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The Institution of Ombudsman in Latin America as a Guarantee for Propagation of Culture of Peace and Respect for Cultural Diversity, as Exemplified by Selected Countries

The institution of the ombudsman is present in the majority of Latin American countries. In spite of differences in nomenclature or structure, it is characterized by several common features. It is a *sui generis* state authority, enjoying extensive autonomy and independence. Its main objective is to promote and protect human rights, and the assistance it provides is free and easily available. Introduction of the institution in Latin American countries was related to the democratisation processes that began at the end of the 1980s. This article presents a comparative analysis of ombudsmen in El Salvador (a country with a history of long-term internal conflict), Peru (a country that advocates multiculturalism), and Argentina (a country with a history of military dictatorship). Detailed discussion is preceded by general remarks regarding the genesis, typology and characteristics of the institution. Common initiatives and associations of Ibero-American ombudsmen will also be discussed. This analysis and its conclusions will argue that the institution is both a tool for implementing a culture of peace, and a guarantee for the respect of cultural diversity in Latin America.

Key words: Ombudsman, Latin America, Protection of Human Rights, Promotion of Human Rights, Cultural Diversity

Introductory remarks

The Swedish office of *Juristtieombudsman*¹ (Advocate of Justice), created in 1809, is considered the origin of the modern institution of the ombudsman. The idea of

¹ It is commonly accepted that the term "ombudsman" is derived from the Swedish word "ombud", i.e. a representative, spokesman, or agent authorised to act on behalf of another entity and to take care of its interests. However, some authors believe that the term

establishing an office dedicated to the control of state administration in relation to individuals is much older and dates back to ancient times. It was a competence of: defender of public interests in the ancient Egypt, Athens *euthine*, Spartan *ephor*, censor office in ancient Rome, *yuan* in China (Banaszak 20, Domańska 17, Malinowska 52). A similar function was performed by the *Sahib-al Mazalim* in medieval Spain during Moorish dominance; and by the *Justicia Maior* during the later period in the Aragon region (Szapietowska 253). Also important is the pre-Columbian Inca office of *Tucuyricuy*², a state authority official who travelled across the *Tahuantinsuyu* State to control the enforcement of the rights and will of Inca. Later, after the arrival of Spaniards to the New World, the disastrous situation of native inhabitants necessitated the appointment of a Defender of Indian Rights (*Protector Universal de las Indias*). Its originator and advocate was Bartolomé de las Casas (González Volio 15, Pareja Rosales de Conrad 40-45). The office of *Tucuyricuy* might be seen as the later ombudsman concept as an instrument to prevent maladministration, and the Defender of Indian Rights could be perceived as a „distant relative” of ombudsman being a human rights advocate.

Nowadays, the institution of the ombudsman is present in over 110 countries all over the world. The process of its expansion began in the early 20th century. It took place in waves, and was closely related to political events in particular regions. For example, the establishment of ombudsmen on the Iberian Peninsula was related to the end of authoritarian regimes. The development of the institution in Latin America was accompanied by democratisation processes, whereas in Central and Eastern Europe by the transformations which took place after the fall of communism. Protection and promotion of human rights is also reinforced on the international level³ in ratified legal documents and designated institutions. Examples include: the European Ombudsman within the European Union⁴; the Commissioner for Human Rights

“ombudsman” derives from Old Germanic, wherein it denoted a person selected by a group who, on behalf of the aggrieved, dealt with collecting compensation from perpetrators of offences. For more information see: Howard 3; Liber 210-221; Deryng 30.

² *El Tucuy Ricuy*, which may be translated as “the one who sees all”.

³ The necessity of undertaking urgent activities in this direction was first addressed during a meeting of the Economic and Social Council of the United Nations in 1946. The next step was adoption by the UN General Assembly of the Universal Declaration of Human Rights. One of most fruitful debates on this subject took place in Paris in 1991 and resulted in adoption of the Paris Principles. The debate was continued two years later in Vienna at the international conference on human rights, where two weeks of discussions resulted in the Vienna Declaration and Programme of Action. Point 36 of this document emphasises the importance of national institutions that protect and promote human rights. It states that they should advise state authorities on how to redress the effects of violations, how to counteract them, and how to conduct promotional and educational activities. It is therefore highly recommended that states establish such institutions as part of their own legal systems, taking into account the guidelines formulated by the UN and the needs of their own societies. For more information, see: Hliwa.

⁴ The institution was established pursuant to the provisions of the Maastricht Treaty, adopted on February 7, 1992 and entered into force on November 1, 1993. The European Ombudsman started to operate formally on September 1, 1995. For more information: Doliwa-Klepacka, Doliwa-Klepacki 359-371; Sadowski, 603-629.

within the Council of Europe; the UN High Commissioner for Human Rights; and the UN High Commissioner for Refugees.

While some countries have used the original Swedish term to describe the institution, others have named it in their own languages. It is worth noting that the respective names of the office often correspond with the model of the ombudsman institution⁵ in that they emphasize the main range of competences (e.g. model of protection of human rights). This is evidenced by the following nomenclature: the People's Defender (*Defensor del Pueblo*) in Spain, Argentina, Peru, Ecuador, Colombia, and Bolivia; the Advocate of Justice (*Provedor de Justiça*) in Portugal; the Spokesman for Protection of Human Rights (*Procurador para la Defensa de Derechos Humanos*) in El Salvador; and the Parliamentary Commissioner for Human Rights in Hungary (*Alapvető Jogok Biztosa*). However, this does not constitute an absolute rule (Rief 12).

