

OMBUDSMAN- HISTORICAL VIEWS

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Abstract

Ombudsman or Mediator represents an institution that more and more is being introduced in different experiences of national institutional organization. This study aims to analyze the operation and the main features of this institution, whose main task is to tear down the wall that separates citizens from public administration. Ombudsman is a mechanism, one of the aspects of democracy that exists for years. Since the period of antiquity, as in Ancient Greece and the Roman Empire also, different institutions can be estimated in current forms of the Ombudsman, because of similar competencies and subjective interests that tutelage against the power of public administration of any time. The institution of Ombudsman in antiquity period has been present under different models and nominations, ranging from the *effors*, the *tribuni plebis* up to *defensor civitatis*. Immediately after completion of this analysis, mainly comparative, we can say that there are no important differences in space and the time at which the Ombudsman has become part of different countries, when we consider his role and main functions, also the modality of interior organization. Since the historical figure of the Swedish Parliamentary Commissioner, today, this institution is generally known as the Protector of Citizens, the bridge between civil society and the administrative apparatus, and every person who sees himself as a victim of an injustice by the Public Administration can be subject of his inquiry. So, the Ombudsman is present in almost all countries, although under different names, like in Spain known as *Defensor del Pueblo*, in Italy known as *Garante*, in France, the land of strong republican tradition and centralized known as *Médiateur de la République* etc...

Keywords: Civil Defender, ombudsman, parliamentary commissioner

1.1 Historical Developments

So as I also stated in the introduction, we can identify experiences in this area dating from the time of antiquity. Various institutions, both in ancient Greece and the Roman Empire, though under other names should be validated with the current forms of Ombudsman, because in they have in common the same skills and the same subjective interests to be protected against excessive power of the public administration of all time. This is because in the words of Rousseau (Rousseau, 2002): "sometimes serves to protect the ruler against the government, as they did in Rome the tribunes of the people, sometimes to support the government against the people, as it does now in Venice, the Council of Ten, and sometimes to maintain balance on the one hand and on the other, as did the ephors in Sparta". With regard to the historical facts, I want to make a clarification. In the introduction I presented this institution as a mechanism, an essential feature of democracy. Several studies in this area support my thesis (Wennergren,1973). As for me, I bind the historical evolution of the Ombudsman with the origin of democracy. We recognize the origins of democracy precisely in that period of history known as antiquity, however, the democracy that we know is a product of the twentieth century, in which it is granted the right to vote to every single individual, including women here (Dahl,2006). In that period of the ancient institution of the Ombudsman has been present in different designs and denominations, from

the Beginning *edici* and *syndici*(Mannino,1984) and then continuing with the ephors, the tribunes and the *defensor civitatis plebis*.

1.1.1 The ephors

The ephors (Paoli), properly "overseers" were a magistracy of Sparta. They formed a board of five members, whose decisions were taken by majority vote, and they were elected by the people. Their main task was to control the entire administration of the state. Precisely the first mentions of the ephors have occurred since the second half of the sixth century BC, when the people wanted to assert his right to exercise control over the administration of the state. In fact, in a city like Sparta, the ephors also represented the only effective control that the people possessed. They had extended competence. They could :

- Impose taxes
- Issue arrest warrants
- Dismiss the judges
- Directing wars also
- Also check out the King

On the latter claim, there is also a historical fact that can testify that the power of the ephors was not limited even before the King, and it is for this reason that all this power was called tyrannical. A famous Spartan King, named Pausanias, the winner of the Persians at Plataea (479 BC) suspected of secret understandings with the King of Persia, was been arrested and sentenced to death by the ephors. Everything said here leads us to the conclusion that even Sparta, the city that was more reluctant to democratic systems had an institution through which his people could freely exercise his will.

