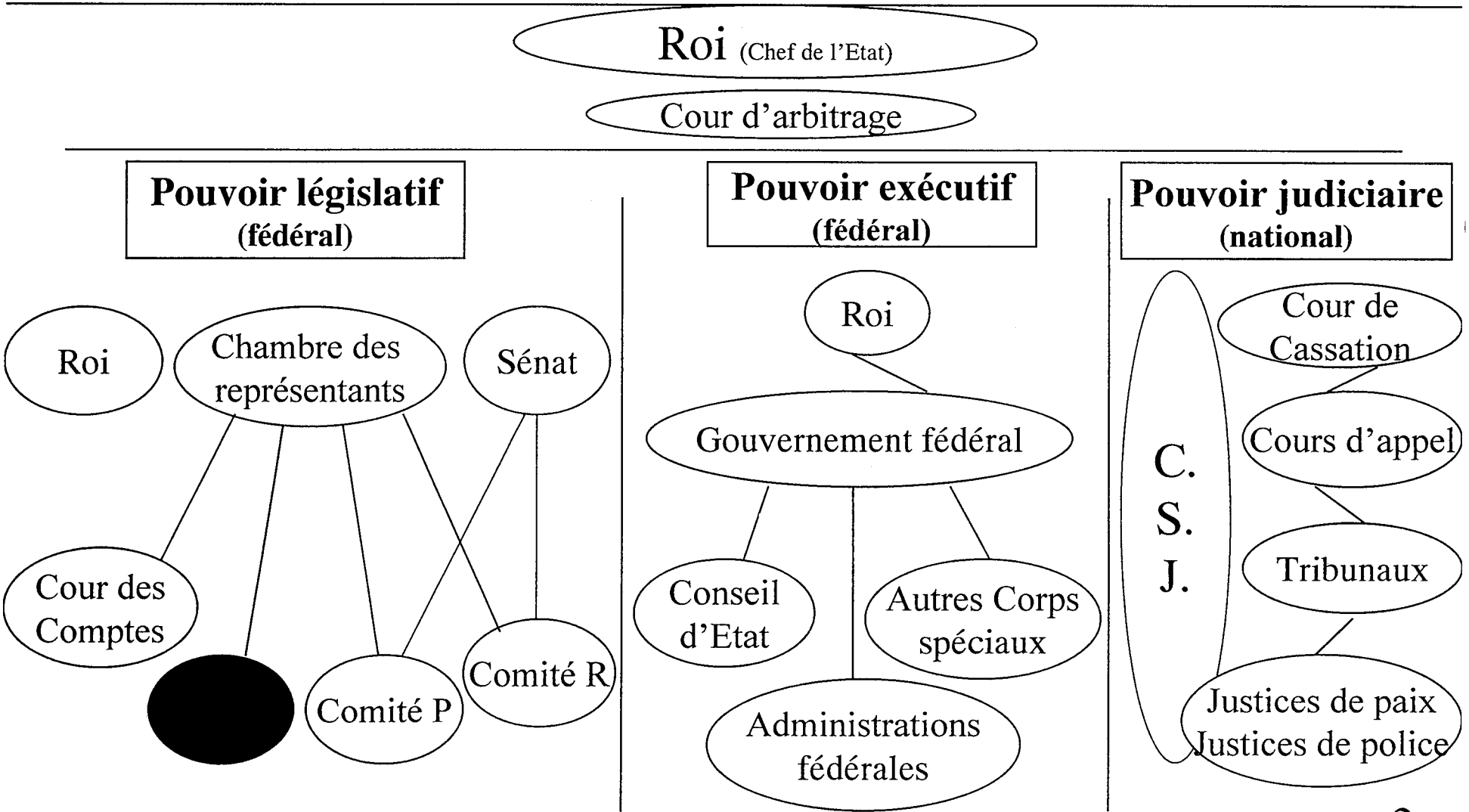
Le médiateur fédéral

Un pont entre
le citoyen
et l'administration



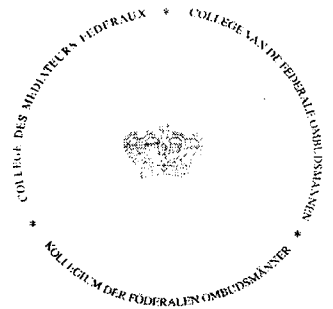


Le Collège des médiateurs fédéraux (CMF) dans l'Etat fédéral.



Le Collège des médiateurs fédéraux

- ~ Ombudsman scandinave (organe parlementaire)
- ~ Médiateur latin (organe de contrôle ET de médiation)
- 2 médiateurs fédéraux (F et N)
- fonctionnement collégial
- ± 40 collaborateurs
- dotation de 3.115.000 € (125.600.000 BEF)
- magistrature d'influence (>< magistrature de sanction)
- organe indépendant, neutre et impartial



Les six facettes de l 'indépendance

- structurelle
  (→ Constitution)
- organique (contrôle externe)
- fonctionnelle
- financière (organe à dotation)
- organisationnelle
- intellectuelle

Neutralité politique

Magistrature d'influence

⇒ efficacité < crédibilité < neutralité

Neutralité des médiateurs garantie par :

- processus de nomination
- interdiction de cumul avec mandat électif
- esprit de neutralité objective **ET** subjective

Impartialité

- pas juge et partie (~ indépendances organique & intellectuelle)
- équidistance entre administré et administration
- « médiateur » ou « ombudsman » (et non « défenseur du peuple » ou « avocat du peuple », etc.)

Les missions du médiateur fédéral

- Traitement de plaintes concernant actes ou fonctionnement de l'administration fédérale

  ✓ Comme organe de contrôle externe & organe de médiation

- *Reporting* et appui au Parlement

  ✓Comme organe collatéral de la Chambre

- Investigations à la demande du Parlement

  ✓ Comme organe de contrôle externe

1. Traitement des plaintes

Traitement des plaintes

Types de requêtes

- Demandes d'informations 21,35 %

  → (fonctionnaires d'information)

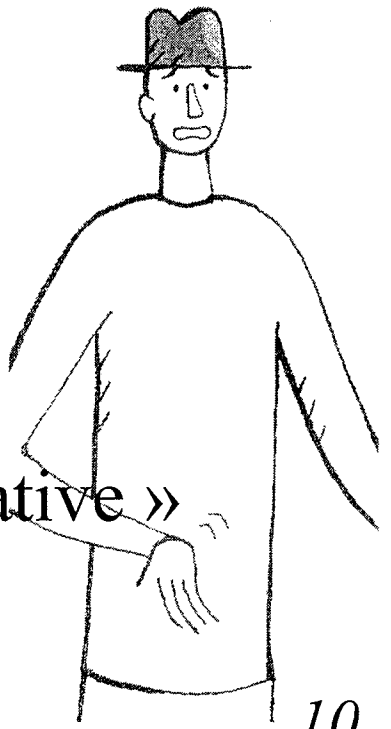
- Réclamations 78,00 %
- Demandes de médiation *stricto sensu* 0,65 %

Traitement des plaintes (suite)

Conditions et modes de saisine

Conditions :

- toute personne
- toute personne concernée
- démarches préalables
- ancienneté ≤ à 1 an
- concerne une « autorité fédérale administrative »
- peut être anonyme
- intervention gratuite



Traitement des plaintes (suite)

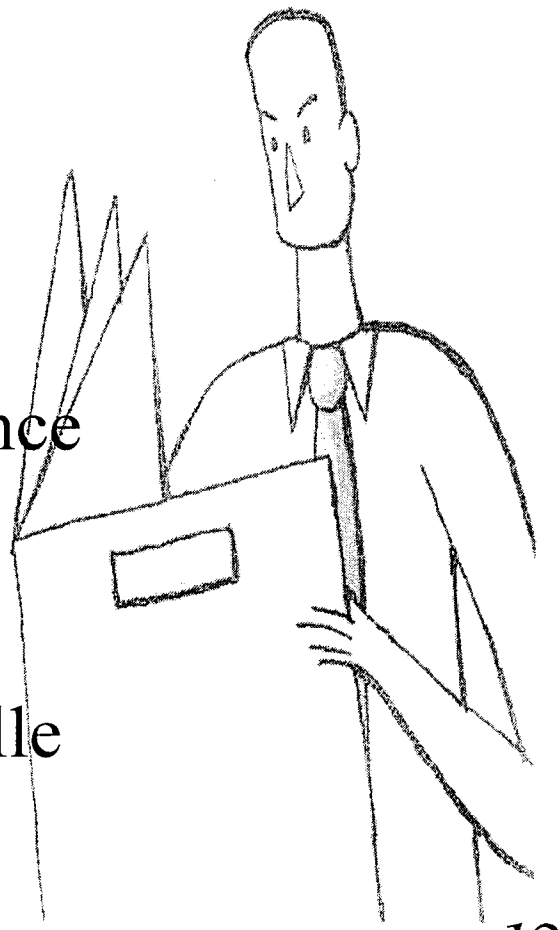
Modes :

• lettre	40 %
• téléphone	30 %
• courriel	18 %
• visite Bruxelles ou province	6 %
• télécopie	6 %
• auto saisine	0 %

Traitement des plaintes (suite)

Phases possibles

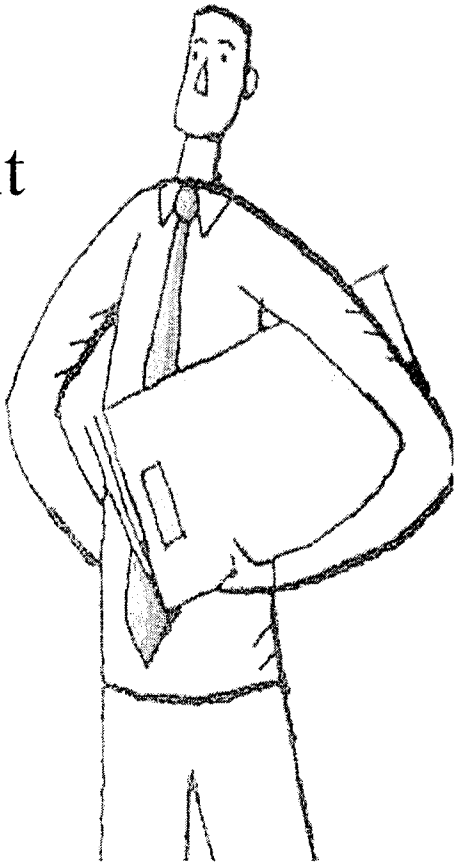
1. Accusé de réception
2. Dossier en information
3. Dossier en instruction
4. Processus de médiation
5. Déclinatoire de compétence
6. Suspension de saisine
7. Proposition
8. Recommandation officielle
9. Transmis
10. Dossier en classement



Traitement des plaintes (suite)

« Grille de lecture » du médiateur fédéral

- Contrôle de légalité
- Contrôle des principes généraux du droit (ou contrôle de juridicté)
- Contrôle de bonne administration
- Contrôle de bonne gouvernance
- Recours exceptionnel à l'équité *(aequitas contra legem)*
- Pas de contrôle d'opportunité



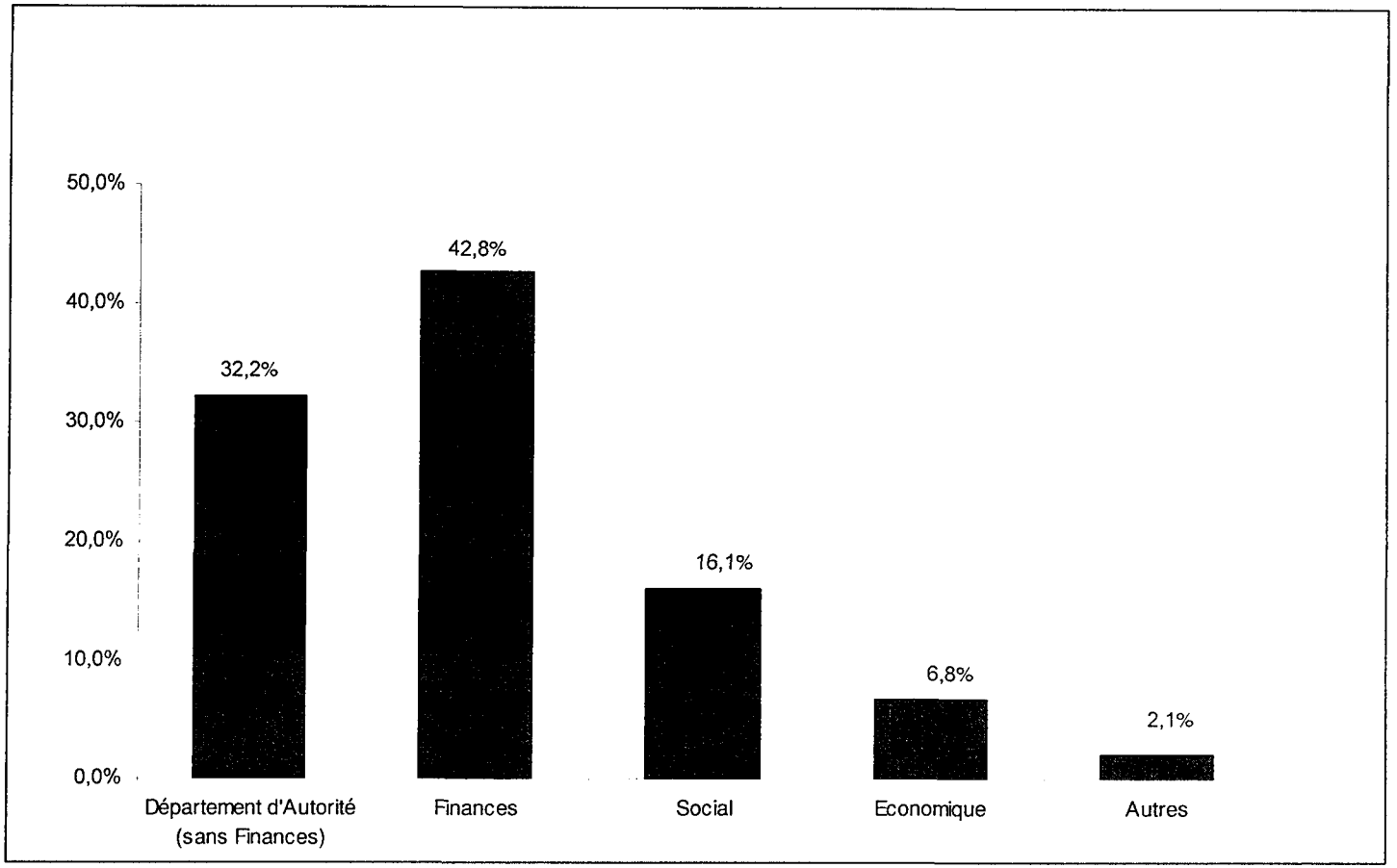
Traitement des plaintes (suite)