With the expansion of the institution of the ombudsman, the term has acquired universal features, becoming a fixed element in international legal terminology.⁶ It is used to describe the *sui generis* state authority with constitutional rank, supervisory function, extensive autonomy and independence, and the competences to protect and promote human rights. This definition (which will be used in this article) encompasses both single-person and collegial bodies, as well as national, regional, and municipal bodies.

Ombudsmen in Latin America

1. The Latin-American Model

In spite of the fact that the *Defensor del Pueblo* differs according to individual countries in the region, it is possible to list a number of common features which account for their specific Latin-American character. This has even convinced certain authors to use the term "Creole Ombudsman" (Madrado 17-25).

As Marcin Komosa notes (85-87), in order to understand the approach to the protection of human rights and democracy in Latin American countries, it is necessary

⁵ There is a differentiation between the European model, where the ombudsman's main function is supervision of public administration, and the Latin-American model, where the institution focuses primarily on protection of fundamental rights. Furthermore, there is the Nordic (Scandinavian) model, where the ombudsman is appointed by the parliament and citizens have direct access to the office, and the British/French model, in which the ombudsman is appointed by the executive authority and individual contact therewith takes place via a parliament deputy. For more information, see: Domańska 32-33.

⁶ International law is also familiar with the term "National Human Rights Institutions" (hereinafter referred to as NHRI). The definition is derived from the Paris Principles – adopted by Resolution No. 48/134 of December 20, 1993 of UN General Assembly. It emphasises that one of the key functions of NHRI is protection and promotion of human rights. The institution must be a state body (not a non-governmental organisation) with a constitutional or at least statutory status. It must also constitute one of the foundations of the national system for protection of human rights via which international standards for the protection of such rights are implemented. For more information, see: "National Human Rights Institutions".

to refer to the basic cultural determinants of the region. Even though Latino communities have been shaped under the influence of European models, relations between the individual and the community differ significantly. First of all, Latin American countries have a tendency to build systems of authoritarian power, which often employ violence. This can be traced back to colonial times and the former dominant model of land relations: *caudillismo*. *Caudillismo* was characterized by strict dominance and subjection between patrons and pupils (clients), lack of succession, and use of violence when fighting for leadership. This was also solidified by the tradition of local chieftains. After the former colonies regained independence, *caudillismo* was transferred to the state level. It was commonly assumed that the rule of a strong individual was a good solution in the context of the control system and extended administration. Use of violence was acceptable in exceptional cases or in the name of justice. Subsequent decades brought numerous examples of authoritarian rule and military dictatorship, and violence and lack of respect for human rights were part of the everyday reality in Latin American countries. Secondly, in the social dimension, *caudillismo* (often combined with *machismo*) had an impact on women's rights. The masculine world of power required women to be submissive, and violence towards them was justified. Thirdly, an effect of *caudillismo* and the accompanying "just" inequality was a lack of respect for the rights of indigenous peoples. Deprived of land, respect, and dignity, they were often pushed to the margins of society (Komosa 85-87). Therefore, Latin American civilisation is marked by a heritage of authoritarian and corporate culture, Catholicism, and values of indigenous cultures (Huntington 56). Let us also not forget about the ethnic and cultural diversity of Latin America (indigenous populations, people of African origin, and Europeans) and the *métissage* processes occurring throughout the ages, with clear privilege for whites. The presence of civil wars, border disputes and *guerrillas* or death squads activities. These circumstances make Ibero-America a difficult area for implementing the policy of protection and promotion of human rights.

The 1980s and 90s were characterized by certain changes. After violence escalated in the form of internal conflicts, the process of normalisation started. In Central America, subsequent peace initiatives supported by international efforts brought long-awaited peace. Countries on the southern edge of the continent saw the end of military dictatorship. Andean countries made a policy turn towards multiculturalism by redefining their own identities. Latin America embarked on a journey towards democracy.⁷ As part of its institutionalisation, the majority of countries decided to sanction the separation of powers, create conditions for free elections, and introduce the institution of the ombudsman. In the majority of cases, establishment of Latin American ombudsmen was thus related to the end of internal conflicts, authoritarian rule, and commencement of democratisation. On one hand, the operation of such institutions was aimed at protecting and promoting human rights, and educating society accordingly. On the other hand, it was also necessary to rebuild citizens' trust of state authorities, who in many cases had been responsible for the abovementioned problems. Furthermore, introduction of the institution of the ombudsman and establishment of the conditions for its operation was a top-down

⁷ In line with Samuel Huntington's proposal, this process is often called democracy's third wave.

process. Internationally, ombudsmen would be a testament that Latin American countries had joined the West in terms of democracy.

As mentioned above, the key activity of Latin American ombudsmen is protection and promotion of human rights, and their mandates are often broadly determined. This has prompted researchers to identify a separate typology for these institutions in Latin America. For example, Thomas Pegram, during a seminar in Salamanca in 2008⁸, proposed the following models: the hybrid-type model; the human rights protection model; and a mixed variant that is a combination thereof. He did so on the basis of three criteria: legal (existence of legal bases with a specific rank, determining the ombudsman's competences in the area of protection and promotion of human rights); functional (competences of supervision and mediation with reference to state authorities); and doctrine-related (the right of the ombudsman to promote his or her activity through the popularisation of standards concerning the protection of and respect for human rights using legislative, court, and community mechanisms). According to Thomas Pegram, the first model, i.e. that of the hybrid ombudsman, is the most popular in Latin America. It can be seen in Argentina, Costa Rica, Peru, and Venezuela. These authorities possess a mandate in the area of protection of human rights, and serve in the classic capacity as a guardian of good administrative practices. The model of the ombudsman as a protector of human rights corresponds to guidelines set for national human rights commissions. Such ombudsmen possess exclusive competences in the protection and promotion of human rights, and have strong doctrinal support for promoting such rights. This model is found mainly in countries that have experienced authoritarian rule, and a high degree of violence or political instability. Examples include Ecuador, Colombia, Mexico, Nicaragua, and Paraguay. Finally, the mixed model assumes that the basic function of the ombudsman is to protect and promote human rights. Nevertheless, he or she possesses extensive competences (e.g. in conducting investigations, securing evidence, and exercising procedural rights). The ombudsman is also entitled to supervise public administration. However, this is a clearly subsidiary function to that listed above. This model can be found in Bolivia, Guatemala, Honduras, Panama, and El Salvador.