1.1.2. Tribunes plebis

The tribune was built from the beginning of the republican constitution and became the instrument of which the plebs use to achieve equality legal with the aristocracy. It is a structure that is established by "establish an exact proportion between the constituent parts of the state, or when it causes can not be eliminated without altering the relationships pose. A special type of the judiciary, which replaces each term in its true relationship and that serves as a link or middle term between both the prince and the people, and between the prince and the king, and, when it is necessary between both sides at the same time"(Rousseau, 2002). Invested with a *potestas Sacrosancta*, meant that the tribunes had the opportunity to object to all magistrates, paralyzing the action. It was not a constitutive part of the state and should not participate in any measure nor the executive nor the legislative branch, but in this his power is greater: because not being able to do anything he stoped everything(Rousseau, 2002). But the tribune was not a magistracy of the Republic but an internal charge of the plebes, a position that no nobleman could play (was prevented by a *lex sacrata*) unless waived its privileges of caste, and he made the *transitio ad plebem* himself to become a plebes(Cassola,1989). The sources provide three data relating to acts performed by the religious community in the foundation of the plebeian tribune :

- a *lex sacrata*
- a *iusiurandum*
- some *caerimoniae* .

The tribune is not sacrosanct for the mere fact that the plebes wants (Fabbrini,1971). The plebes wants to impose its *civitas tribunus* and has full confidence in him, because the *tribunus* is *sacrosanctus* . The assumptions that see in *iusiurandum* the decisive factor of the sacredness, *sacrosanctitas* itself, capture only a purely negative aspect , the "inviolability" in fact. But the inviolability itself is incomprehensible if we do not descend from *sacrosanctitas*. The positive nature of *sakros* was instead given to the tribune on the Monte Sacro, through

sacred ceremonies: the tribune was invested them with the power of magic from which sprang result for the inviolability of his person. The year 494 was a decisive year for the plebeian community, as they have formally recognized the religious foundation of their community and its leaders. After this decisive moment another major challenge presented itself in the fate of the plebeian community: they had to validate the existence of their community against the civitas as a whole. The existential validity of the plebeian tribunes could only occur as a result of an agreement between them and the patricians. It is true that initially the plebeians have created and sustained the tribune revolutionary way, but it is true that it was a peaceful revolution. The tribune is unarmed and does not resort to force (Fabbrini,1971). Since these facts, though on religious foundations, the plebeians in 494 have made a serious act of civil disobedience, after which they would have deserved death. Unless it had happened a new fact: that the Roman patrician religious community had not condescended to recognize the value of religious-legal and therefore also for acts committed by the plebes, ratifying this act. Given that religious ideas on which it was based were the plebeian community foreign to the Roman religion as established by the popes, Rome accepted it then with a different act with the act by which we accept the things that come from abroad. Therefore, the relevant college to accomplish that feat was that of feziali. In front of feziali, the Roman community and community plebeian is recognized as autonomous religious communities worship: that you could integrate only putting those in a position of equality under the protection of a deity from both recognized as the supreme: Jupiter. The period from the secession of Monte Sacro until the lex Hortensia is the heroic age of the tribune of the plebs because at this time the plebes maintains a revolutionary attitude and consequently reaches the legal equality with the patricians(Fabbrini,1971).The tape decisive in this process of integration are: the Twelve Tables and the leges *Liciniae Sextiae*. During the period decemvirale (451-450), the tribune of the plebs was suspended and was only restored in 449, when the new Republic was founded and were reconquered freedom(Fabbrini,1971).So the college of tribunes, consisting of ten members, become effective on 10 -XII- 449. After this brief historical overview of the creation and affirmation of the tribunes plebis would be better if we specify what they consist of the fundamental powers of that authority. The main function that the tribunes possessed was to auxilium that lent to the single plebe or the populace as a whole(Fabbrini,1971).The auxilium was expressed not only through the negative power of defense and punishment practiced against those who violate the rights of the people, but also in the positive thing to talk to the people, to call him, to make proposals, to hear the proposals plebeian. After that they develop a series of powers, including:

- the *intercessio*
- the *coercitio*

The intercession was indeed a revolutionary Tribunician power is the ability to veto all decisions and actions that are harmful in some way to be judged by the tribunes of the plebs as inappropriate for the interests of the populace itself. This veto could be brought against all the organs of the civitas: Magistrates, the Senate, Comizi. Should be noted that this type of power had not character well determined from the beginning. It was only a general power of opposition, and that gradually extends to cover any possible hypothesis (De Martino,1958). It is expressed by the technical term of *prohibere*: it has two meanings : to prevent :

- That the act deemed harmful or unlawful is fulfilled
- That arise from an act detrimental consequences.