Evaluation des dossiers 2001

Bonne administration	34,9 %
Bonne administration après intervention	24,6 %
Mal-administration	6,8 %
Consensus	7,1 %
Responsabilité partagée	2,4 %
Responsabilité indéterminable	2,2 %
Clôture par manque d'information	16,7 %
Sans appréciation	5,2 %
Équité	0,1 %

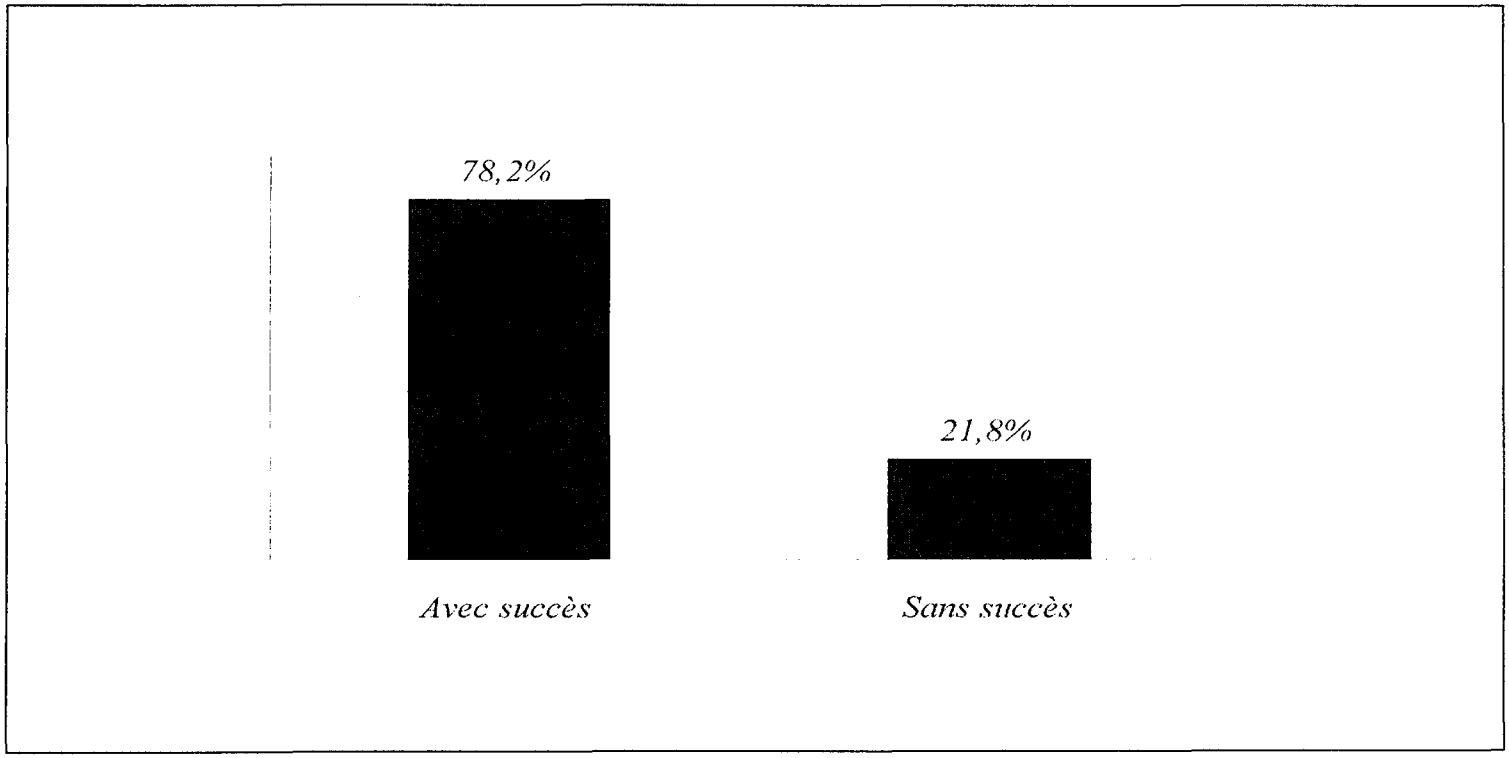
Traitement des plaintes (suite)

Plaintes par secteur (2001) :



Traitement des plaintes (suite)

Résultat de l'intervention du médiateur fédéral (2001)



= cas avérés de mal-administration corrigés après intervention du médiateur fédéral

2. *Reporting* et appui au Parlement

Reporting et appui au Parlement

Reporting	• « collatéral » de la Chambre • Rapport annuel • Rapports intermédiaires éventuels • Recommandations générales • Commission des Pétition • Commissions permanentes

Reporting et appui au Parlement

Appui	• Mission de législateur • Mission de contrôleur de l'Exécutif

3. Investigations

Investigations

« A la demande de la Chambre, le CMF mène toute investigation sur le fonctionnement des services administratifs fédéraux qu'elle désigne ».

- ~ Cour des Comptes
- experts
- mission non encore exploitée

Pouvoirs du médiateur fédéral

- **Pouvoir d'instruction**
  - faire toute constation sur place
  - se faire communiquer tout document
  - se faire communiquer tout renseignement
  - entendre toute personne concernée
  - lever secret professionnel de toute personne concernée
  - se faire assister par experts
- **Pouvoir d'injonction**
  - imposer délai de réponse aux fonctionnaires

Pouvoirs du médiateur fédéral (suite)

- **Pouvoir de dénonciation**
  - dénoncer fonctionnaire récalcitrant
  - Dénoncer infraction disciplinaire
  - Dénoncer infraction pénale
  - dénoncer dysfonctionnement administratif
  - dénoncer dysfonctionnement réglementaire / législatif
- **Pouvoir de recommandation**
  - recommandation officielle → gouvernement /admin.
  - recommandation générale → Parlement
- **Pouvoir d'accès**
  - droit d'être entendu par la Chambre

Le médiateur fédéral >< le juge

• Pouvoir législatif	><	Pouvoir judiciaire
• moyen de contrôle, de médiation et de régulation	><	organe juridictionnel
• magistrature d'influence	><	magistrature de sanction
• grille de lecture plus large (hard law / soft law)	><	contrôle de légalité / juridicité
• processus non formel	><	procédure réglée par code judiciaire
• processus consensuel	><	procédure conflictuelle
• conflit avec administration fédérale	><	tous conflits
• peut élargir le champ de sa saisine	><	ne peut statuer ultra petita
• action de reporting au Parlement	><	intervention se termine avec jugement / arrêt
• intervention gratuite	><	coût des procédures judiciaires

Le médiateur fédéral ~ le juge

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- Domaines de compétence respectifs du juge/du médiateur ne coïncident pas tout à fait
- Le médiateur peut intervenir avant le juge
  - ➢ désengorgement des prétoires
- Le médiateur peut intervenir parallèlement au juge
  - ➢ prise en délibéré
- Le médiateur peut intervenir après le juge
  - ➢ problèmes d'exécution
- Jurisprudence médiationnelle et jurisprudence CE ou C&T se complètent
  - ➢ soft law → hard law

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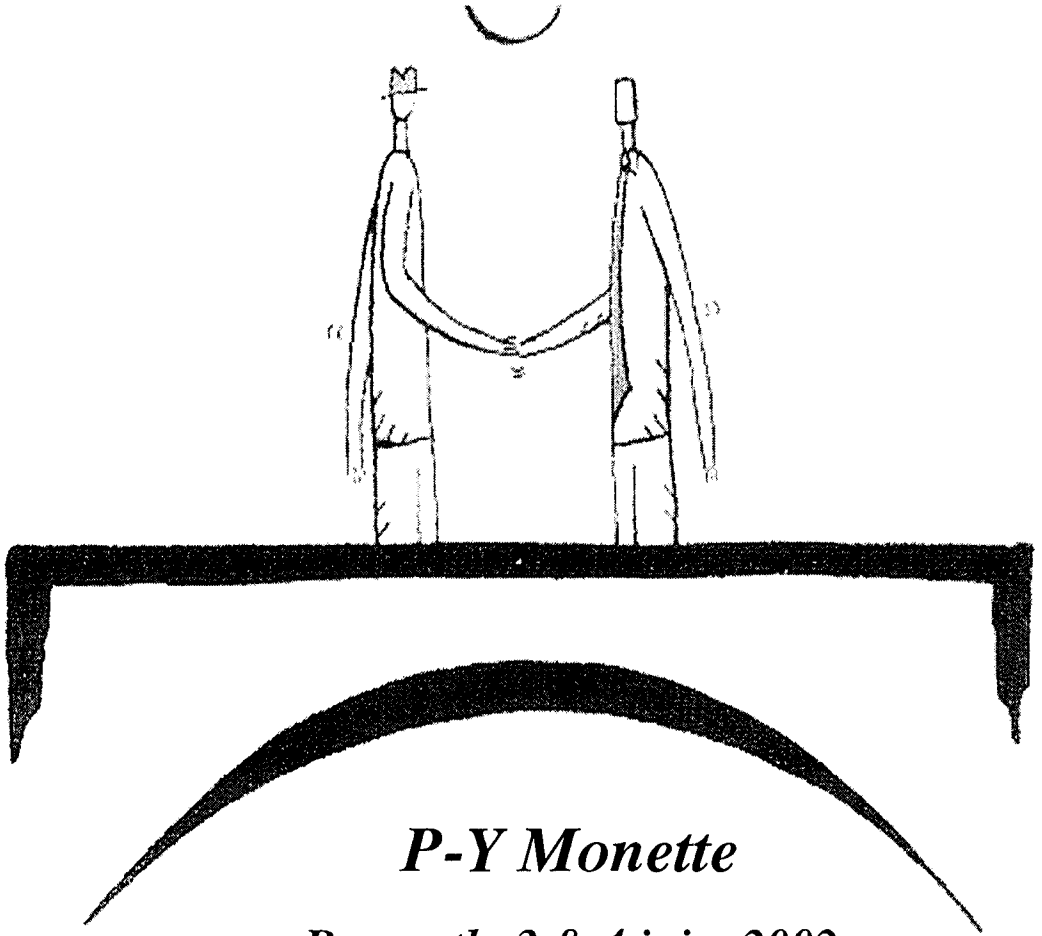

P-Y Monette

Beyrouth, 3 & 4 juin 2002

– JO –

PARLIAMENTARY OMBUDSMEN

Kjell Swanström
Chief of Staff

PRESENTATION

Date
2002-05-24

Experiences of the Parliamentary Ombudsmen in Sweden – Subject of Intervention at the Seminar on the Establishment of an Ombudsman in Lebanon, Beirut, June 3–4 2002.

Introduction

The institution of the Parliamentary Ombudsmen has been described as Sweden's most important contribution to the international constitutional development. The Swedish institution started its work in 1810 and it remained the only institution of its kind for more than 100 years. Sweden thus has a unique experience of the ombudsman institution, and I think that this experience might be of some interest also to countries that have recently introduced the ombudsman idea or are contemplating doing so.

Today ombudsman offices can be found in almost 100 countries all over the world. These institutions come in many different shapes. There is the "classical" ombudsman that can be found in the Nordic countries and in i.a. Poland, the Netherlands, Spain and South America. One sometimes meets with human rights ombudsmen as in Hungary or with human rights commissions as in Central America. There are national, regional and local ombudsmen. They all have in common, however, that they are democratic institutions based on the recognition of the fundamental rights of the individuals and the principle of the rule of law.

Historical background

The Swedish institution evolved from specifically Swedish circumstances and historical experiences. It can be said that it grew up organically in its administrative and political surroundings. Even though it is fundamentally a democratic institution it in fact came into existence more than a century before Sweden had a system of government which was completely democratic.

The Swedish word ombudsman denotes a person whose task it is to take care of somebody else's interests. The first Swedish ombudsman was a royal official, the King's "Highest Ombudsman", who later had his title changed into that of Chancellor of Justice. The role and the functioning of this institution, which came into being in 1714, are comparatively easy to understand. The duty of the royal ombudsman was to assist the King in one of the fundamental tasks of government, viz. to ensure that the public administration functions correctly. He did so in his capacity as the highest prosecutor in the country, and that role fitted well into the

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existing administrative system in Sweden, which was – and still is – based i.a. on the principle of accountability under criminal law of every Swedish judge and civil servant for his actions in his official capacity.

During the so-called Era of Liberty, which followed on the death of King Charles in 1718, most of the political power in Sweden was transferred from the King to the Swedish Parliament, the Riksdag. In fact Sweden during that period had a system rather close to the parliamentary system of government of today. As a result the Chancellor of Justice in practice was regarded as a servant of the Riksdag, and this was formally confirmed when the Riksdag in 1766 for the first time elected the Chancellor of Justice. That year thus saw the birth of the concept of the parliamentary ombudsman.