2. Expansion of the Institution

The first country in Latin America to establish the office of a human rights advocate was Guatemala, during a civil war in 1986.⁹ However, this does not mean that there had been no prior interest in the institution of the ombudsman in the region. On the contrary, academic discourse had been ongoing since at least the 1950s. The arena for exchange of ideas was the Latin-American Ombudsman Institute (*Instituto Latinoamericano del Ombudsman*), a private initiative supported by professors of numerous Latin American universities specialising in administrative law. At this stage,

⁸ The content of Thomas Pegram's lecture is available at: <http://campus.usal.es/~dpublico/areacp/doctorado07-09/Pegram.pdf>

⁹ It is necessary to clarify that in 1966, the office of the ombudsman was established in Guyana, and in 1976 in Trinidad and Tobago. These countries, in spite of their geographical location, are not treated as Latin American countries. Puerto Rico, where the ombudsman was established in 1977 should also be treated separately due to its status and ties with the United States.

the necessity of adapting the Scandinavian model to Latin American reality was discussed. It was thought that the ombudsman would best function as a one-person body, related to the legislative power, with extensive autonomy thanks to which it could exercise its competences in relation to acts issued by public administration (Santistevan de Noriega 27-28).

The end of the 1970s brought a change in perspective. Apart from legal and administrative factors, constitutional factors also grew in significance, as new constitutions put emphasis on the protection of human rights. Solutions deriving from basic laws in Portugal (1976) and Spain (1978) became an inspiration. In both cases, the countries adopted constitutions after long-lasting authoritarian rule – in Portugal after the April Revolution which brought an end to Salazar's dictatorship, and in Spain after General Franco's death and the Monclova Pact. When beginning the process of democratisation, countries from the Iberian Peninsula saw the necessity of establishing the office of the ombudsman. The office was meant to be a guarantee for the protection of basic rights determined by basic law.¹⁰ Over a decade later, this model was closest to the reality of Latin America not only culturally, but politically as well. Experiences from the Iberian Peninsula provided valuable inspiration.

Nowadays, the institution of a human rights advocate is present in the majority of the region's countries. The only exceptions are Chile and Brazil. In Chile, in spite of many grassroots initiatives and an animated discussion, the office has not yet been established.¹¹ Brazil, the largest former Portuguese colony, has no ombudsman on the federal level, however, in individual states, there are institutions of a similar nature: *ouvidorias* (Constenla 64). True expansion of the institution on the continent took place in the 1990's. At that time, such institutions were established in Mexico (1990), El Salvador (1991), Colombia (1991), Costa Rica (1992), Honduras (1992), Peru (1993), Argentina (1994), Nicaragua (1995), Ecuador (1996), Bolivia (1996), Panama (1996), and Venezuela (1999).

3. Cooperation of Latin-American Ombudsmen on the International Level

Popularisation of the ombudsman in Latin America gave rise to the idea of integration on the international level. Organisations bringing together Latin America's defenders of the people became a platform for exchange of experience and implementation of joint projects in the fields of education and promotion of human rights.

The pioneer organisation for this is the Ibero-American Federation of Ombudsmen (*Federación Iberoamericana de Ombudsmen*, hereinafter also referred to as "FIO"). It was established during a meeting in the Colombian city Cartagena de Indios in 1995. Nowadays, it brings together over 75 advocates of human rights (national, regional, provincial, autonomous, and municipal) from 20 countries on both sides of

¹⁰ In the case of Spain, section I of the Constitution from December 27, 1978 contains a catalogue of basic rights and obligations (Art. 9-52) and determines guarantees thereof (Art. 53-54). One such guarantee is the institution of the Defender of the People (*Defensor del Pueblo*), which protects the rights listed in the Constitution. In the case of Portugal, the Constitution of Portugal provides for rights and liberties in Part I (Art. 12-79), and the basic regulation regarding the *Provedora da Justiça* is found in Art. 23. For more information, see Łabno-Jabłońska 179-199; Szapietowska 253-261.

¹¹ For more information, see: Recabarren 1-67.

the Atlantic Ocean.¹² The manner and range of FIO operations are determined both by the organisation's charter,¹³ and resolutions issued by the General Assembly – its highest authority (Santistevan de Noriega 57-58). The objectives include: establishment of cooperation between ombudsmen from Latin America and countries of the Iberian Peninsula, as well as other organisations and institutions dedicated to similar activities; support, expansion, and solidification of respect for human rights; promotion of the institution of the ombudsman in other countries of the region where such offices have not yet been established; implementation of joint programmes; education and promotion of the idea of peace; and increasing standards of protection for basic rights. The FIO cooperates fruitfully with other organisations, which is evidenced by the fact that the Inter-American Institute of Human Rights (with registered office in San José) serves as its technical secretariat. Congresses and conferences are attended by representatives of other institutions that deal with extending protection, education, and promotion of basic rights. It is also necessary to mention a joint project, namely the Ibero-American Centre for Cooperation Development (*Centro Iberoamericano de Cooperación para el Desarrollo*), which operates as part of the University Alcalá de Henares and is supported financially by the European Union (Santistevan de Noriega 58). FIO authorities have presented their standpoint at the UN Human Rights Commission forum a number of times.

