

Book Review

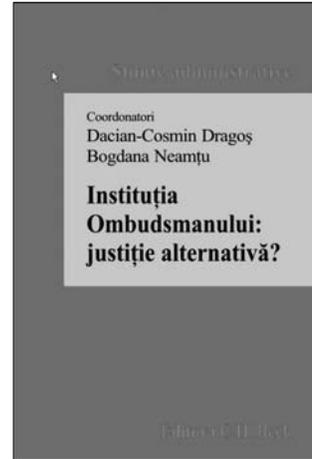
Dacian-Cosmin DRAGOȘ and Bogdana NEAMȚU (editors)

Instituția Ombudsmanului: Justiție Alternativă?
(*The Ombudsman Institution: Alternative Justice?*)

Bucharest, C.H. Beck, 2011

The volume edited by Dacian-Cosmin Dragoș and Bogdana Neamțu is welcomed in the area of scientific literature regarding the complex issues surrounding the institution of the Ombudsman. In fact, it is known, and this volume emphasizes it, that the debates regarding this institution can be integrated in the wider theoretical sphere of issues regarding the principles of good governance, the problematic relation between the various state institutions and the relation between these institutions, and the citizen. This volume comes as a corollary of the research project financed by CNCISIS¹ between 2008 and 2011, and reunites prestigious researchers from Romania, The Netherlands, Canada, Belgium, France, Great Britain, Argentina and South Africa, whose contribution is unified by the scientific strictness of the Public Administration Department at Babeș -Bolyai University.

A good starting point for the review of this book is given in the chapter written by Alex Brenninkmeijer, who from 2005 is the National Ombudsman of The Netherlands. In an original manner, he chooses to state his opinion regarding public management by starting off with the vision Franz Kafka outlines in his well-known novel, *The Trial*. The Dutch Ombudsman reminds us that, at a superficial level, this novel describes a chaotic world, in which the huge and absurd mechanism of the uncontrolled bureaucracy crushes the citizen through an endless series of unjustified measures. Obviously, the Czech novelist distorts the reality, emphasizing its flaws in order to suggest the idea of an absurd universe, but the observations of the Dutch researcher make us question the extent to which reality comes close to Kafka's vision. Moreover, Alex Brenninkmeijer



1 CNCISIS Project – IDEI 2008: ‘Transparency, responsibility and civic involvement: the role of the Ombudsman institution in the development of the good administration principles’. This project is included in a wider research, developed under the sponsorship of the Robert Schuman Centre, European University Institute and European Group of Public Administration.

makes a statement that can come as a surprise for the Romanian reader, whose tendency is to admire without reservation the well-functioning of the Northern European administration: 'In my role as National Ombudsman of the Netherlands, I see many cases that seem Kafkaesque and center on the loss of autonomy experienced by the citizen who finds himself in the toils of some vast and incomprehensible bureaucratic power' (p. 168). Even though some might argue that the Dutch researcher exaggerates, his objective is to draw attention to 'the gulf that divides the citizen as a person and government as a system (or set of subsystems)' (p. 172).

The main idea advanced in this volume is that the Ombudsman institution has as a primary objective the decreasing of the gulf mentioned by Brenninkmeijer. There are three major themes that the editors lay out in the introduction: the fundamental role of the Ombudsman in the state and the general principles that regulate its activity; secondly, the way the Ombudsman can involve in good administration and the relations he maintains with other state institutions; finally, the paper sets out to give an empirical research through which it can evaluate the practical functioning of the Ombudsman and its institutional perception, in order to identify the essential issues that derive from the confrontation between theoretical principles and reality.

The first part includes five chapters that analyze the way the institution of *People's Advocate*² works. The first chapter, written by Dan Balica and Bianca Radu, firstly gives a welcomed historical perspective in order to show the origins and the evolution of this institution. It is interesting to note the paradoxical fact that the authors consider to be the main cause of the Ombudsman's evolution in the modern society: the importance of the institution grew exponentially as the welfare state consolidated, an aspect that, after all, draws attention to the risks that come with democracy and prosperity. The analysis the two researchers make starts with the distinction that Linda Reif makes between *the classical Ombudsman* – whose activity is focused on supervising and correcting the administrative activity of the Executive Power – and *the hybrid Ombudsman*, that can be, in its turn, an Ombudsman orientated towards protecting human rights or an Ombudsman with specific attributions. One of the conclusions is that the Romanian Ombudsman can be classified as hybrid, oriented towards protecting human rights. The second major idea of this chapter is similar to the idea that the next four chapters support about the Romanian Ombudsman and it regards the solutions for its activity optimization.