A short period of royal absolutism, during which the king had recovered the prerogative of appointing the Chancellor of Justice, was brought to an end in the spring of 1809. At that time a revolutionary situation prevailed in Sweden. The Finnish dominions had been lost in a disastrous war against Russia, and the king had been dethroned. In a few weeks a new constitution was created, based on the principle of balance of power between the King and the Riksdag. The men who drafted the new constitution and who had the experiences of the past fresh in their memories wanted i.a. to create a stronger parliamentary control over the executive's exercise of power.

Since the concept of the parliamentary ombudsman had already been invented it was natural to incorporate such an institution in the new constitution. The new ombudsman was to be completely independent of the executive power and to be accountable only to the Riksdag. His task was to see to it, in his capacity as a representative of the Riksdag, that the citizens enjoyed the protection granted them by the law in their dealings with the courts of law and the administrative authorities. Like the Chancellor of Justice the Parliamentary Ombudsman was a prosecutor and he thus had a function that was comparatively easy to fit into the regular system of government.

The Ombudsmen and the Constitution

Today the most important provisions concerning the Parliamentary Ombudsmen are to be found in the Instrument of Government of 1974 which is based on the principle of the sovereignty of the people. The activities of the ombudsmen form part of the parliamentary control of government. The role and the position of the ombudsman institution in the constitutional system are basically the same today as in 1810. Its task is, on behalf of the Riksdag and in total independence of the executive, to carry out juridical supervision of the courts and the public administration in the interest of the individuals.

In order to understand the position of the ombudsman institution in the system of government it is necessary to have some knowledge of the Swedish public administration. Unlike most other countries Sweden does not have a ministerial system. The Swedish ministers are not heads of the different branches of administration. Their duties are instead concentrated on policymaking activities. This means that a Swedish cabinet minister is not head of a ministry in the usual sense; he has to his disposal only a rather small staff – usually between 100 and 200 persons who prepare bills, government decrees and other cabinet decisions.

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Against this background it has been considered natural to organise the constitutional control of government in such a way that the Riksdag, through its Constitutional Committee, supervises the ministers and that the Parliamentary Ombudsmen supervise the administrative authorities and the courts.

A key word when one wants to describe the Swedish ombudsman system is independence. A prerequisite of public confidence in the ombudsman as a guarantee for the rights of the ordinary citizen against those who exercise public power is that he is free and independent not only in theory but also in reality. It has in fact been regarded as essential that an ombudsman should as far as possible act independently also of the Riksdag that has granted him his powers.

The activities of the ombudsmen are regulated by an act of law decided by the Riksdag, and their work is financed by an annual allocation, voted by the Riksdag on the basis of estimates made by the ombudsmen themselves. Within these bounds the ombudsmen have complete freedom of action with regard to the Riksdag. They lay down their own procedures and they select on their own discretion the authorities that should be inspected, the issues that should require their attention and the complaints that should warrant a more thorough investigation.

The Organization

Each of the four parliamentary ombudsmen is elected by the Riksdag at a plenary sitting for a period of four years. The elections are prepared by the Riksdag's Committee on the Constitution. The ombudsman office is strictly non-political, and it has been a tradition that an ombudsman must be acceptable to all the political parties represented in the Riksdag. Re-elections are possible and frequent.

The ombudsmen usually come from the judiciary and they are recruited among persons who are or would be suitable as justices of the Supreme Court or the Supreme Administrative Court.

One of the ombudsmen – the Chief Ombudsman – is head of the ombudsmen's office. He is responsible for the administration of the office, appoints members of the staff etc. He also decides the main orientation of the activities of the ombudsman institution and determines the sphere of responsibility of each ombudsman. He cannot interfere in the investigations and decision-making activities of the other ombudsmen, however. Each ombudsman is accountable for his actions only to the Riksdag.

The ombudsmen are assisted by a staff of about 50 (some 30 lawyers as well as registrars, secretaries and administrative staff). Only an ombudsman, however, is authorised to sign a final decision. The legally trained staff is usually recruited from the authorities. Most of them are junior judges in the judicial career, who usually stay on between four and six years.

The Duties of the Ombudsmen

The main object of the ombudsmen's activities is to safeguard the principle of rule of law and to protect the rights and freedoms of the individual as laid down in the Constitution and Swedish law.

It is said in the Ombudsman Act that it is the particular duty of the ombudsmen to ensure that the courts of law and the administrative authorities observe the provision of the constitution concerning objectivity and impartiality and that the fundamental rights and freedoms of the citizens are not encroached upon in the process of public administration.

The Jurisdiction of the Ombudsmen

The ombudsmen's supervision covers all governmental agencies and the local government as well as the individual members of their staff. They also supervise other persons who exercise public power. But, as I have already mentioned, they do not supervise cabinet ministers. Nor do they supervise members of the Riksdag or of the municipal councils.

It should be noted that in many cases the decision of an administrative agency can be appealed against at an administrative court, which has the right to review the decision in its entirety. This means that there is usually no need for the ombudsmen to look into matters concerning the material content of such decisions. The ombudsmen instead pay attention mainly to matters of procedure. One of their most important tasks is in fact to promote good administrative and judicial behaviour.

The Powers of Investigation of the Ombudsmen

The powers of investigation of the ombudsmen are laid down in the Instrument of Government. They have access to all official files and documents, even the classified ones, and all officials are obliged to give the ombudsmen any information they may ask for and to assist them with investigations and in other ways. Failure to do so is regarded as a disciplinary offence. The ombudsmen also have the right to ask for the assistance of any public prosecutor.

The Weapons of the Ombudsmen

The ombudsmen still have the right to prosecute officials who have violated the law in their official capacity. Even though prosecutions nowadays are not very frequent, the right to prosecute negligent officials is still an important basis for the authority of the ombudsman office, and it gives a special weight to the critical pronouncements made by the ombudsmen. The ombudsmen can prosecute any official under their supervision before an ordinary court of law for any crime committed in his official capacity. Of special importance in this respect is a provision in the Penal Code concerning wilful misuse and negligent use of public power.

The ombudsmen also have the right to initiate disciplinary proceedings.

Today the ombudsmen's main weapon, however, is the power to admonish or criticise negligent officials. If an ombudsman finds that a decision or an action made by an official or an authority is inadequate, improper or unwise but not punishable under criminal law, he will point out how, in his opinion, the matter should have been handled. The ombudsmen also have the right to make statements based on individual cases in order to promote uniform and appropriate application of the law.

The ombudsmen have the right to address the Cabinet or the Riksdag in order to ask for or suggest amendments of the law.

The Handling of Complaint Cases

The handling of complaint cases constitutes the bulk of the ombudsmen's activities. The Riksdag considers the handling of complaint cases to be the most important part of their work. The main reason for this is that in a democratic society based on the principle of rule of law every citizen should have the right to have the dealings of the authorities scrutinised from a legal point of view by an agency that is quite independent of the Government.

Everyone – even citizens of other countries or people not living in Sweden – can complain to the ombudsmen. There is no rule saying that the complainant must be personally concerned in the matter. No absolute time limit is set, but it is prescribed that the ombudsmen should not, unless on special grounds, start an investigation if the matter complained of took place more than two years before the complaint.

There is no rule that says that existing judicial or administrative remedies should be exhausted before a complaint is lodged. But normally an ombudsman does not intervene while the matter is pending in a court or an administrative authority or an appeal is still possible. An intervention will be made at this stage mainly when the complaint concerns certain types of procedural matters, e.g. when it is alleged that the case does not advance or that judgement is not delivered within a reasonable time after the hearing.

Complaints should be presented in writing. If necessary, however, a member of the ombudsmen's staff will help the complainant to word his letter. No fee is charged. Anonymous complaints are not admissible but they sometimes give an ombudsman cause to start an investigation on his own initiative.

The largest categories of complaints refer to the social welfare authorities, the police, the prison administration, the social insurance authorities and the courts for civil and criminal cases.

It should be added that since 1968 the ombudsmen have had the right to refer to other agencies, e.g. the public prosecutors, such complaint cases that cannot be dismissed but do not justify an ombudsman's personal attention.

The complaint cases that are not immediately dismissed or referred to another agency are investigated in one way or another. Often the first step is to ask for verbal information from the authority by phone and to request the relevant documents. In many cases it is possible to judge from the information gained in this way that there is not sufficient cause for the complaint.

The next – sometimes the first – step will be to ask for an explanation in writing from the authority or the official responsible for the actions complained against. A demand of this kind is addressed to the head of the authority, and it is his duty to find out the facts of the matter, to report his findings to the ombudsman and to state his own opinion on what he has found out. This method of investigation makes it possible for the ombudsmen to investigate a great number of cases employing only a comparatively small staff. Oral hearings are sometimes held in order to obtain more or better evidence.

If in the course of his investigation the ombudsman finds that there is reason to believe that an official is guilty of a criminal act – e.g. of negligent use of public power or of taking bribes – he has the same obligation to start a criminal investigation as a public prosecutor. In such a case the investigation is carried out according to the rules in the Code of Judicial Procedure, and the ombudsmen then often make use of their constitutional right to request the assistance of a public prosecutor.

If an official is suspected of having committed a crime he is not obliged to give information about his actions. Instead he has the same right to defend himself – including the right to remain silent – as any other person suspected of a crime.

If an ombudsman finds that there is sufficient ground for a prosecution he is obliged to prosecute in the same way as an ordinary public prosecutor. In such cases the ombudsman is usually represented by a public prosecutor or a member of the ombudsmen's staff.

When the investigation is completed the ombudsman gives his decision, which is always open to the public. The decisions are often very detailed and they are in many respects written in the same way as the judgements of the courts of law. The decisions are often reported in the media, and such decisions as are of interest to the members of the Riksdag, to judges, civil servants etc. are afterwards published in the Ombudsmen's Annual Report. The decisions are also often distributed by the concerned central agency to its subordinate authorities.

Cases Initiated by the Ombudsmen

In order to make the best possible use of the resources of the ombudsmen's office the ombudsmen are not only allowed to decide on a discretionary basis which complaints should be investigated and which should be dismissed, but they are also entitled to start investigations on their own initiative. The majority of these cases are based on observations made during inspections. Sometimes reports in the newspapers or in the radio or TV may give an ombudsman cause to open an investigation.

An ombudsman might also during the investigation of a complaint case discover errors or unsatisfactory conditions that are not covered by the complaint. He will then act on his own initiative and open a new investigation.

The methods of investigation used in cases initiated by the ombudsmen themselves are the same as those used in the complaint cases. As an ombudsman does not open an investigation without good reason it is understandable that a much higher percentage of these cases result in criticism by the ombudsmen than

the complaint cases. The rate of critical pronouncements in the cases initiated by the ombudsmen is usually 70–80 % as compared with 12–14 % in the complaint cases.

Inspections

Ever since the ombudsman office was set up the ombudsmen have made inspections from time to time of authorities of all kinds.

Inspections cover central administrative agencies as well as regional and local authorities, boards, offices and other establishments all over the country.

During an inspection much time is spent in perusing files and other documents. The ombudsman will meet with the head of the authority and other senior members of its staff. When a prison, mental hospital or a similar establishment is inspected, the inmates are given the opportunity to talk to the ombudsman.

An inspection may reveal errors in individual cases that might give the ombudsman reason to start a case on his own initiative. More frequently, however, the ombudsman may find cause to recommend that the authority improve its directives to the officials. Observations made during an inspection have sometimes caused the ombudsman to take action in order to remedy deficiencies in the legislation.

The inspections are of great value in several ways. They give the ombudsmen and their staff the opportunity to meet the people who are serving in the authorities in their everyday surroundings and to learn to know their working conditions. It is also much easier to find errors of a systematical nature in the activities of an authority at an inspection than from dealing with complaint cases. Also the knowledge that any authority can be inspected by an ombudsman at any time contributes to keep the officials on their toes.

Supervision of the Courts

The Swedish Parliamentary Ombudsmen supervise also the courts. In most countries other solutions have been preferred. In many countries it is e.g. possible to use disciplinary punishment against a judge and also to remove a judge from office if he is considered unfit to perform his duties. Sometimes the initiative to an action of this kind might come from the courts themselves, sometimes from the Minister of Justice.

It is thus generally recognised that judges are not infallible and that it might be necessary to take action against a judge because of the way in which he carries out his duties.

The Swedish system of supervision has historical reasons. When the office of the Swedish Parliamentary Ombudsmen was created in 1809 there was no very clear dividing line between the courts and the administrative agencies. The King had for centuries been the supreme judge as well as the supreme administrator, and the administrative agencies acted in much the same way as the courts when they dealt with matters concerning the rights and duties of the individuals. In addition the courts were the most important local authorities and they had administrative as

well as judicial duties. Also the judges were – and still are – accountable under criminal law for their actions in office in the same way as the civil servants.

In the light of these circumstances it is only logical that the Parliamentary Ombudsman was given the task of prosecuting negligent judges as well as other officials, and it has never been considered necessary or even desirable to remove the courts from the jurisdiction of the ombudsmen.

When supervising the courts it is necessary to proceed with great care. First of all the ombudsman responsible for this area must be an expert in judicial matters, since he cannot afford to make any mistakes in his decisions concerning the courts. Also the activities of the ombudsman must under no circumstances infringe upon the constitutionally guaranteed independence of the courts.

The activities of the Swedish ombudsmen in this respect is based on the principle that the courts are independent under the law but that they are not entitled to put themselves above the law. For this reason the ombudsman does not investigate matters concerning the way in which a court has assessed the evidence in a case or how it has interpreted the law as long as the interpretation can be regarded as acceptable. But the ombudsman can take action against the judge if a judgement or a decision is in manifest contravention of the law, e.g. if the maximum penalty for the crime of which the defendant has been found guilty has been exceeded.

With this exception the activities of the ombudsman are concentrated on matters of procedure. The ombudsman e.g. often makes pronouncements criticising a judge for undue slowness in the processing of a case. He also investigates instances of erroneous processing and of biased or rude behaviour of judges, and he sometimes criticises a court on the grounds that it has not stated the reasons for a judgement in a satisfactory way.