Another organisation is the Andean Council of Ombudsmen (*Consejo Andino de Defensores del Pueblo*), which was established on September 6, 1998 during a meeting in Lima as an ombudsman association of the Andean Community of States (whose members are Bolivia, Ecuador, Colombia, Peru, and Venezuela). The organisation began its activity four years later, and Panama and Chile were also invited to cooperate. Its structure and principles are determined in its charter. The Andean Council of Ombudsmen became an advocate for establishing ombudsmen in the region, as well as extending the competencies of existing offices. It undertakes joint activities with other entities (including the FIO) in an effort to expand education and promote human rights (Santistevan de Noriega 59-60).

It is worth indicating that, as part of cooperation, both of the above-listed institutions see it necessary to promote a culture of peace through ombudsmen, and provide indigenous peoples with special protection. These ideas were expressed in at least three important documents: the Declaration from Antigua (Guatemala) on Human Rights and a Culture of Peace, adopted on July 30, 1996; the Declaration from Lima of October 5, 2000; and the Declaration from La Paz, signed on August 14, 2001. In the first document, ombudsmen associated with both organisations decided unanimously that it was necessary to promote and implement all principles expressed in international legal acts such as the UN Charter, the Universal Declaration of Human Rights, the American Convention of Human Rights, and other pacts and conventions. This was done in an effort to help generate peace among various

¹² These are: Andorra; Argentina; Bolivia; Brazil; Ecuador; Guatemala; Spain; Honduras; Colombia; Costa Rica; Mexico; Nicaragua; Panama; Paraguay; Peru; Portugal; Puerto Rico; Salvador; Uruguay; and Venezuela.

¹³ The currently binding charter of the FIO was adopted by the FIO General Assembly during a meeting that took place between November 20 – 21, 2008 in Merida (Yucatan, México).

nations and cultures, and offer a basis for respecting dignity, tolerance, social justice, and people-centred values. Such objectives may be accomplished through ongoing education and promotion of the adopted principles. Furthermore, the Declaration from Lima deals with multiculturalism. It emphasises that the majority of Latin American countries are a mosaic of cultures and ethnic groups. The rights of Indians and people of Afro-Latin-American origin thus cannot be ignored; and governments, parliaments, and public institutions of such countries should respect them. To this end, ombudsmen call for specific activities, in particular the promotion of such rights and extensive protection for indigenous peoples. Finally, the La Paz Declaration indicates the necessity of liquidating all types of discrimination, including that against race or origin, and undertaking activities aimed at promoting minority rights (Aylwin 38-43).

The Institution of the Ombudsman in selected Latin American Countries

1. El Salvador

Establishment of the office of the Procurator for the Defence of Human Rights (*Procurador de Derechos Humanos*) in El Salvador was directly related to the peace process after a long-lasting civil war. It resulted from an agreement signed on April 27, 1991 in Chapultepec, Mexico between the government and the Farabundo Martí National Liberation Front (*Frente Farabundo Martí para la Liberación Nacional*) (Gruszczak; Córdova Macías 63-70; Ribera 89-134). The institution was entrusted with an important function in the process of normalisation; namely, it was tasked with protecting human rights in a country that was putting aside a bloody internal conflict, and supervising public administration in its relations with individuals. Formal changes were introduced immediately. An amendment to the Constitution was adopted in October 1991,¹⁴ and on February 20, 1992 an act on the human rights advocate was passed.¹⁵

The memory of serious, decade-long violations of fundamental rights on a mass scale – such as the right to life, peace, and private property – resulted in the ombudsman in El Salvador having a broad range of competencies. This range makes the model here different from the Scandinavian model. The mission of the ombudsman is to protect, promote, and educate in the area of human rights. Such rights are broadly understood. As provided for by Art. 2 of the act, these include all civil, political, economic, social, and cultural rights, as well as all rights of the so-called third generation set out in basic law, domestic legal acts, and acts signed by El Salvador in international agreements (including those which are non-binding), such as with the UN or OAS. Furthermore, the catalogue of the ombudsman's powers included in the Constitution (Art. 194) is open, and may thus be supplemented by further legal provisions. The competences of *Procurador de Derechos Humanos* include: promoting respect and guaranteeing protection of human rights; handling cases related to the violation of such rights, both *ex officio* and in response to claims; providing

¹⁴ Decree No. 64 of October 31, 1991.

¹⁵ Decree No. 183 of February 20, 1992.

legal assistance to victims of violence and violations of human rights; monitoring compliance with such rights in country and conducting all types of investigations; and engaging in promotional and educational activities in the area of protection and respect for human rights. Additionally, Art. 11 and 12 of the act indicate that the Ombudsman has procedural authority, and may initiate court proceedings and support motions of parties in pending cases. The ombudsman has legislative powers and is authorised to file drafts of legal acts aimed at improvement and reinforcement of human rights protection in El Salvador. The ombudsman also plays an important advisory role by presenting opinions, suggestions, and indications in the area of human rights to other authorities responsible for establishing or executing the law. Its activities are also aimed at increasing awareness in Salvadoran society in the area of protection, promotion, and respect for rights. For this purpose, a number of permanent and thematic programmes and events are organised.