In other words, has two aspects:

- Prohibition
- Termination.

Instead *coercitio* consists in a right to personally execute their own decisions, inflicting a penalty to the violator(Fabbrini,1971). This power is also called *coercendi summa potestas* and the tribune comes as a byproduct of its sacred character. The manner in which the *coercitio* option will apply are:

- The power to stop the consuls
- The power to punish for infringement of the *leges sacrae*
- The power to impose tax
- The power to enforce judgments
- The power to prosecute .

1.1.3 Defensor civitatis

In its first origin, the *defensor* was a magistrate which relied the only assignment, to defend the inhabitants of his city, and especially the plebeians, from every kind of oppression(Romano,1957). The *defensor* had to exercise this function not only of the various classes of citizens, defending the weak against *potentiores*, but also between the governors and the governed, protecting them from the abuses of the former. So he arose with the only office to protect and defend the plebeians. In fact, in addition to the name of *defensor civitatis*, he is spent designated by the name of *defensor plebis* and also with that of *Patronus plebis*. There is a tendency to compare the *defensor civitatis* with the ancient tribune of the plebs. There is a very strong analogy between the one and the other institution. They proposed the same end and the means of attaining it coincided to a certain point. The *defensor civitatis* was established for the first time on 27 -IV -364 in Illyria by a constitution of the emperors Valens and Valeriano addressed in Probus. However, it must be pointed out that only 385 from all the provinces of the empire have their *defensores*(Romano,1957).

Under the domination of the Ostrogoths, the *defensor* always retained the mixed nature destination for state and municipal destination by virtue of the fact that it continued to be appointed by the King on the appointment of city residents(Mastropasqua' 2003). In this period, the *defensor* worked with vitality and further increased its power thanks to the contribution of additional features such as :

- 1 . supervision of market prices
- 2 . regulate the activity of the markets in general
- 3 . treat the collection of taxes
- 4 . to prepare the documents necessary to give validity to contracts for the sale of real estate
- 5 . certify municipal deeds .

The *Defensor* at a later date was completely suppressed under the eastern emperor Leo IV "the Wise " (866-911) (Mastropasqua' 2003).

1.2 The Ombudsman in modern times

For centuries the concept of ombudsman seems to have disappeared into thin air, until in 1713 the absolute monarch Charles XII instituted the Hogste Ombudsman. This was the remedy institutional innovation that would not bring chaos during the 13 years of his long absence around the world. In 1719, the Supreme Ombudsman them have conferred the title Chancellor for Justice (Justitiekanslern). And in 1766 the Chancelleries Justice was transformed into a Parliamentary Ombudsman, namely a commissioner in charge of oversight of the bureaucracy and justice. In the act that enacted this change, the Riksdag (Swedish Parliament) established that this new institution should enjoy all the confidence that a free people could tune to each individual and that the holders of that office should be appointed by the electorate MPs. The duration of appointment was the same as the legislature and the owners were required to submit a written report on the whole they remain

in office. The statute provided that anyone could freely access the Ombudsman to request his intervention on whatever they considered a tort committed by a public official, which could also have been reported. This reform is finally restored in the Swedish constitution enacted June 6, 1809(Wennergren,1973). From this year it is noted that the Swedish experience is widespread and embraced in many other areas and countries, but also bearing in mind the conditions and the unique history of each country. There are several evaluation criteria in order to find all models of civil defense in the world today. Currently there are five criteria basis for a classification of the various models(de Vergottini, 1994). The analysis of these five criteria for grouping with their respective subdivisions will be the subject of special study in this paragraph. **The first criterion of individuation takes into account the relationship between the Ombudsman and the constitutional bodies.** There are four models that are identified using the above criteria(la Bella,2004):

- **The parliamentary model.** And the model of civic defense offered by the Ombudsman Scandinavian. It is a model arose as an offshoot of the legislative, administrative and inspection function dependent on the executive who must make informed Parliament through a regular report. In the later stage, when the figure of the original Parliamentary Ombudsman is consolidated, as he also has powers of protection of individual and collective interests of the various parties.