When inspecting a court the ombudsman scrutinises open cases that have been pending for a long time in order to find out whether the court has fulfilled its obligation to see to it that the proceedings do not come to a standstill. He also studies judgements in order to ascertain that they are worded in such a way that they can be enforced, that the cases of the plaintiff and the defendant has been properly stated, that the reasons for the judgement are given in an acceptable way etc.

The ombudsman also looks into cases that have been recently decided in order to find out whether the provisions in the Code of Judicial Procedure have been correctly applied.

A system that gives the ombudsman the right to supervise the courts has several advantages. First of all it is easy for a person who feels that he has been wrongfully treated by a judge or by a court to complain to the ombudsman. Secondly the ombudsman can start an investigation even if there is no reason to believe that the error that has been committed is of such a serious nature as to give rise to disciplinary proceedings or to a prosecution. Thirdly, since the ombudsman can look also into minor matters, he can make such pronouncements concerning good judicial behaviour and the proper way of applying the Code of Judicial Procedure that cannot be made e.g. by a superior court after an appeal.

In fact the Swedish ombudsmen have contributed in a substantial way to the interpretation of procedural law and to the development of a code of ethics for the courts, and the statements of the ombudsmen in such matters are often cited in legal textbooks and treatises.

Annual Reports

Under the Ombudsman Act of 1986 the Parliamentary Ombudsmen shall submit a printed report to the Riksdag every year not later than November 15, covering the previous working year (July 1 – June 30). The Annual Report of the ombudsmen usually consists of about 500 pages and gives a full account of all those cases handled by the ombudsmen that are considered to be of a general interest.

The report is studied by the Riksdag's Committee on the Constitution. The Committee then reports to the Riksdag. The Committee's report might be discussed at a plenary session of the Riksdag.

The Annual Report is also read by judges, civil servants, law professors etc.

The Impact of the Ombudsmen

It is of course difficult to assess the *impact of the ombudsman institution*, but I think that it may safely be stated that it is hardly possible to imagine the Swedish constitution without the Parliamentary Ombudsmen. They function as a stabilising factor in the Swedish society by giving the ordinary citizen a feeling of confidence in his dealings with the authorities.

An important function of the ombudsman institution is to contribute to the maintaining of public confidence in the administrative system. The citizens can see that errors within the administration do not go unpunished. Since a critical pronouncement by an ombudsman is often directed against an individual official it functions in very much the same way as a disciplinary punishment. This effect is strengthened by the fact that such pronouncements are often publicised in the media.

The ombudsman institution also is of great help to the authorities by offering legal advice and clarifying the contents of the law concerning e.g. administrative and judicial procedure. The ombudsmen in some cases bring about important changes in the routines and methods used by of the authorities or in the legislation. In fact the authorities as a rule regard the ombudsmen's pronouncements as binding even though this formally is not the case. One of the most important functions of the ombudsman institution is to take part in the developing of Swedish administrative and procedural law. The ideal is that the ombudsmen shall prevent mistakes from happening.

Many complainants write to the ombudsmen in the hope that they will help them in an individual case. In this respect the powers of the ombudsmen are rather limited, however. Characteristic of an ombudsman institution is that the ombudsman cannot change a decision by an authority or order it to act in a certain way. In the case of the Swedish Parliamentary Ombudsmen it should be added that they cannot, like some other institutions, act as mediators between the complainant and the authority.

This does not mean, however, that the activities of the ombudsmen are without importance for the complainants in the individual cases. If somebody alleges that an administrative case does not proceed or that no answer is forthcoming to a letter that he has sent to an authority the ombudsman can usually speed up things just by contacting the authority. Also many complainants are of the opinion that a critical pronouncement by the ombudsman gives them satisfaction enough.

All the same the fact remains that only 12–14 % of all the complaints to the Swedish ombudsmen result in some kind of criticism. It is, however, a mistake to conclude from this figure that the ombudsmen are of no use to the vast majority of the complainants. The fact that the ombudsman has found that there is no reason to believe that an authority has acted incorrectly can often reassure a person who has suspected that his case has been handled wrongfully. It must also be remembered that a very common cause for the dismissal of a complaint is that the matter is already being investigated by a regular organ, e.g. the police, the public prosecutor or the County Administrative Board, or that the matter is pending in a court of law or an administrative court.

Another reason why many complaints are unsuccessful is that even in a country like Sweden many members of the public are not aware of the limitations of the competence of the ombudsmen. Many persons complain against private enterprises such as banks or insurance companies. Other complaints are dismissed because the complainant asks the ombudsman to change or repeal a judgement or an administrative decision or to grant him damages. In such cases, however, it is often possible to give the complainant advice about where he should turn. Also many complaints are based on a misunderstanding about the contents of the law.

All in all the Swedish experience proves that the ombudsman can play an invaluable role in the defence of the rights of the individual in a system of government that recognises the principle of the rule of law and the fundamental rights of the individuals. Even though the ombudsman institution never can replace such regular legal institutions as the courts or the public prosecutors it can be an indispensable complement to them.

Concluding remarks

The Swedish experience of the ombudsman institution can be summarised in the following way.

In order to be able to maintain its credibility the ombudsman institution should be completely independent of the executive power. It should also enjoy a great degree of independence in relation to the Parliament and at the same time have the Parliament's full support.

Furthermore the institution should be shaped in such a way that it fits into the existing system of government and can be easily understood both by the general public and by the officials. The role of the ombudsman should be quite clear and the ombudsmen must adhere strictly to it in all their activities.

The ombudsman should have extensive powers of investigation and the right to make the results of his investigations available to the public. It greatly increases the effectiveness of the ombudsman institution if it can start investigations on its own initiative.

In order to earn the respect of the authorities the ombudsmen should have a thorough knowledge of the activities they are supervising and of the relevant legislation. They must know what they are talking about and they must be able to persuade the authorities that they are right.

The work of the ombudsmen should be based on the principles of fairness and impartiality. This attitude is necessary if the ombudsman institution is to keep the confidence of the general public as well as the respect of the authorities and officials under its supervision.

In order to protect the ombudsmen from being flooded with irrelevant complaints it is necessary to inform the public not only about the existence and the task of the ombudsmen but also about the limitations of the institution. If one promises too much the result will be disappointment and frustration.

Good relations to the media are of the greatest importance. The work of the ombudsmen should be characterised by a high degree of openness. In Sweden the principle of public access to official documents applies to most documents at the ombudsmen's office including all final decisions.

The safeguarding of the constitutional rights and the rights under the law of the individual is a hallmark of a democratic state subject to the rule of law. The fact that the interest in the ombudsman institution today is greater than ever before inspires great hope for the future.

LE MEDIATEUR DE LA REPUBLIQUE

REPUBLIQUE DU MALI
Un Peuple – Un But – Une Foi

COLLOQUE SUR LA CREATION DU MEDIATEUR AU LIBAN
Beyrouth, 3 et 4 juin 2002

TEXTE DE L'INTERVENTION DU MEDIATEUR DE LA REPUBLIQUE DU MALI

Monsieur le Ministre d'Etat pour la Réforme Administrative du Liban ;

Mesdames et Messieurs, chers collègues Médiateurs et Ombudsmans ;

Mesdames, Messieurs les invités

C'est pour moi un grand honneur et un réel plaisir d'être aujourd'hui parmi vous dans ce beau pays, le Liban, pour participer au Colloque sur la création du Médiateur, quelques semaines seulement après ma propre nomination en qualité de Médiateur par le Président de la République du Mali. Car celui que la plupart d'entre vous connaissaient et appréciaient, Maître Demba Diallo que j'ai le redoutable privilège de remplacer, est décédé il y'a un an. A sa mémoire, je voudrais observer avec votre permission une minute de silence... Je vous remercie.

Dans l'accomplissement de cette haute mission qui m'incombe désormais, je vous donne l'assurance que je mettrai tout en œuvre pour renforcer les liens de coopération entre nos institutions respectives.

Le Médiateur de la République du Mali

1. **Introduction** :

Le Mali est un vaste pays continental de plus de 1 241 000 km2 pour une population estimée à 10 millions d'habitants. Situé au cœur de l'Afrique de l'Ouest, son absence d'ouverture sur la mer accroît une pauvreté déjà aggravée par une situation géographique et des conditions climatiques désastreuses. En effet, le pays souffre d'un enclavement intérieur accentué par des barrières naturelles comme le désert qui occupe toute sa moitié septentrionale (menaçant des villes comme Kidal, Gao et Tombouctou), mais aussi des distances énormes séparant les extrêmes nord-sud et est-ouest, l'absence d'infrastructures routières, ferroviaires, aéroportuaires ou fluviales conséquentes. C'est dire Mesdames et Messieurs comment le règlement d'un simple conflit entre un citoyen ordinaire et l'administration, peut prendre dans ces conditions des proportions dramatiques.

Lors des débats de la Conférence Nationale tenue à Bamako pendant la Transition du 29 juillet au 12 août 1991, l'Administration publique de notre pays a été fortement interpellée et même mise en cause. Il lui a été reproché, entre autres :

- son insouciance face aux préoccupations des usagers ;
- son esprit de corps l'amenant à protéger en toutes circonstances ses agents en cas de conflit avec les usagers du service public ;
- le formalisme qui entoure ses activités ;
- la lourdeur, voire l'inertie dans les procédures.

Ces pratiques et comportements hermétiques étaient devenus incompatibles avec la protection des citoyens, dans un contexte marqué par l'avènement de l'Etat de droit.
En conséquence, une reforme en profondeur s'avérait nécessaire pour rapprocher l'administration de ses usagers.

La démarche vise d'abord à humaniser les rapports entre l'administration et les usagers, en offrant aux seconds un accès plus facile aux documents administratifs ainsi que les moyens de se pourvoir contre les actes qui leur portent préjudice.

Elle vise ensuite à mettre l'appareil administratif au service du développement du pays, en le dotant de capacités de mobilisation des richesses au profit de tous.

Cette nécessité d'ouvrir entre l'administration et les diverses composantes de la société, des voies nouvelles de dialogue, devrait passer par une approche nouvelle moins conflictuelle, moins coûteuse.

Pour ce faire, le recours à une autorité de médiation dans la prévention et la résolution des conflits, a été constamment évoqué.
Ainsi, le séminaire sur la simplification des formalités et procédures administratives, tenu à Bamako du 16 au 19 mars 1992, allait donner aux uns et aux autres l'occasion de débattre de la question.

L'institution d'une autorité de médiation a été également au nombre des recommandations lors de la deuxième édition de l'Espace d'Interpellation Démocratique (E.I.D.) (1).

C'est finalement en 1997 que fut institué au Mali un Médiateur de la République (2). L'institution de cette autorité de médiation s'insère dans le cadre de l'approfondissement de la démocratie et de l'Etat de droit.

La Loi n° 97-022 du 14 mars 1997 qui crée l'institution, qualifie le Médiateur de la République d'autorité indépendante qui ne reçoit d'instruction d'aucune autorité dans l'exercice de ses fonctions. C'est à lui que sont confiées les missions définies par la loi et c'est lui-même qui formule les recommandations justifiées par les cas qu'il examine.

Quatre précautions ont été prises pour garantir cette indépendance :

a) Un mandat de sept ans non renouvelable ;
b) Une immunité juridictionnelle analogue à celle des parlementaires ;
c) L'impossibilité d'être investi d'un mandat électif ;
d) L'autonomie dans la gestion de ses crédits.

(1) L'E.I.D a été institué par le Décret n°159 du 31 mai 1996. Il a pour but d'interpeller durant une journée (le 10 décembre de chaque année) les membres du Gouvernement, sur la violation des droits des usagers par l'administration.

(2) Loi n°97-022 du 14 mars 1997, instituant le Médiateur de la République.

2. **Quelles sont les missions du Médiateur de la République** ?

Le rôle essentiel du Médiateur de la République ou de l'Ombudsman est de répondre au besoin de dialogue et de compréhension entre l'administration et les usagers.

Dans un pays comme le Mali ou plus de 70 % de la population ne savent ni lire ni écrire, il va de soi que la plupart des gens ne comprennent pas les subtilités de l'action administrative et deviennent de ce fait les victimes d' agents publics peu soucieux de l'intérêt général.

En ce qui concerne les missions du Médiateur de la République, le principe est clair : il connaît les relations entre l'administration et les administrés et son rôle est de concilier leurs points de vue et de les réconcilier dans le cas où un litige les opposerait . Ainsi, aux termes de l'article 1er alinéa 1er de la loi N°97-022 du 14 mars susvisé, le Médiateur de la République **« reçoit les réclamations concernant le fonctionnement des administrations de l'Etat, des collectivités territoriales, des établissements publics et de tout organisme investi d'une mission de service public dans leurs relations avec les administrés. »** A la lecture de cet article, l'on peut dire que le Médiateur aide les citoyens qui n'arrivent pas à résoudre les problèmes qu'ils rencontrent avec l'administration ou tout autre organisme investi d'une mission de service public.

Cependant le Médiateur de la République n'est pas compétent dans les cas suivants:

- les conflits entre personnes privées (art.1er de la loi) ;
- les différends entre un agent public en activité et l'administration qui l'emploie (art.10).

De même, le Médiateur de la République ne peut :

- interférer dans le déroulement d'une procédure juridictionnelle (art.12) ;
- remettre en cause le bien-fondé d'une décision de justice (art.12).

3. Qui peut saisir le Médiateur de la République ?

Peuvent saisir le Médiateur de la République, les particuliers (personnes physiques) et les personnes morales (associations, syndicats, les sociétés commerciales, etc...) (art.9).
Le réclamant n'est pas obligé d'avoir la nationalité malienne pour saisir le Médiateur de la République. En revanche, l'administration avec laquelle il a un problème doit être malienne.

4. Comment saisir le Médiateur de la République ?

Un usager ne peut saisir le Médiateur de la République que sous certaines conditions.