Procurador de Derechos Humanos has guaranteed immunity, broad autonomy, and independence from other state bodies. The office is subject exclusively to the Constitution and legal acts, and is elected by the parliament by a 2/3 majority vote. The term lasts three years and the ombudsman may try to be re-elected (Art. 4 of the Act). The Act sets high requirements for candidates, both positive (those which must be fulfilled) and negative (those which cannot be present). With respect to positive requirements, candidates must: be over 35 years of age; possess Salvadoran citizenship and full public rights; have a higher education, and significant accomplishments in the area of promotion, education, and protection of human rights; and have a high level of morality and respect for generally accepted principles (Art. 5 of the Act). With respect to negative criteria, candidates may not be: a state official by choice; a minister or deputy minister; a Supreme Court judge; a spouse or a relative up to the fourth degree of consanguinity or an individual up to the second degree of affinity of the above-listed persons; a member of political parties holding functions in their bodies; a professional military man in service; or a military man who belongs to or has belonged to any armed groups. The candidate also may not have been convicted for any crimes related to violations of human rights (Art. 6 of the Act). It is not possible to combine the ombudsman's mandate with the holding of any other public function, professional activity (excluding academic and cultural activities), party membership, activities as authorities of trade unions or employers' organisations, or religious functions (Art. 7 of the Act). Such strict requirements for candidates are aimed at guaranteeing the selection of a person of impeccable character, free from prejudice regarding the civil war. The ombudsman must be a person capable of rebuilding society's trust of state authorities – the main aggressors and violators of human rights during the civil war. In the context of democracy, state authorities can contribute to the promotion, respect, and protection of such rights, offer a guarantee of stability, and prevent the repetition of ignoble history.

In order to ensure efficiency in execution of his or her duties, the Salvadoran ombudsman has numerous personnel organized into a comprehensive structure consisting of five divisions: Deputy Procurator for Protection of Children and Youth (*Procuraduría Adjunta para la Defensa de los Derechos de la Niñez y la Juventud*); Deputy Procurator for Protection of Women's and Families' Rights (*Procuraduría Adjunta para la Defensa de los Derechos de la Mujer y la Familia*); Deputy Procurator for Protection of Economic, Social and Cultural Rights (*Procuraduría Adjunta para la Defensa*

de los Derechos Económicos, Sociales y Culturales); Deputy Procurator for Protection of the Environment (*Procuraduría Adjunta para la Defensa de Medio Ambiente*); and Deputy Procurator for Protection of Civil Rights and Individual Rights (*Procuraduría Adjunta para la Defensa de los Derechos Civiles e Individuales*). Each division has five departments, in which competencies are distributed according to its specific activities and the complexity of each case dealt with. The departments are responsible for the following areas: complaints; protection measures; procedures; penitentiary control; preventive supervision and management in crisis situations. The institution also has sixteen local branches, regional branches and departments, and larger urban units. It is worth adding that a ombudsman's office runs a Human Rights School, whose objective is education of future personnel, training, and promotional activities for the protection and observance of human rights. This is meant to supplement state policy as adopted in peace agreements.

The *Procurador de Derechos Humanos* also files annual reports on its operation to the parliament. These are very detailed documents, describing precisely the number, type, and nature of complaints submitted and investigated. The report for the period from June 2012 to May 2013¹⁶ shows that the ombudsman examined 11,708 cases related to human rights protection, 8,652 of which were related to legal issues. Also during this period, the office issued 677 initial decisions, and 362 decisions to close cases. The greatest number of cases came from the central region (1,430), including 659 cases from the capital, San Salvador. As far as types of cases are concerned, there were complaints regarding violations of civic rights (2,593), economic, social, and cultural rights (804), the rights of children and youth (264), women's rights (213), prisoners' rights (208); and immigrants' rights (52). There were also cases related to the natural environment (59), as well as persons suffering from AIDS (28). Confirmed violations were related to personal integrity rights (635), the right to just administrative proceedings (539), the right to work (405), the right to have access to court services (363), and the right to personal safety (294). The ombudsman emphasised that the institution against which the most complaints were filed was the police (1,487). Next in line were local governments (654), judges and courts (294), and prosecution offices (283).

During the period from June 2013 to May 2014,¹⁷ on the national level the ombudsman reported 8,207 instances of legal advice provided, 2,549 accepted complaints, 3,848 *ex officio* activities, 387 initial decisions, 819 final decisions, and 6 safeguarding measures. Similarly to the first period, the majority of cases during the second period were related to violations of the right of personal integrity, the validity of administrative proceedings, the right to work, the right to safety, the right to have access to court services, and the right to personal freedom. Once again, the police, local government units, and judges and courts were institutions that committed the greatest number of violations.

Apart from annual reports, the Salvadoran ombudsman also presents special reports that pertain to specific issues and problems related to the work of the institution. These include analyses of the perception of political rights, as well as the rights of women, children, and sexual minorities in El Salvador. The ombudsman

¹⁶ Report on the work of the Salvadoran Ombudsman from June 2012 to May 2013.