The relationship between the People's Advocate and the Executive Power, The Legislative Power and the Judicial Power is analyzed in order to see that the attributions of this institution are rather limited, even though in the last few years there has been some progress in this matter. With a respectable competence in this area, Dana Apostol Tofan examines the relations between the People's Advocate and the constitutional jurisdiction and observes a satisfying evolution in this matter especially regarding the number of unconstitutional exceptions that were claimed and admitted by the Constitutional

2 People's Advocate (Avocatul Poporului) is the Romanian equivalent for Ombudsman.

Court. Finally, the idea that the increasing of the prerogatives of this institution might decisively contribute to the consolidation of the rule of law is emphasized.

An interesting perspective is outlined in the fourth chapter. Laura Hossu uses Nils Brunsson's concept of *organizational hypocrisy* to describe the attitude the People's Advocate is forced to adopt in his activity. The *hypocritical* behavior is seen as a solution for coping with inconsistent requirements and is described as a behavior through which an institution is required to: 'speak in a way to satisfy a wish, to decide in another way to satisfy another wish and to offer products to satisfy a third party' (p. 96). Laura Hossu identifies three phases in the evolution of the Romanian Ombudsman, separated by the way it relates to its objectives and to the environment it acts in. Other concepts taken from Brunsson are used in order to show that, in a preliminary phase, between 1997 and 2001, the People's Advocate was an *action-organization*, it became in 2001 a *political organization* and in 2005 it transformed into a *hypocrite organization*.

The second part of the volume investigates the Ombudsman in different countries, offering a comprehensive and clarifying perspective over the specific matters related to this institution. The limited space determines us to briefly and selectively present this part, with an emphasis on the common points identifiable in the eight chapters. One can observe that the functioning of the Ombudsman's institution comes close to the optimal situation in states like The Netherlands, Canada, Belgium or the UK. The two authors that deal with the Dutch model, Gio ten Berge and Philip Langbroek, underline a series of positive aspects, including citizens' trust, adequate legislation, efficient distribution of attributions, good relations with judicial institutions and, especially, with public administration institutions. The analysis that Laverne Jacobs makes for The Federal Commissioner for Information is very useful. The author firstly discusses the two well-known conflict resolution patterns – *the inquisitorial model* and *the adversarial model* – and then argues the fact that the efficient involvement of the Ombudsman can provide a more adequate alternate model. The vast empirical research undertaken is meant to confirm the initial hypothesis and to signal the positive evolution of the way in which the Federal Commissioner functions. Belgium's case is equally interesting and is presented by Ludo M. Veny, Ivo Carlens and Bengt Verbeek. After describing the various types of Ombudsman the authors identify the main issue this institution faces: the great number of claims that have to be rejected because they do not fit the prerogatives of the institution. The causes of this situation are given by the interference areas between the competence spheres of public administration, judicial institutions and Ombudsman, specifically – the insufficient distinction between *appeal* and *complaint* as forms of citizen's reaction against some actions of the state. In another chapter, H el ene Pauliat gives a comprehensive perspective of the French Mediator and of the way he is required, in the author's opinion, to prevent and to fight against possible abuses or errors of Justice.

Beyond the numerous punctual aspects discussed, the volume makes a solid argument for the idea that the debate regarding the Ombudsman's institution is a relatively new segment, but a very consistent one, belonging to the theoretical area

centered on the functioning of the rule of law. Dana Apostol Tofan firmly states that the fundamental mission of this institution is to compensate the judicial gaps, the faulty framing of laws and the difficult access to judicial institutions (p. 36). This statement comes close, after all, to the theoretical perspective of Thompson, Kirkman and Buck. The British researchers do not foresee the substitution of the judicial and executive power with a fourth power, but their justified reinforcement in such a manner that the idea of *lawfulness* is adjoined with the ideas of *rightness*, *responsibility* and *integrity*.

The opinions of Alex Brenninkmeijer are aligned in the same sense: the author underlines that the principle of *lawfulness* has to be completed by the principle of *honesty* and that the decisions of authorities should be not only legal, but justified and timely (p. 169). The Dutch Ombudsman is preoccupied by the gap between the abstract order of the system and the concrete order of the society. To depict this distance, he comes up with an eloquent analogy with the computer, whose abstract and sophisticated operating system requires interfaces in order to be used by the common individual. In essence, the interfaces are instruments that decrease the gap we mentioned, adapting the system to the needs of the individual. The entire volume edited by Dacian Dragoș and Bogdana Neamțu pleads for such an image of the Ombudsman as a fundamental institution meant to function as an interface between the system and the citizens it is supposed to serve. In simple words, it needs to offer 'a way to adapt the world of the system to the world of humanity' (p. 175), to make the system more humane, compensating the distance between its abstract and rigid organization and the complex and lively structure of reality.

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