Tout d'abord, avant de s'adresser au Médiateur de la République, il doit obligatoirement avoir effectué une première démarche auprès d'une administration ou un organisme investi d'une mission de service public en vue de comprendre sa position, contester la décision prise et constater le cas échéant que le désaccord est profond (art.9, al.2).

Ensuite la saisine du Médiateur de la République doit se faire par écrit (art.9, al.1er). A la différence du Médiateur français, la saisine du Médiateur malien est directe. Le réclamant n'a pas besoin d'un intermédiaire. Il doit seulement constituer un dossier complet, comportant un exposé clair du problème ainsi que toutes les pièces nécessaires. Le dossier ainsi constitué est déposé au Secrétariat du Médiateur de la République.

Il est à noter que le recours au Médiateur de la République est gratuit.

5. Comment le Médiateur de la République traite les réclamations ?

Le Médiateur de la République règle au cas par cas les réclamations qui lui sont soumises. En effet, chaque affaire étant différente, chacune reçoit un traitement particulier.

Après avoir vérifié que l'affaire est recevable et relève effectivement de sa compétence, le Médiateur procède à un examen approfondi du dossier.

Lorsque la réclamation lui paraît justifiée, le Médiateur de la République engage alors avec l'administration en cause une négociation pour trouver une solution amiable.
Si la réponse de l'administration ne lui paraît pas suffisante, le Médiateur de la République peut formuler des recommandations (art.11) et les rendre publiques, notamment dans un rapport annuel remis au Président de la République et au Président de l'Assemblée Nationale (art.17).

Dans leur application, certaines des dispositions législatives ou réglementaires peuvent créer des situations inéquitables. Pour y remédier, le Médiateur de la République peut suggérer aux pouvoirs publics une reforme de ces textes afin d'éviter que ces situations ne perdurent. (article 11, al.2). Le Médiateur de la République développe ainsi une action de prévention des conflits.

A titre exceptionnel, le Médiateur de la République a la faculté de demander à une administration de revenir sur sa décision quand celle-ci, bien que parfaitement conforme à la réglementation en vigueur, entraîne des conséquences qu'il estime insupportables ou inéquitables pour le réclamant. Il adresse alors à l'administration une réclamation en équité.

6. Les moyens humains et financiers :

Le Médiateur de la République peut se faire assister librement par des collaborateurs nommés parmi les magistrats et les agents civils

et militaires en activité dans la fonction publique. Ils cessent leurs fonctions en même temps que le Médiateur.

Les crédits nécessaires à l'accomplissement de la mission du Médiateur sont directement inscrits au budget d'Etat. Il a même été instruit au Ministre des Finances de constituer un dépôt à vue au profit du Médiateur de la République.

Conclusion :

- Monsieur le Ministre d'Etat pour la Réforme Administrative du Liban ;
- Chers collègues Médiateurs et Ombudsmans , Mesdames et Messieurs ;

En espérant que cette modeste contribution de la jeune institution malienne que je représente aidera à la création de son homologue du Liban, je vous renouvelle mon engagement solennel à œuvrer inlassablement pour le renforcement des liens de coopération et de solidarité entre nos institutions et nos pays.

Je vous remercie.

The Contribution of the Hungarian Ombudsman to the international seminar on the establishment of the ombudsman in Lebanon

Dear Mr. Fouad el-Saad,
Ladies and Gentlemen,

I would like to thank you, on behalf of the Hungarian Ombudsman, Mr Barnabás Lenkovics for the opportunity to participate at this conference, and to kindly address the participants.

In my presentation I am going to introduce you the legal framework, the background of the establishment, and the work experience of the Hungarian Ombudsman.

As you can find attached to the written version of the presentation the text of the law on the ombudsman, instead of introducing it below I would rather try to share with you the Hungarian Ombudsman's day-to-day work experience.

I. In order to establish the new institution of the ombudsman in Hungary there were **certain issues to be clarified.**

1. the necessity of the institution of the ombudsman,
2. the special nature of the institition,
3. the person of the ombudsman,
4. and the framework of his work.

1. As regards the necessity it is useful to recall that among the group of thc former socialist countries, beside Poland, it was Hungary where the democratic transition and the establishment of the democratic institutions have started the earliest. Therefore already in 1989 the amendment of the constitution (Act XXXI) introduced the Constitutional Court, the State Audit Office and the institution of the ombudsman. The wording of the amendment mentioned a Parliamentary Commissioner for Civil Rights and a Parliamentary Commissioner for the Rights of National and Ethnic Minorities; however, it also ruled that the Parliament may elect other ombudsmen for the protection of particular constitutional rights.
After having set up the legal framework, the institution of the ombudsman, there was an ongoing professional and political debate on its real need. According to some views, the future Constitutional Court's work was enough guarantee for the protection of fundamental human and civil rights and the ombudsman would have only uselessly doubled its work. However, others opted successfully for the establishment of both drawing a clear-cut distinction between the jurisdiction of the two

institutions.

2. As far as the nature of the institution is concerned it was laid down in the Constitution, in the Law on the Ombudsmen and in special acts related to the procedures of the data protection ombudsman (Act LXIII of 1992) and of the ombudsman for minorities (Act LXXVII of 1993).

a) The constitution and the Law on the Ombudsman states that anybody may apply to the ombudsmen if in their judgement they suffered injury in connection with their constitutional rights. The ombudsman's main task is to conduct or to have a thorough examination conducted of the alleged constitutional infringements and to take individual or universal measures in order to remedy them.

b) The ombudsman for minorities proceed in cases of violation of national and ethnic minority rights (mainly cases related to discrimination), and the data protection ombudsman who can examine apart from the authorities, the media and even the representatives of the private sector.

As a result of political and professional debates, the Law on the Ombudsmen, which defines the legal status and the detailed procedures of the ombudsmen, was passed in 1993, only four years after the amendment of the constitution (Act LIX). Empowered by the Law and the amended constitution, after reaching a consensus as to the persons of the ombudsmen, the Parliament elected the Ombudsman for the Fundamental Human and Civil Rights (hereafter abbreviated as: ombudsman), his general deputy (hereafter as: general deputy), the Ombudsman for the Rights of National and Ethnic Minorities (hereafter as: ombudsman for minorities), and the Ombudsman for the Protection of Personal Data and ont he Publicity od data of Public Interest (hereafter as: data protection ombudsman) in 1995. The four elected ombudsmen proceed independently but with the administration and the preparatory work of a common Office.

3. According to the Law on the Ombudsmen, after taking into consideration the preferences of the political parties, it is the President of the Republic that makes a proposal for the **persons** of the ombudsmen and the Parliament elects them with the two thirds of the votes of the Members of the Parliament for six years. The ombudspersons may once be reelected. The mandate of the ombudsman is incompatible with any other state, governmental or political office or mandate. It is again the two thirds of the votes of the Members of the Parliament that can remove

the ombudspersons from their office in cases of conflict of interests, if the ombudsman is not able to meet his duties resulting form his mandate or becomes unworthy of the office.

4. Both the Constitution and the Law on the Ombudsmen provide the **frame of the work** of the ombudsmen and empower them to set up their office and to lay down their rules of conduct. Since neither the Constitution nor the Law on the Ombudsmen rule the ombudsman's procedures in details, they are shaped by the ombudsmen themselves. In some instances the lack of the above mentioned rules have lead to uncertainties about the ombudsman's examining competence vis-a-vis the attorney office or the Parliament's non-legislative activity. (The problems concerned were solved by the decisions of the Constitutional Court and the amendment of the Law on the ombudsmen in 2001.)

II. The **Hungarian Ombudsman** needs to meet the following serious professional requirements: he shall be a lawyer with outstanding theoretical knowledge, have considerable experience in the field of constitutional rights, and must be highly respected. The main task of the Hungarian Ombudsman is the examination of the complaints, or acting ex officio, against the so–called "mal-administration" (incorrectly operating public administration) of the public authorities, but he may also examine the organs performing public service. After a thorough examination the ombudsman may come to the conclusion that an "abuse" concerning constitutional rights exists. However, neither the Constitution nor the Law on the Ombudsmen defines the meaning of the word "abuse", it is the ombudsman himself that interprets it in different ways. In case of a recognized abuse certain remedial measures are to be taken but unfortunately there are relatively weak means at the ombudsman's disposal since his decisions are not legally binding. The ombudsman's strength is in negotiating, convincing and publicizing the cases in the media or by turning to the Parliament (either in individual cases or in the framework of the annual report to the Parliament).

The ombudsman's procedure does not have a suspending effect, and his decisions are not legally binding. Nevertheless, the authorities concerned are obliged to answer to his requests and recommendations and to provide the required documentations. State secrets and the service secrets may not impede the ombudsman in the examination, but the provisions relating to secrecy shall be binding for him as well. The ombudsman is under the obligation of secrecy even after the termination of his mandate. The ombudsman may also have access to the areas serving the operation

of the armed and police forces. However, the way of access is regulated by the minister having competence thereto.

More than six years of experience shows that most of the authorities agreed with the initiatives and the recommendations of the ombudsman with significant number of measures taken. It has also happened several times that the ombudsman has amended or withdrawn his original recommendation aknowledging from the reply of the authority concerned that the abuse can be remedied in a different, more effective way.

If the constitutional abuse is the result of the proper application of the law, the ombudsman may propose to the organ entitled to legislation (can be the local government, but the Parliament as well) the amendement, repeal, or issue of a legal rule. So far two thirds of the 853 proposals of this nature made by the ombudsman and his genaral deputy have been successful.

The limits of the procedure of the ombudsman are declared by the Law on the Ombudsmen. According to its paragraphs: if a non-appealable resolution has been in the matter, the ombudsman can be applied to with a petition within one year of the communication thereof, and there is no place for the ombudsman's examination in pending or terminated trial cases, or in cases dated before the amendement of the constitution (Act XXXI of 1989), or in those that are not matters of proceedings of authorities or organs serving public service. Another condition of the ombudsman's procedure is that the plaintiff must have exhausted the available possibilities of the administrative legal remedies or that no legal remedy is ensured for him.

To the request of the plaintiff his name and personal data must be handled in strict confidence, but the ombudsman may also reject anonymous complaints.
The Law on the Ombudsmen has empowered the ombudsmen to establish their office. It only ruled that it must operate under the head of the office that is appointed and employed by the ombudsmen. In practice, the office deals with the administrative and preparatory part of the work and there is also a mainly lawyer consultant group that conducts the examinations and drafts the recommendations and the initiatives.

As the relationship between the ombudsmen is not clarified in the Law on the Ombudsmen, they make joint decisions in issues concerning the office.

Let me present you some figures about the workload and the filed and completed examinations. Since the establishement of the institution till the 31st of December 2001 out of the recieved 56228 complaints, 5218 have been addressed to the data protection ombudsman and 2510 to the ombudsman for minorities. There are 130 people working for the four ombudsmen in average.

II. There are some other questions worth to talk about

1. Handling the complaints,
2. Dealing with other administrations and public authorities, especially with judiciary authorities
3. Solving the citizens' complaints and their conflicts with the administrations

1. Handling the complaints

The procedure of the ombudsman is open to anybody: Hungarian citizens, foreigners, refugees and homeless people. There are no language or other restrictions. The complaint is handled on its merits by applying the Hungarian law, taking into consideration the international instruments as well. The complainant may submit the application in writing, but it may be presented orally in the office of the ombudsmen as well.

Firstly the complaint is examined whether it falls within the jurisdiction of the ombudsman, and if not (e.g. pending before or terminated at court) the plaintiff is informed on and advised as to where to turn to, or the other possibilities available. In case of incomplete applications and depending on the type of deficiency, the ombudsman may ask the complainant to detail the complaint, or request supplementary material from the applicant. In order to fulfill the requirement of the principle of „audiatur et altera pars", the ombudsman obtains the view of the other side as well and conducts enquiries at the official body to which the application relates. In case of uncertainty the ombudsman may require the contribution of other authorities to express their views on the issue in question. As a result of the work of the ombudsman, that is focused on a professional and independent negotiation, a fair relationship has been established with the authorities; consequently a high number of the recommendations have been accepted.

2. Dealing with other administrations and public authorities, especially with judiciary authorities

In Hungary it is the **Constitutional Court,** which is empowered to repeal and to oblige the organ entitled to legislation to issue a new legal rule in case of unconstitutionality of a law (with the exception of the Constitution). The ombudsman may only propose to the organ entitled to legislation to amend, repeal or issue a legal rule if, according to his standpoint, the abuse relating to constitution rights is the result of the superfluous or not unambiguous provision of a legal rule. The decisions of the Constitutional Court are compulsory erga omnes, even though they determine only the constitutional or unconstitutional nature of the legal rule. The ombudsmen's examinations reveal the unconstitutionality of the application of the same legal rules. The ombudsman may also make a motion to the Constitutional Court for a more profound examination of the legal rule concerned. Furthermore, the Constitutional Court's work differs from and at the same time completes the ombudsmen's work in the following aspect. While the Constitutional Court examines e.g. each local government decree one by one as a legal rule, the ombudsman, taking into consideration the decisions of the Constitutional Court, can call on several local governments having identical or similar decrees to make the necessary amendments.

In the Hungarian legal system there is no administrative judiciary, and the procedures of the **judicial authorities do not** fall within the jurisdiction of the ombudsmen. However, the jurisprudence of the Supreme Court and that of the other courts is taken into consideration during the examinations.

The draft laws made as a result of the recommendations are sent to the ombudsman to express opinion, although he is not obliged to do so. (The data protection ombudsman expresses opinion ex officio on draft laws related to data management, and the ombudsman for minorities on laws related minority rights.)

Owing to the changes in the jurisdiction and the role undergoing at both institutions, the ombudsman's relationship with the attorney offices and the State Audit Office is of special nature. The above mentioned changes have resulted in the decrease of the examining competence of the ombudsman concerning these institutions.