¹⁷ Report on the work of the Salvadoran Ombudsman from June 2013 to May 2014.

comments on any irregularities, and files proposals for legal and other actions. This is a *sine qua non* condition for the improvement of the situation in the country. By reinforcing a culture of peace, the ombudsman presents the status of observance of human rights via the prism of implementation of peace agreements.¹⁸

2. Argentina

In Argentina, the first legislative initiatives aimed at establishing the office of the ombudsman were taken in the middle of 1970s, but were subsequently thwarted by the military *coup d'état* of 1976. The return to these initiatives was possible only after the fall of the regime. For another decade, an animated discussion was held in academic circles and among politicians about the possibilities of establishing the institution within the presidential system. It was indicated that, in principle, such offices could function in countries with parliamentary systems, and must be related to the legislative authority. In consequence, its prospective establishment was deemed incompatible with the Argentinean system. These reservations suspended further work on the national level. However, they did not influence the local communities. Indeed, the 1980s brought development of ombudsman institutions in the cities and provinces of Argentina. Regional Defenders of the People were appointed in Salta (1984), Buenos Aires (1985), San Juan (1986), La Rioja (1986), Córdoba (1987), and Santa Fé (1989).

The idea of establishing a national office was revisited in the next decade; however, the road was not easy. Firstly, the initiative was taken by the executive power, and a presidential decree establishing the office of the ombudsman was issued on August 26, 1993. Nevertheless, it was not enshrined in an act at that time. Only several months later, on December 1, 1993, did the parliament adopt an act on the appointment of the Defender of the People of Argentina (*Defensor del Pueblo de la Nación Argentina*).¹⁹ Later, an amendment (i.e. Art. 86) to the act was passed on August 22, 1994, which made the institution constitutional (Pareja Rosales de Conrad 115-116).

The Argentinean Ombudsman is responsible for protecting the rights and interests of individuals and communities (natural and legal persons) with respect to the acts, activities, and omissions of the public administration (Art. 1 of the Act). In order to eliminate illegal, defective, improper, abusive, discriminatory, negligent, inappropriate, and premature acts and deeds of the executive branch, the ombudsman may act *ex officio* or in response to claims from aggrieved parties (Art. 14 of the Act). The ombudsman is entitled to participate in legal proceedings (Art. 86 of the Constitution). Furthermore, in terms of public administration, the ombudsman supervises entities at the national and local level, centralised and decentralised structures, state companies and enterprises (irrespective of legal form or name), and even private institutions that perform tasks commissioned by the public administration. The supervisory activities of the ombudsman exclude judicial authorities, legislative authorities, the municipal authorities of Buenos Aires, and institutions related to state defence and safety (Art. 16 and 17 of the Act). The efficiency of the ombudsman is guaranteed by independence, broad autonomy, immunity corresponding

¹⁸ For example, a report entitled "Special Report on Observance of Human Rights in El Salvador in the Light of Peace Agreements".

¹⁹ Act No. 24.284 on Defender of the People of December 1, 1993.

to the immunity of a member of parliament, and freedom from the guidelines of other bodies. The official website²⁰ of the *Defensor del Pueblo* emphasises that it is not a strictly cosmetic or aesthetic figure. On the contrary, it should be treated with full respect. Its objective is not to replace or assist other bodies or supervisory procedures, but to supplement them. In taking care of the welfare of individuals and communities, it is guided by the principles of critical cooperation with the administration, dialogue, and continuous search for amicable solutions where possible. The ombudsman wishes to avoid escalation of existing conflicts.

The *Defensor del Pueblo* is chosen by a 2/3 majority vote by both chambers of the parliament from among candidates selected by a special commission (Art. 2 of the Act). The term of office lasts five years and candidates may be re-elected once (Art. 3 of the Act). Candidates must possess Argentinean citizenship and be over thirty years of age (Art. 4 of the Act). The requirements do not include education or legal experience. The function of the ombudsman cannot be combined with other public, political, economic, or professional activity, excluding academic activity (Art. 7). The ombudsman possesses competences for initiating and conducting investigations, as well as checking and controlling procedures. He or she may also demand clarification, documents, and opinions, and apply safeguarding measures to facilitate clarification proceedings. If these measures fail, the ombudsman may appeal to justice authorities in order to make a third party liable for issuing documents or filing clarifications which were earlier refused (Art. 24 and 25 of the Act). The ombudsman may appeal to the legislative or executive authorities for legal changes in order to remove the causes of violations of individuals' rights (Art. 32 of the Act).

The ombudsman is supported by subordinate personnel in performance of these tasks. The office has five units (in Buenos Aires, Córdoba, San Salvador de Jujuy, Santa Rosa, and Río Negro). The assistance provided is free of charge and commonly available. However, it is necessary to comply with formal requirements, and claims must be submitted in writing. Furthermore, claims cannot refer to an Act, deed, or omission that took place over one year earlier (Art. 19 of the Act). Every year, by May 31, the *Defensor del Pueblo* is required to file a report of the office's activity. In the report, the *Defensor* should indicate at least the number and type of complaints, including the number not accepted for investigation and the causes of rejection, and the number investigated and the result of the proceedings (Art. 32 of the Act).

Analysis of reports for specific years indicates that the Argentinean ombudsman is very active. Since the beginning of the institution's operation on October 17, 1994, it has intervened in 239,154 cases. The 2013 report (a document of over 300 pages, divided thematically into eleven chapters) shows that the ombudsman carried out 8,551 activities for the given reporting period. A definite majority of these activities, i.e. 8,499, were reactions to submitted complaints, and only 52 were initiated *ex officio*. Over 1/4 of complaints came from the province of Buenos Aires (25.3%), the most populated area in Argentina. Significant numbers also came from the regions of Córdoba (17.0%), the Federal Capital (16.3%), Entre Ríos (11.2%), and Santa Fé (8.2%). 55.34% were submitted by men, and 42.64% by women. Over half (62.90%)

²⁰ <http://www.dpn.gob.ar/dpn.php> (date of access: December 20, 2015).

of the cases were related to public works and services, the economy, and the tax system; 17.30% to social insurance and employment; 10.20% to health, social activity, education, and culture; and 8.60% to violations of human rights, and the rights of women and children (Twentieth Annual Report of the Ombudsman of Argentina for 2013).