3. Solving the citizens' complaints and their conflicts with the

administrations

In some instances the complaint is solved by simply telephoning the authority concerned and in most cases the misunderstandings are clarified at latest by the end of the exchange of views. However, it also happens that the organ sticks to its bad practice and the ombudsman has to address his proposal to the head of the organ in a report. If the organ requested does not agree with the initiative, it shall inform the ombudsman within thirty days, and the ombudsman may make a proposal for remedy to the supervisory organ of the organ having brought about the abuse. If the supervisory organ does not agree with the contents of the proposal, the ombudsman may submit the case to the Parliament and may either demand for individual measures to be taken or/and initiate amendments of legal rules.

Another way of solving conflicts is mediation, with the meaning of mediating between the two parties in order to avoid possible lawsuits.

The ombudsman tries to stay in regular contact with the authorities, therefore he participates in conferences and discussions in order to exchange information and opinions with the aim of promoting a more effective administration.

Over the past few years most of the citizens have learned how to „use" the help of the ombudsman and turn to this institution with confidence in case of conflicts with the administration; at the same time the authorities themselves see the ombudsman as a support in their work rather than a supervisory body. The ombudsman's efforts during the first term are said to have established the need of this institution both in the view of the citizens and the authorities. According to the statistics, the majority of the citizens do know the institution of the ombudsman and the way he can provide help.

The Hungarian Ombudsmen have to make an annual report to the Parliament on the experience of their activities, which can be completed by their answering the questions raised at the parliamentary hearings.The members of the Parliament approve the annual report by voting; so far the Parliament the share of votes has been of 95% every year.

In the recent years, apart from the ombudsmen some other similar mediator institutions have been established as part of the administrative or the governmental organs, e.g. the commissioner of educational rights

appointed by the Minister of Education (called educational ombudsman in the media), and hospitals employ commissioners for the rights to health (called ombudsman for health rights).

The long term existence, the future and the work of the institution of the ombudsman mainly depends on the will of the Parliament (it might become a political issue). However, it must be mentioned that there are efforts made to elect some other, special ombudsmen such as an ombudsman for environmental issues, or an ombudsman for the rights of people living abroad with Hungarian nationality.

The Hungarian Ombudsman's goals accord with the ombudsmen's aims in other countries that are confirmed and maintained via regular international contacts.

III. Comments on the Draft law on the Lebanese Ombudsman

I would like to start by saying that my comment might include some misunderstandings caused by the differencies between the Hungarian and the Lebanese administrative and legal system as well as the uncertainties resulting from the English translation.

In terms of its nature and work, the institution to be set up in Lebanon seems identical or at least very similar to the ombudsman institutions established anywhere in the world.

Nevertheless, compared with the similar Hungarian institution, the main difference is that while the Hungarian Ombudsman is proposed by the President of the Republic and elected by the Parliament and has the obligation to report to it (and can even examine the acts of the government), in the planned Lebanese institution the ombudsman is appointed by the Council of Ministers and submits his report to the President of the Republic, the House Speaker and the Prime Minister.

Furthermore, in the Hungarian Ombudsman's opinion it should be reconsidered the way of selecting from amongst the five candidates proposed by the Parliament.

The Hungarian Ombudsman would also like to know who the Ombudsman's representatives in the Muhafazats are and what their competences might be.

IV. To conclude, let me convey the Hungarian Ombudsman's hope and firm belief that relying on the experiences gained at the present conference the Lebanese authorities will be able to establish the institution of the ombudsman in the near future. The Hungarian Ombudsman believes that the future ombudsman will succeed in overcoming the potential difficulties and problems and will contribute to promoting within the sphere of administration the culture of citizenship and of individual human rights.

The Hungarian Ombudsman assures the future Lebanese Ombudsman of his full support and he is convinced that the achievements of the present conference will mark the beginning of a fruitful cooperation and long-lasting relationship between the two institutions.

Thank you for your kind attention.

Act LIX of 1993
On the Ombudsman (Parliamentary Commissioner) for Civil Rights*

For the Execution of Article 32/B of the Constitution Parliament passes the following Act:

Tasks of the Ombudsman for Civil Rights

Section 1 (1) It shall be the duty of the Ombudsman for Civil Rights (hereinafter "Ombudsman") to investigate or to have investigated any abuses of constitutional rights, he has become aware of, and to initiate general or particular measures for the redress thereof (paragraph (1) of Article 32/B of the Constitution.)

Election of the Ombudsman, of the General Deputy Ombudsman and of the Special Ombudsman

Section 2 (1) In order to ensure the protection of constitutional rights Parliament shall elect the ombudsman and his general deputy as commissioners responsible exclusively to Parliament.

(2) For the protection of certain constitutional rights Parliament may elect also a special ombudsman. The special ombudsman has right of taking independent measures in his field

(3) If the general deputy of the ombudsman is prevented, or his office is vacant, the ombudsman shall be deputized for by the special ombudsman, or if there are several ones, by the special ombudsman appointed by the ombudsman.

(4) If the special ombudsman is prevented, his sphere of authority shall be exercised by the ombudsman or by the general deputy of the ombudsman.

(5) Where this Act mentions ombudsman, by this – failing any provision to the contrary effect – the general deputy of the ombudsman and the special ombudsman shall be understood as well.

Section 3 (1) Any Hungarian citizen graduated from the faculty of law of a university, with clean criminal record may be elected as ombudsman, who meets the requirements prescribed in subsections (2) and (3).

(2) Parliament shall elect the ombudsman from those lawyers with outstanding theoretical knowledge or from lawyers having at least ten years professional practice who have considerable experience in the conduction, supervision or scientific theory of the conduction of proceedings concerning constitutional rights, and who are highly respected.

(3) Anyone who during the four years preceding the proposal for election has been a Member of Parliament, President of the Republic, member of the Constitutional Court, member of the Government, secretary of state, deputy secretary of state, member of the local government council, commissioner of the Republic, notary, public prosecutor, professional member of the armed forces, the police and the police organs, or the employee of a party may not be elected ombudsman.

Section 4 (1) The President of the Republic shall make a proposal for the person of the ombudsman.

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* This Act was passed by Parliament on 1 June 1993.

(2) The person (persons) proposed shall be heard by the Committee on Constitution, Legislation and Justice, as well as the Committee on Human Rights, Minorities and Religious Affairs, and in the case of a proposal made for a special ombudsman, also by the competent committee of Parliament, with the authority of being consulted.
(3) The election of the ombudsman shall require the votes of two thirds of the Members of Parliament.
(4) If Parliament does not elect the person proposed, the President of the Republic shall make a new proposal within thirty days.
(5) The ombudsman shall be elected for six years. The ombudsman may once be reelected.
(6) The new ombudsman shall be elected within three months of the expiration of the appointment of his predecessor. If the mandate of Parliament ceased to exist during this period, the election shall be held within one month of the constituent meeting of the newly elected Parliament.

Conflict of Interests

Section 5 (1) The mandate of ombudsman shall be incompatible with any other state, local government, social or political office or mandate.
(2) The ombudsman may not engage in any other gainful employment, and he may not accept any remuneration for his other activities – except for scientific, educational, artistic activities, activities falling under the protection of copyright, or proof-reader's and editor's activities.
(3) The ombudsman may not be senior official of an economic association, member of the supervisory board thereof, furthermore, the member obliged to personal cooperation of an economic association.
(4) Beyond the tasks resulting from his sphere of authority, the ombudsman may not pursue any political activity, he may not make any political declarations.
Section 6 (1) If a conflict of interests defined in Section 5 exists concerning the person elected as ombudsman, he shall terminate that within ten days of his election. Until this has happened, the person elected ombudsman may not exercise his sphere of authority resulting from this office.
(2) If the ombudsman does not meet his obligation defined in subsection (1) until the expiration of the prescribed time limit, upon the motion of any Member of Parliament, Parliament shall decide on the matter of the conflict of interests after having consulted its committee dealing with immunity and conflict of interests matters. For pronouncing the conflict of interests, the votes of two thirds of the Members of Parliament shall be required.
(3) If within four years after the election of the ombudsman it is established that against him a reason for conflict of interests defined in subsection (3) of Section 3 exists, subsections (1) and (2) shall be governing mutatis mutandis.

Legal Status of Ombudsman

Section 7 When entering his office, the ombudsman shall take an oath before Parliament.
Section 8 In the course of his proceedings, the ombudsman shall be independent, he shall take his measures exclusively on the basis of the Constitution and of the law.
Section 9 (1) The basic remuneration of the ombudsman and of the special ombudsman shall be the same as the basic remuneration of the ministers, while the basic remuneration of the general deputy of the ombudsman shall be identical with the

amount of the basic remuneration fixed in accordance with Act XXIII of 1992 on the Legal Status of Civil Servants for the secretary of state. The senior official's supplementary remuneration shall be in the case of the ombudsman and the special ombudsman 80 per cent of the basic remuneration, while in case of the general deputy of the ombudsman, it shall be 30 per cent of the basic remuneration. A remuneration supplement in the amount corresponding to 15 per cent of their basic remuneration shall be due to the ombudsman, to the general deputy of the ombudsman, and to the special ombudsman.

(2) The ombudsman shall be entitled to forty working days leave per calendar year.

Section 10 (1) As to the social insurance status of the ombudsman, the rules relating to those in employment shall be governing with the proviso that his remuneration shall be the income serving as basis for the social insurance and pension contributions. The payment of contribution and the accounting thereof, as well as the registration and data supply shall be regulated in an agreement concluded by the office of the ombudsman with the General Directorate of National Social Insurance.

(2) The duration of the mandate of the ombudsman shall be regarded as time spent in employment and as service time counting towards pension.

Immunity

Section 11 The ombudsman and the ex-ombudsman shall not be held responsible in court or before any other authority for any fact or opinion communicated by him in the course of the exercise of his mandate. This immunity shall not extend to slander, libel or to the civil law responsibility of the ombudsman.

Section 12 (1) The ombudsman may be taken into custody only if cought in the act, and criminal proceedings or contravention proceedings may be instituted or continued against him, furthermore, coercive measures of criminal proceedings may be applied against him only with the previous consent of Parliament.

(2) The motion for the suspension of immunity shall be submitted to the Speaker of Parliament by the chief public prosecutor before the submission of the bill of indictment, thereafter or in a case with private prosecution by the court. The motion shall be submitted without delay if the ombudsman was cought in the act.

(3) In a case of contravention the motion for the suspension of immunity shall be submitted by the chief public prosecutor to the Speaker of Parliament on the basis of the request of the authority of contraventions.

(4) The motion for the suspension of immunity shall be transferred without delay for investigation by the Speaker of Parliament to the committee dealing with immunity and conflicts of interests matters of Parliament, and he shall report on this on the following session day of Parliament.

(5) The committee dealing with immunity and conflict of interests matters shall submit its proposal to decision within thirty days at the latest to Parliament.

(6) Parliament shall decide in the matter without debate, but the ombudsman shall be entitled to make known his position. For the decision in the matter of the suspension of immunity the votes of two thirds of the Members of Parliament shell be required.

(7) The decision made on the subject-matter of the suspension of immunity shall be related only to that case for which the motion has been submitted.

(8) If Parliament suspends the immunity of the ombudsman, it shall simultaneously suspend also his right to provide for his tasks resulting from this office.

Section 13 (1) The ombudsman may not waive his immunity – with the exception of proceedings for contravention. This right of his shall be respected by everyone.

(2) The ombudsman shall report without delay to the Speaker of Parliament any injury to his right of immunity. The Speaker of Parliament shall take the necessary measures without delay.

Section 14 The ombudsman shall be entitled to immunity from the day of his election. The person proposed for the office of ombudsman shall be regarded from the point of view of immunity as if he were ombudsman.

Termination of the Mandate of Ombudsman

Section 15 (1) The mandate of ombudsman shall terminate by:

a) the expiry of the term of mandate;

b) death;

c) resignation;

d) the declaration of conflict of interests;

e) discharge;

f) removal from office.

(2) In the cases of paragraphs a) to c) of subsection (1) the termination of the mandate of the ombudsman shall be established and pronounced by the Speaker of Parliament. In the cases of paragraphs d) to f) of subsection (1) Parliament shall decide in the issue of the termination of the mandate. The votes of two thirds of the Members of Parliament shall be necessary for pronouncing the termination of the mandate.

(3) Resignation shall be communicated in writing to the Speaker of Parliament who shall be obliged to accept it.

(4) If in connection with the person of the ombudsman in the course of his activity a conflict of interests arises, he shall terminate it. Parliament shall pronounce the existence of conflict of interests by the votes of two thirds of its Members in a resolution. If the ombudsman does not terminate the conflict of interests within ten days of passing this resolution, Parliament shall – upon the motion of any Member of Parliament – establish in a resolution the termination of the mandate of the ombudsman. From the date of passing the parliamentary resolution establishing the conflict of interests until the passing of the parliamentary resolution pronouncing the termination of the mandate due to this reason the ombudsman may not exercise his authority resulting from this office.

(5) The mandate may terminate by discharge if the ombudsman is not able to meet his duties resulting from his mandate for more than ninety days through no fault of his own. Discharge may be moved for by any Member of Parliament. In case of discharge the ombudsman shall be entitled to three months special remuneration.

(6) The mandate may terminate by removal from office if the ombudsman does not meet his duties resulting from his mandate through his own fault, or commits a criminal offence established in a non-appealable judgment or becomes unworthy of his office in any other way. The removal from office may be moved for by the committee dealing with immunity and conflicts of interests matters of Parliament after examination of the reasons giving rise to it.

(7) If the mandate of the ombudsman terminates on the basis of paragraph a) of subsection (1), the new ombudsman shall be elected in accordance with the provisions of subsection (6) of Section 4. In the cases of termination of the mandate regulated in paragraphs b) to f) of subsection (1) hereof the new ombudsman shall be elected within two months.