According to the report for 2014, the *Defensor del Pueblo* performed 11,061 activities, 15 of which were *ex officio*, and the rest in response to submitted complainants. In total, 54 complaints were left unexamined. As emphasized by the ombudsman, 167,525 persons in total were provided with advice and legal assistance either personally, via telephone, or via e-mail. Undoubtedly, this is an impressive number. As in the previous year, most complaints originated from Buenos Aires (31.23%), the Federal Capital (19.42%), Córdoba (16.73%), and Santa Fé (7.33%). This time, women were more active, accounting for 51.35% of complaints in comparison to the 48.64% filed by men. In terms of types of complaints, the proportions were similar to those from 2013: over a half (62.91%) of the cases were related to public works and services, economy, and the tax system; 16.47% to social insurance and employment; 11.89% to health services, social activity, education, and culture; and 7.90% to violations of human rights, and the rights of women and children (Twenty First Annual Report of the Ombudsman of Argentina for 2014).

3. Peru

In Peru, the institution of the ombudsman was established together with the adoption of the new Constitution *via* a referendum in 31st of October, 1993. The detailed scope of its rights, obligations, and principles of operation was determined by a specific act passed in 1995²¹, on the basis of Art. 161 and 162 of the Constitution. However, it is worth indicating that, even before establishment of the office, the classic competences thereof were executed as part of governmental structures in spite of the absence of a formal ombudsman office. The Minister for Public Affairs was required to act as the defender of the people in relations between individuals and public administration bodies. The Minister's task was to protect fundamental rights provided for by the Constitution, lest the public administration, armed forces, or political authorities perpetrate any violations (Pareja Rosales de Conrad 110).

Nowadays, the ombudsman is chosen by the parliament by a 2/3 majority vote for a five-year term. Ombudsmen may be re-elected once. Article 161 of the Constitution requires candidates to be over 35 years of age and possess the education of an attorney. Holding the office cannot be combined with: any other public, political, or judicial functions; professional activity; or activity in trade unions, associations, or foundations (with the exception of academic activity, Art. 6 of the Act). According to Article 162 of the Constitution, the ombudsman must protect the constitutional and fundamental rights of individuals and communities, as well as supervise public administration, including public services for the benefit of citizens. The ombudsman's competences are determined very broadly by an open clause (Art. 9 of the Act). The ombudsman is entitled to initiate and conduct, upon formal request or *ex officio*, proceedings for the purpose of determining violations of fundamental and constitutional rights by the public administration. The ombudsman is authorised to file

²¹ Act No. 26.520 on the Defender of the People of August 8, 1995.

complaints to the Constitutional Tribunal, as well as to exercise other legal measures (including procedural measures) in an effort to protect the rights of individuals and communities. The ombudsman may initiate administrative proceedings or support a party therein. He must promote adoption, ratification, and proper implementation of international treaties in the area of protection of human rights. Furthermore, the ombudsman possesses a legislative initiative. There is no particular form for claims, though they should be filed in writing. They may be filed by a natural person, a community, individually, in a group, *via* telephone, or *via* a dedicated website. Claims can be filed regardless of nationality, sex, age, place of residence, legal capacity, imprisonment; or whether the person filing is staying at a social rehabilitation centre, school, or hospital (Art. 10 of the Act).

The structure of the office is divided into departments focusing on individual types of cases. Specially protected groups include: children and youth; women; people with disabilities; indigenous peoples; victims of violence; African-Peruvian people; convicts; people suffering from AIDS; immigrants; sexual minorities; and elderly people. The Defender of the People has 28 units throughout the country, and an additional ten complaint receipt points. Legal assistance is provided in Spanish and in Quechua.

The activities of the Peruvian ombudsman constitute an important contribution to the promotion of culture of peace and respect for democracy. Even though Peru was spared military dictatorship and the internal armed conflicts which were an every-day reality in other countries of the region, we must not forget about *Sendero Luminoso* or the aggression of its state authorities. The scale of violations of human rights – including fundamental rights, such as the right to life, health, and private property – was extensive.

The ombudsman proposes amicable solutions to reconcile parties, and promotes and solidifies respect for human rights. Thanks to an extensive mandate, it can operate efficiently in protecting the rights of the wronged. It is also necessary to mention the contribution of the *Defensor del Pueblo* to promoting the idea of multiculturalism. The territory of Peru, before the arrival of Columbus, was inhabited by numerous groups of Indians, often of diverse origins and customs. It was further diversified by the arrival of Africans and Europeans during colonial times. The co-existence of various cultures provokes conflict and may be a cause for discrimination against indigenous peoples or Afro-Latin-American people. The premises of the Peruvian ombudsman's operation (according to information found on the official website of the office) include the necessity to promote the integration of Indian communities into state structures, to ensure proper access to healthcare and education, and to create conditions conducive to dialogue.

The *Defensor del Pueblo* is obligated to prepare three types of reports: annual; extraordinary; and thematic (Abad Yupanqui 495). According to data available for 2011, the Defender of the People had prepared over the course of 15 years a total of more than 150 reports regarding the state of respect for human rights in Peru, organised at least 2,000 events promoting such rights, and – between 2005 and 2011 – investigated over 6,000 cases and prepared 87 reports on monitoring and intervening in social conflicts (Castañeda Portocarrero 298). According to the most recent data, the ombudsman received 103,122 claims between January and November of 2015, where 59,572 were requests for legal assistance, 15,625 were petitions, and 27,925

were complaints. The definite majority of claims were investigated, with fewer than 2% left uninvestigated.²²

Recapitulation

The following conclusions can be drawn from the analysis in the article:

1. Introduction of the institution of the ombudsman in Latin American countries was related to the democratisation processes which took place in the region starting from the end of the 1980's. It forms a part of a canon of processes also taking place in other parts of the world. On the Iberian Peninsula, this was confirmed a decade earlier in the 1970s when, after the end of authoritarian rule, Portugal and Spain began to initiate democratic changes. Identical steps were taken by countries in Central and Eastern Europe, which introduced systemic reforms after the fall of the Eastern Bloc. The countries that decided to establish an ombudsman's office saw it as a guarantor for the functioning of a democratic state under the rule of law – a guardian for the protection of individual rights.
2. One of the tasks of the newly-established ombudsman offices in Latin America was promotion of a culture of peace. The ombudsmen were required to monitor respect for human rights under difficult conditions and upon resolution of long-lasting internal conflicts. Good examples here are provided by countries such as Guatemala, El Salvador, Nicaragua, and Colombia. In their case, promotion of peace encompassed a full range of activities: first, ending a civil war; and subsequently, promoting rights and rebuilding mutual trust between the parties that were in conflict. Countries burdened with experiences of long-lasting dictatorship or authoritarian rule (e.g. Argentina, Paraguay, and Panama) had similar objectives. The end of dictatorship and the beginning of democracy did not mean that long-term disputes, conflicting interests, and animosities were automatically brought to an end. It was thus necessary to create mechanisms to alleviate these disputes and rebuild trust – including trust of state authorities, who were very often the main violators of individual rights.
3. In spite of differences in nomenclature, structure, formal requirements for candidates, and range of competences, the model of the ombudsman as the protector of human rights was adopted in the majority of the region's countries, albeit differently from the initial Scandinavian model (focused on cases of "bad administration"). The main activities of Latin American *Defensor del Pueblo* focus on promotion, education, and protection of human rights. This is related to two subsequent issues: extensive range of rights of the institution and broad understanding of human rights.
4. When implementing tasks determined constitutionally or statutorily, Latin American ombudsmen are equipped with a broad range of competencies. Apart from typical competencies, such as taking action either in response to a claim or *ex officio*, conducting investigations, and demanding information or clarification, they often possess legislative and procedural powers and are authorised to file constitutional complaints. They are also competent to issue opinions. The

²² Data available on the official website of the Peruvian ombudsman: <http://www.defensoria.gob.pe/Downloads/estadisticas/cuadro-nov-2015.pdf> (date of access: December 20, 2015).

ombudsman is thus required to review acts of international law in the area of human rights and provide legislative and executive authorities with guidelines regarding their ratification (e.g. in Peru).

5. The range of rights of the Defenders of the People also assumes a broad understanding of the term "human rights". When determining the tasks of the office, the legislators of Latin American countries often made references to the catalogue of rights included in their respective constitutions and acts of international law. These documents encompass not only the rights of the first and second generation, but the third generation as well. Furthermore, the 1990s were characterized by a clear tendency for emphasising the cultural and ethnic heritage of the region. Many countries introduced amendments to fundamental acts which resulted in a redefinition of their national identities, with a stress on exceptional multiculturalism (e.g. Andean countries, Mexico). This policy is in line with a wider trend, which, on the international level, is embodied by the Universal Declaration on Cultural Diversity, adopted in 2001, and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, signed four years later. Both documents have been adopted by the majority of Latin American countries. They set a high standard for the protection of rights, and extend the range of activity for advocates of human rights, providing them with new legal tools. Indigenous people and people of African origin received special status in subsequent legal acts. Ombudsman offices are equipped with specialist units dedicated to protecting the rights of these demographics. Common access is ensured by the liquidation of formal barriers, and a guarantee of legal assistance, even in the main languages of indigenous peoples (e.g. Quechua in Peru). Significant financial and human resources are also allotted to education, and promotion and popularisation of respect for human rights, including the rights of Indian communities. Summing up, in Latin America, ombudsmen have become guarantors of respect for human rights, taking into account the multiculturalism in the countries in which they operate. A testament thereof is the right of access of indigenous peoples to courts, which does not only involve simplifying procedures and lifting formal barriers to the initiation of court proceedings, but guaranteeing communication in the native language of aggrieved parties before the court. The next step may be an order to include legal protection of the customs and unwritten rights of Indians.
6. Two decades after the introduction of the office of the Defender of the People in Latin American countries, there are numerous indications that the institution is gradually acquiring citizens' trust and starting to fulfil the duties set before it. Such conclusion comes from the offices' annual reports, as the number of cases received and investigated is systematically growing.
7. Cooperation on the international level (or at least in the Latin American region) has contributed to strengthening the position of ombudsmen, e.g. as part of the Ibero-American Ombudsman Federation or the Andean Council of Defenders of the People. Common assumptions have been expressed in adopted declarations, e.g. the Declaration on Human Rights and Culture of Peace, signed under the auspices of UNESCO in Antigua, Guatemala in July 1996. It was emphasised that the key to common respect of basic rights is implementation of a culture of peace. Only cessation of armed conflicts may create the conditions necessary for

adequate protection of the rights to life, freedom, social justice, tolerance, equality (including that between men and women), children's rights, the rights of minorities, and the rights of indigenous peoples.

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