Proceedings and Measures of the Ombudsman

Section 16 (1) Anybody may apply to the ombudsman if in his judgment he suffered injury in consequence of the proceedings of any authority (subsection (1) of Section 29) or organ performing public service (hereinafter together "authority"), or its decision (measure) taken in the course of the proceedings and/or of the omission of the measure of the authority in connection with his constitutional rights, or if a direct danger thereof exists, provided that he has exhausted the available possibilities of administrative legal remedies or that no legal remedy is ensured for him.
(2) In order to terminate an abuse connected with the constitutional rights the ombudsman may act also ex officio in case of the existence of the conditions indicated in subsection (1).
(3) Any petition submitted to the ombudsman shall be free of duty.
(4) If the person submitting the petition so requests, his identity may not be revealed by the ombudsman.
Section 17 (1) With the exception contained in subsection (2) the ombudsman shall examine the petition submitted to him. He shall select himself the measure deemed to be purposeful within the framework of this Act.
(2) If in the judgment of the ombudsman the abuse included in the petition is of small importance, the ombudsman shall not be obliged to investigate the petition. He shall notify thereof the person having submitted the petition.
(3) The right of investigation of the ombudsman shall extend to proceedings instituted after the coming into force of Act XXXI of 1989.
(4) If a non-appealable resolution has been in the matter, the ombudsman can be applied to with a petition within one year of the communication thereof.
Section 18 (1) In connection with the non-appealably terminated matters, the ombudsman shall be entitled to control any authority, and in the course thereof – failing any provision to the contrary of a separate Act – he may have access to the localities of the authority. In the interest of exercising his rights, the ombudsman may have access to the areas serving the operation of the armed forces, of the services of national security, of the police and policing organs in the way regulated by the minister having competence thereto. This regulation may not impede the control in effect.
(2) The ombudsman may request data and information of any authority in connection with the proceedings conducted by it or in connection with the omission of proceedings, furthermore, he may inspect the documents, he may request the sending thereof, or if this is not possible, the preparation of copies thereof.
(3) The ombudsman may hear the official in charge of the matter investigated by him or any employee of the organ conducting the proceedings, and may request the conducting of an inquiry by the head of the organ concerned or the head of its supervisory organ or the head of the organ otherwise entitled to the conduction thereof by a legal rule.
(4) In a matter investigated by him the ombudsman may request a written explanation, declaration or opinion of any organ or an employee thereof.
(5) State secrets and the service secrets may not impede the ombudsman in the exercise of his rights regulated in this Section, but the provisions relating to secrecy shall be binding for him as well. The ombudsman shall be under the obligation of secrecy even after the termination of his mandate.
(6) The ombudsman may exercise his right to access to documents of the armed forces, the services of national security and of the police in respect of documents

containing state or service secrets in accordance with the limitations laid down in this Act.

(7) In the course of his proceedings concerning the police the ombudsman may inspect documents containing secrets the becoming aware of which would endanger the success of law enforcement on the basis of a permit of the national head of the police. If the national head of police does not permit inspection, the ombudsman may apply to the Minister of the Interior.

(8) The Schedule to the Act shall contain those documents of the armed forces and the services of national security which the ombudsman may not inspect. If, however, the ombudsman deems necessary the examination of the documents enlisted in the Schedule in order to completely unveil the matter, he may apply to the competent Minister, or in the case of the services of national security to the director general heading the service for the examination thereof. The persons requested shall be required to conduct the inquiry desired by the ombudsman (or to have it conducted), and to inform the ombudsman of the result thereof within fifteen days.

(9) In the course of the hearing in accordance with subsection (3) the person may refuse to answer or to make a declaration in accordance with subsection (4) if

a) the person affected by the petition forming basis of the proceedings of the ombudsman is his relative in accordance with subsection (2) of Section 13 of the Code of Civil Procedure, or his common-law spouse;

b) in the course of answering or making the declaration he accuses his relative in accordance with subsection (2) of Section 13 of the Code of Civil Procedure or his common-law spouse of the perpetration of a criminal offence, in the question relating thereto.

Section 19 (1) The ombudsman shall notify the petitioner of the investigation conducted and of his eventual measures.

(2) The ombudsman shall reject evidently unfounded petition, as well as petitions submitted repeatedly and containing no new fact or data on the merits, and he may reject petitions not submitted by the party entitled to do so, or anonymously submitted ones. The rejection shall be justified in all cases.

(3) The ombudsman shall transfer the petition relating to a matter not within his competence to the competent organ, with the simultaneous notification of the petitioner.

Section 20 (1) If the ombudsman comes, on the basis of the investigation completed, to the conclusion that an abuse concerning constitutional rights exists, he may make a proposal for remedy to the supervisory organ of the organ having brought about the abuse – with the simultaneous information of the organ concerned. The supervisory organ shall notify the ombudsman within thirty days of receipt of the proposal of his standpoint on the merits formed in connection with the proposal and/or of the measures taken.

(2) If the supervisory organ did not agree with the contents of the proposal, the ombudsman shall inform the supervisory organ within fifteen days of receipt of the communication relating thereto of the maintenance, amendment or withdrawal of the proposal.

(3) If the ombudsman amends the proposal, it shall be regarded as a new proposal from the point of view of the measures to be taken.

(4) In the case of a minister, the Government shall be understood as supervisory organ.

Section 21 (1) If in accordance with the available data the organ bringing about the abuse in connection with constitutional rights is able to terminate this abuse within its own competence, the ombudsman may initiate the remedy of the abuse with the head of the organ concerned. Such initiative may also be made directly (by telephone, verbally etc.); in such case the date, way and essence of the initiative shall be laid down on the document on file.
(2) The organ concerned shall inform the ombudsman within thirty days of receipt of the initiative of his standpoint on the merits of the initiative and/or of the measure taken.
(3) If the organ requested does not agree with the initiative, he shall present it together with its opinion to its supervisory organ within the deadline indicated in subsection (2). The supervisory organ shall notify the ombudsman within thirty days of receipt of the presentation of its standpoint, and/or of the measures taken.
(4) Otherwise, the provisions of subsections (1) to (3) of Section 20 shall governing mutatis mutandis for the further proceedings of the supervisory organ and of the ombudsman, with the proviso that the ombudsman shall notify the supervisory organ whether he maintains the initiative in an unchanged or amended form as a proposal.
Section 22 The ombudsman may make a motion to the Constitutional Court for
a) the ex post facts examination of the unconstitutionality of a legal rule or any other legal instrument of state direction;
b) the examination of whether a legal rule or any other legal instrument of state direction conflicts with an international agreement;
c) the judgement of a constitutional complaint submitted for the infringement of rights ensured in the Constitution;
d) the termination of unconstitutionality manifesting itself in an omission;
e) the interpretation of the provisions of the Constitution.
Section 23 (1) In accordance with provisions laid down in a separate Act, the ombudsman may initiate with the competent public prosecutor the lodging of a public prosecutor's protest.
(2) The competent public prosecutor shall notify the ombudsman within sixty days of his standpoint concerning the lodging of the public prosecutor's protest, and of his eventual measures.
Section 24 If in the course of his proceedings the ombudsman perceives the well-founded suspicion of the perpetration of a contravention or of a disciplinary delict, he may initiate proceedings directed to the calling to account with the competent organ, and in the case of the perception of a criminal offence he shall initiate the same. In default of any provision of law to the contrary the organ requested shall inform the ombudsman within sixty days of his standpoint regarding the institution of the proceedings, and of the result of the proceedings within thirty days of the termination thereof.
Section 25 If according to the standpoint of the ombudsman an abuse relating to constitution rights is the result of the superfluous, not unambiguous provision of a legal rule or of some other legal instrument of state direction, or that of the absence (insufficiency) of the legal regulation of the given issue, in order to avoid the abuse in the future he may propose to the organ entitled to legislation or to the issue of some other legal instrument of state direction the amendment, repeal or issue of a legal rule (some other legal instrument of state direction). The organ requested shall notify the ombudsman of its standpoint, and/or of his eventual measures within sixty days.

Section 26 (1) If the organ requested by the ombudsman fails to form a standpoint on the merits and to take the measures corresponding to it, or if the ombudsman does not agree with the standpoint, with the measures taken, the ombudsman shall submit the case in the framework of his annual report to Parliament, and – with the exceptions laid down in subsection (2) – he may request that the case be investigated by Parliament. If according to his assessment the abuse is extraordinary grave or if it affects a larger group of citizens, he may initiate that Parliament put the debate of the given issue on its agenda already before the annual report. Parliament shall decide in the matter of putting the issue on the agenda.
(2) In the case according to subsection (1), if the ombudsman has taken the measure indicated in Section 22, or if in the case regulated in Section 25 he applied to Parliament (its Speaker), the ombudsman shall indicate his measures and the measures of the requested organ or the omission thereof in his annual report.
(3) In the case according to subsection (1), if the abuse emerged in connection with the operation of the armed forces, of the services of national security or of the police, and its disclosure would affect a state secret or service secret, the ombudsman shall submit the case together with his annual report, or – if the abuse is extraordinary grave or it affects a larger group of citizens, – prior to the annual report in a report classified as secret to the competent committee of Parliament. The committee shall decide in a sitting held in camera in the matter of putting the issue in the agenda.

Annual Report of the Ombudsman

Section 27 (1) The ombudsman shall make an annual report to Parliament on the experience of his activities – and within the framework thereof, on the situation of the protection of constitutional rights in connection with official proceedings, as well as on the reception of his initiatives, recommendations and on the result thereof. The report shall be submitted to Parliament by the end of the first quarter of the calendar year following the subject year.
(2) The report of the ombudsman shall be published in the Hungarian Official Gazette after the passing of the resolution on it by Parliament.
(3) The special ombudsman shall submit an independent report, which shall be governed by the rules of subsections (1) and (2).

The Office of Ombudsman

Section 28 (1) The tasks of administration and preparation shall be performed by the office of the ombudsman.
(2) The organizational and operational rules of the office of the ombudsman shall be established by the ombudsman.
(3) The operational costs of the ombudsman and of his office organization, as well as the number of employees thereof shall be determined in a special chapter of the state budget.
(4) The head and the employees of the office shall be appointed and dismissed by the ombudsman.
(5) The legal status of the head of the office shall be identical with that of the deputy secretary of state.

Closing Provisions

Section 29 (1) For the purposes of this Act, an authority shall be:
a) an organ fulfilling a task of state power, state administration;

b) any other organ acting in its jurisdiction of state administration;
c) the armed forces;
d) the police, the policing organ;
e) the services of national security;
f) an organ of justice – except for the courts;
g) local governments;
h) an organ deciding with binding force in legal disputes, outside of the court.
(2) This Act shall come into force on the day of its promulgation.
(3) Within four months of the coming into force of this Act, the ombudsman and his general deputy shall be elected.
(4) The provisions of subsection (3) of Section 3 shall be applied also to the Deputy Minister and to the council member.
(5) An Act may lay down rules departing from this Act for the special ombudsman.

Árpád Göncz *György Szabad*
President of the Republic Speaker of Parliament

Schedule to Act of 1993

I. In the course of his investigation affecting the armed forces, the ombudsman may not inspect:
1. Any document relating to an invention of outstanding importance from the viewpoint of national defence, serving the defence of the Republic of Hungary, to such product, defence project as well as to the development of the defence capacity, from which one can become aware of their essence.
2. The documents containing the battle order excerpt of the Hungarian Army (hereinafter: HA) including the level of corps, as well as the summarized data concerning the establishment, maintenance and dislocation of military material supplies.
3. Documents containing plans relating to the application of HA in the case of extraordinary state or emergency.
4. Documents relating to the protected command system of the state and military high leadership.
5. Documents concerning fighting value, alarming and system of informing of HA, as well as the summarized documents on readiness to mobilize on the total capability for mobilisation for war, furthermore, the summarized plans of readiness for war of the military territories, and military organizations at the same or of higher level, and the connected documents relating to the whole organization.
6. The summarized plan of the organization of communication of the Ministry of Defence (hereinafter MD) and of HA, the cypher and other documentation of the special information protection means introduced or employed.
7. The detailed budget, calculation, and development material of HA.
8. Such plans and cooperation agreements concluded with the ministries of defence and with the armies of other countries, as well as those data of military engineering, which were mutually declared state secrets by the parties.
9. Documents containing summarized data relating to the means and operation of strategic intelligence, as well as to HA counter intelligence.
II. In the course of his proceedings concerning the services of national security, the ombudsman may not inspect:

1. The documents containing the organizational and operational rules of the services of national security.
2. The security documents connected to the objects and staff of the services of national security.
3. The personnel registers and other personnel materials of the services of national security, except when this is requested in writing by the person concerned.
4. Registers serving the identification of private persons cooperating with the services of national security.
5. Documents containing the technical data of the operation of means and methods applied by the services of national security for secret information gathering, or documents making possible the identification of the persons applying them.
6. Documents connected with the number, location, operation of means of computer technique, and the applied softwares.
7. Documents concerning the ciphering activities, the specialized direction and official supervision thereof.
8. Documents concerning the security document protection and technological control.
9. Documents that have come about in the course of the security protection and clearing of persons filling extremely important and confidential position or office, or nominated for such office, except when this is requested in writing by the person concerned.
10. All documents the becoming aware of which would make possible the identification of a provider of information.
11. The international agreements of the services of national security.
12. All documents the becoming aware of which would infringe an obligation undertaken in respect of the foreign partner services by the services of national security.

INTERVENTION
DE Mme. Alifa FAROUK
MEDIATEUR ADMINISTRATIF DE LA REPUBLIQUE TUNISIENNE

Excellence, chers Collègues ;
Mesdames et Messieurs ;

C'est un grand honneur et un énorme plaisir qui m'échoit de participer à votre auguste assemblée, et de présenter l'experience d'un Médiateur Directeur au Conseil d'Administration de l'I.O.I (Institut International de l'Ombudsman) et de l'A.O.M.F (Association des Ombudsmans et Médiateurs de la Francophonie), l'experience d'un Médiateur d'un pays arabe et africain : La Tunisie.

Mais permettez moi tout d'abord de présenter mes vifs remerciements à son Excellence Monsieur Fouad el-Saad Ministre de la Réforme Administrative d'avoir bien voulu m'inviter à cette prestigieuse Conférence, à laquelle je souhaite une réussite totale qui puisse aboutir à la création du Médiateur de la République au Liban.

Je suis d'autant plus honorée que lors de mon dernier séjour en juillet 2001 à Beyrouth, toujours sur invitation de son Excellence, le Ministre Fouad el-Saad, l'Institution du Médiateur Administratif en Tunisie n'était pas encore dôtée de mécanismes juridiques qui consolident dans le texte son indépendance effective et qui délimitent la durée de son mandat.

Ainsi la loi 2002-21 a été promulguée le 16 février 2002 complétant la loi 93-51 en date du 3 mai 1993 portant création du Médiateur Administratif qui stipule expressément que "Le Médiateur Administratif ne reçoit pas d'instructions d'aucune autorité publique durant l'exercice de ses fonctions. le Médiateur est nommé par décret présidentiel pour une durée de 5 ans renouvelables.

- Le Médiateur Administratif en Tunisie : Historique

Le 7 novembre 1992, à l'occasion de la célébration du cinquième anniversaire de l'accession du Président **Zine El Abidine Ben Ali** à la Magistrature suprême du pays conformément aux dispositions de l'article 57 de la Constitution Tunisienne, le Président de la République, dressant le bilan des cinq premières années du Changement et des différentes réalisations notamment en matière de démocratisation, de promotion des droits de l'homme et de réforme globale de l'Administration, a annoncé tout un programme pour la

consolidation des acquis, comprenant notamment la création de la fonction du Médiateur Administratif.

le 10 décembre 1992, le Président de la République a signé le décret n° 92-2143 officialisant l'institution de cette fonction. C'était à l'occasion de la commémoration de la Déclaration Universelle des Droits de l'Homme.

Symbolique, le choix de ces deux dates est révélateur de l'importance attachée tant à la fonction de médiation qu'aux objectifs qui lui sont assignés.

Un peu plus tard la loi n° 93-51 du 3 mai 1993 a doté le Médiateur d'une structure adéquate pour l'exercice de ses prérogatives et pour assurer à son action l'efficacité et l'efficience recherchées.

Le 7 février 2000, le Médiateur Administratif s'est doté de structures régionales en vertu de la loi 2000-16 du 7 février 2000 complétant la loi 93-51 du 3 mai 1993 en instituant la fonction de représentants régionaux du Médiateur et ce dans le souci du Président Ben Ali de rapprocher davantage les services administratifs du citoyen.

Le 16 février 2002, le Médiateur Administratif s'est vu rérenforcer son indépendance vis à vis de l'administration et de toute autorité publique en vertu de la loi 2002-21 précedemment citée.

S'inscrivant dans un cadre global, la création de la fonction de Médiateur a apporté, en fait, un maillon supplémentaire à la chaîne des instruments et procédures déjà mis en place pour la protection des droits des citoyens et particulièrement ceux en relation avec l'Administration.

- Le Médiateur Administratif dans le système global de protection des droits de l'homme en Tunisie.

La déclaration du 7 novembre 1987 a réservé une place de choix à la protection des droits de l'homme. Le Chef de l'Etat y a affirmé sa volonté de veiller à la bonne application de la loi de manière à bannir toute forme d'iniquité et d'injustice et d'agir en vue de restaurer le prestige de l'Etat et de mettre fin au laxisme qui a marqué les dernières années d'avant le Changement.

Pour y parvenir, divers aménagements devaient être introduits pour améliorer la performance des institutions déjà existantes et en créer de nouvelles ayant la charge de dire le droit, d'appliquer la loi ou de parer aux abus.

- Les instances juridictionnelles : deux types de juridictions sont prévues :

a - Les juridictions de droit commun : Placeés sous l'autorité de la Cour de cassation , 10 cours d'appel et 23 tribunaux d'instance et des tribunaux cantonaux avec une moyenne de 3 par gouvernorat.

b - Les juridictions administratives :

Le Conseil d'Etat formé de deux corps : le Tribunal Administratif et la Cour des comptes.

- Les organes Constitutionnels

a - Le Conseil Constitutionnel

b - Le Conseil Economique et Social

- Les Organismes Gouvernementaux des Droits de l'Homme

a - Le Comité Supérieur des Droits de l'Homme et des Libertés Fondamentales

b - Le Ministre Délégué auprès du Premier Ministre chargé des Droits de l'Homme , de la communication et des relations avec la Chambre des députés.

c - Le Conseiller auprès du Président de la République, Chargé des Droits de l'Homme.

- La Conception Tunisienne du Médiateur :

Ombudsman, Médiateur de la République, Défenseur du peuple, Protecteur du citoyen ... autant de dénominations que d'alternatives, toutes révélatrices, d'une certaine conception de la fonction voire d'une ambition de contribuer à asseoir une sorte de charte du service public.

Tout en respectant les choix des autres, motivée et confortée par des considérations de droit, de sociologie politique et des exigences de l'efficacité, la Tunisie a opté pour la Médiation terme qui ne traduit pas tout à fait la notion arabe de "Mouafek" qui serait à la fois Médiateur, Arbitre et Conciliateur.

Le terme Médiateur a été choisi par la plupart des pays francophones, la Tunisie, de son coté, a mis en place une institution typiquement tunisienne favorisant la conciliation à l'arbitrage et la sollicitation à l'injonction en jouant sur ce qui caractérise le plus le peuple tunisien à savoir la tolérance et la clémence.

- Opportunités et objectifs par rapport à l'évolution sociale :

Dans un pays attaché aux principes de l'Etat de Droit et des institutions, il y avait beaucoup d'intérêt à introduire un mécanisme de dialogue entre l'Administration et les usagers des services publics en créant une institution chargée non seulement de contribuer à la résolution des problèmes quotidiens que rencontrent les citoyens auprès de l'Administration, mais également d'oeuvrer pour un meilleur fonctionnement de l'Administration, en formulant toutes recommandations utiles pour parer aux défaillances révélées à l'occasion de l'examen des requêtes adressées au Médiateur.

Dans le cadre des réformes politiques et économiques initiées dès les premiers jours du Changement, il était tout à fait logique que le citoyen tunisien soit doté d'un moyen supplémentaire de recours lorsqu'il s'agit de remettre en cause l'une des décisions de l'Administration.

Aussi, le Président de la République a-t-il voulu que l'Ombudsman Tunisien soit un des mécanismes de la réforme administrative et un élément moteur de la réconciliation de cette Administration avec son environnement et qu'il constitue un observatoire capable de déceler les anomalies, d'en faire l'analyse et la synthèse et de transmettre, au plus haut niveau du pouvoir, les doléances des citoyens et de faire entendre leurs voix.

En effet, l'amélioration des relations Administration-usagers dépend en fait et dans une très large mesure de l'évolution des comportements et des mentalités. Le Médiateur Administratif doit profiter d'une conjoncture favorable afin d'oeuvrer pour que les agents de l'Administration se comportent autrement qu'en agents d'autorité et pour que les usagers des services publics fassent preuve de plus de modération et de réalisme dans leurs revendications.

- Le Médiateur Administratif fonction et moyens :

Pour permettre au Médiateur Administratif de réussir dans son entreprise, les textes lui ont conféré de larges attributions et l'ont habilité à intervenir dans les affaires administratives concernant les personnes physiques et morales et qui sont du ressort des services de l'Etat, des Collectivités Publiques Locales, des Etablissements Publics, des Entreprises Publiques et de tout organisme investi d'une mission de service public.

Ce domaine de compétence très étendu n'a que trois limites.

La première est relative aux requérants : les requêtes doivent être individuelles et présentées par des personnes physiques ayant un intérêt direct à faire valoir soit à titre personnel soit à titre de représentant d'une personne morale.

La deuxième limite concerne les différends qui peuvent surgir entre les organismes investis d'une mission de service public et leurs agents à propos de leur carrière administrative.

Cependant cette incompétence n'est plus retenue après la cessation des fonctions de ces agents ou en cas d'inexécution d'une décision de justice les concernant.

La troisième et dernière limite lui interdit d'intervenir dans une procédure engagée devant une juridiction ou de mettre en cause une décision juridictionnelle.

Cependant, le Médiateur Administratif est habilité à faire des recommandations à l'Administration ou à l'organisme concerné pour éventuellement mettre fin à l'action en justice s'il estime que cette action est infondée ou dilatoire.

En cas d'inexécution d'une décision de justice ayant acquis l'autorité de la chose jugée, le Médiateur Administratif peut examiner l'affaire avec l'organisme concerné et proposer toute solution de nature à surmonter les difficultés d'exécution de la décision.

Pour permettre au Médiateur d'intervenir efficacement, la réglementation a fait obligation aux ministres et à toutes les autres autorités publiques de faciliter sa tâche ; ils sont tenus, notamment, d'autoriser les agents placés sous leur autorité à répondre aux questions et aux convocations du Médiateur. De même, les corps de contrôle sont tenus d'accomplir, dans la limite de leur compétence, les vérifications et enquêtes demandées par le Médiateur Administratif.

Pour son organisation, le Médiateur Administratif est doté d'une structure légère et centralisée relayée cependant auprès de chaque Ministère ou tout organisme le justifiant par le nombre des requêtes afférentes à son activité, par une cellule dirigée par un cadre supérieur appartenant au département ou organisme en question et qui a la charge de recevoir et de traiter avec célérité les réclamations que lui transmet le Médiateur. Au niveau régional le Médiateur est relayé par les représantant régionaux, entitiés indépendantes dans chaque gouvernorat qui agit pour traiter les requête relevant de la région d'une manière indépendante. Ils présentent un rapport semestriel au Médiateur Administratif qui l'incopore dans son rapport annuel présenté au Présideent de la République.

Pour mener à bien cette tâche exaltante, le législateur a donné toute latitude au citoyen pour s'adresser au Médiateur Administratif. Aucun préalable ni formalité ne sont exigés pour saisir cette institution. Cette saisine peut se

faire en toutes circonstances (sauf les trois limites sus indiquées) et par tout moyen jugé opportun par le requérant.

Les services du Médiateur Administratif procèdent à un premier examen du dossier, convoquent éventuellement le requérant ou lui adressent une demande de renseignements si ceux fournis paraissent insuffisants et invitent l'Administration mise en cause à justifier sa position.

Le Médiateur a toute latitude pour exiger une réponse dans un délai déterminé. Les correspondants dans les divers organismes sont alors chargés de procéder aux enquêtes nécessaires et de trouver les solutions équitables et d'en informer le Médiateur.

Lorsque l'Administration reconnaît l'erreur et procède au rétablissement de la situation, le requérant en est informé et le dossier classé, il en est de même lorsque les justifications présentées par l'Administration paraissent convaincantes.

Cependant lorsque le requérant conteste les arguments présentés ou lorsque ceux-ci ne leur paraissent pas plausibles, les Services du Médiateur procèdent aux vérifications nécessaires soit par leurs propres moyens soit par tout organisme de contrôle compétent.

Enfin lorsque la réclamation lui parait justifiée, le Médiateur fait les recommandations qui lui paraissent de nature à régler les difficultés dont il est saisi.

En outre, la fonction de Médiateur introduit dans la réglementation la notion d'équité. En effet lorsqu'il apparaît au Médiateur Administratif, à l'occasion d'une sollicitation, que l'application des dispositions législatives et réglementaires aboutit à une iniquité, il peut recommander à l'organisme mis en cause une solution pour régler en équité la situation du requérant.

Le pouvoir de recommandation du Médiateur lui donne une autorité morale renforcée par son rattachement direct au Président de la République. De ce fait il n'exerce sur les autorités publiques que des persuasions objectives fondées sur des considérations de droit et d'équité.

Ainsi, tout en aidant les citoyens, le Médiateur procure aussi des services à l'Administration et aux pouvoirs publics. En effet, il constitue une source supplémentaire d'information sur les réactions de la population concernant la qualité et la pertinence des décisions de l'Administration, il apporte aussi un éclairage complémentaire sur des questions précises ou sur des sujets plus généraux.

Il reste que le Médiateur est lié par l'obligation de secret professionnel pour tout ce qui concerne les faits et les informations dont il a eu connaissance dans l'exercice ou à l'occasion de l'exercice de ses fonctions. Il demeure lié par cette obligation même après la cessation de ses fonctions.

Il en découle que le citoyen peut s'adresser en toute confiance au Médiateur et lui fournir tout document susceptible de l'éclairer sans crainte d'éventuelles réactions.

Partant de cas particuliers et individuels, le Médiateur est tenu de proposer les mesures qu'il estime de nature à améliorer le fonctionnement de l'Administration et de suggérer les modifications qu'il juge utile d'apporter aux lois et règlements en vigueur.

Cette faculté complète l'action corrective du cas par cas par la proposition d'une action préventive d'ajustement permanent des règles et procédures et permet, à partir de l'examen des cas individuels, d'apprécier l'implication de ces règles et procédures sur les usagers.

L'intervention du Médiateur est donc polyvalente, puisqu'elle allie le contrôle de la légalité à l'appréciation de bon sens qui inclut naturellement l'équité.

Excellence ;
Mesdames et Messieurs ;

Le Médiateur Administratif en Tunisie fête cette année ses 10 ans d'existence pendant lesquels il aura acceuilli plus de 100.000 citoyens et traité environ 56000 requêtes, ces 10 années qui seront couronnés par l'acceuil en octobre 2002 du Conseil d'Administration de l'I.O.I cette institution internationale qui regroupe environ 500 institutions de médiation appartenant à 107 pays.

En souhaitant à ce prestigieux colloque tout le succés escompté, nous espérons voir émerger, au Liban, ce nouvel instrument des Droit de l'Homme qui s'inscrit parfaitement dans la tradition libanaise de Démocratie et de Droits de l'Homme.

Je vous remercie de votre attention

مشروع التنظيم الهيكلي لمصالح الموفق الإداري

3 ماي 2002