- **The parliamentary-government model.** This is the original Scandinavian ombudsman, but that becomes a fruit processing changes to be adopted in a particular context. This is the case of the UK Parliamentary Commissioner and the Ombudsman French. While remaining the criterion of the fiduciary relationship between the Ombudsman and Parliament, the holder body is appointed by the government and the search for information, through the possibility of access to the Parliamentary Commissioner, is filtered through an instance to be presented to a member of Parliament.

- **The governmental model.** It is stated in Germany for example, where there is the delegate for immigration, the delegate for the disabled, the federal guarantor for the protection of data. It's Ombudsman trust the government, operating in various sectors of public administration.

- **The spontaneous model.** It is located in a position completely outside the state apparatus organization, as it has no ties with both the parliament and with the government. This refers to a kind of third sector organization, such as the various committees of consumer protection, the courts of the sick, the doors complaints.

A second evaluation criterion is that of territorial jurisdiction. Keeping this criterion we can distinguish between Ombudsman :

- **National.** Belong to this type of cases, Sweden, Great Britain, Netherlands, Portugal, Spain and Austria, where there are parliamentary delegates with skills generalized throughout the country.

- **Sub - national.** Join here all forms of decentralization envisaged, for example, in France, where there are the departmental representatives Mediateur the only national, or Britain itself where we find the commissioner for the health service in England, one in Wales and one in Scotland, all delegates of the Parliamentary Commissioner.

- **Local.** And the model represented by real local Ombudsman, as in the Italian case.

The third evaluation criterion takes into account the competence for the matter. Based on this criterion, we identify two examples of Ombudsman :

- **General Competence**

- **Expertise in specialized area,** such as the Parliamentary Commissioner for the Armed Forces in Germany or that of the protection for children in Norway.

The fourth criterion evaluates the organizational structure in distinguishing the Ombudsman. So we have two models :

- **The Collegial model**, the typical model of Sweden, where even today what is called Ombudsman is composed of four different subjects.

- **The Monocratic model**, based on a single subject, who heads the office.

The last evaluation criterion, but no less important because it is **precisely this that makes the most difference distinguishes the Ombudsman according to the functions assigned to them**. The theme of the functions is closely linked to that of the powers of the Ombudsman. A "dilemma" the applicant regards, for example, whether it should be only "organ of influence" or "organ of effective protection". In the first case, the Ombudsman would only power signaling, recommendation or warning. In the second case, however, it would be more effective powers of nature "coercive". In the context of these dilemmas should read the variety of functions that, in addition to those 'classic' ombudsman, are expected to head to the Ombudsman under the laws of the various countries: control functions, functions of settling conflicts, functions reform, and functions of political and democratic representation.

So this figure is present in Finland (1919), Norway (1952), Denmark (1954), West Germany (1957), New Zealand (1962), Great Britain (1967), Israel (1971), France (1973), Portugal (1976), Luxembourg (1976), Austria (1977), Spain (1978), Ireland (1980), The Netherlands (1981), etc. . This process resulted in not only the spread of the Swedish original model, but also its separation into different logs, which once provided for in the constitutions of each country, trying to adapt to a specific context, thus creating new models and also variations arising of the original Swedish contemporary era .

1.3 The evolution of the Ombudsman to the European level

Still in regard to the subject on the ombudsman is noteworthy development of that institution at the European level. This is because at this level there is an ombudsman institution that transcends national boundaries national ombudsman. In fact it is a completely different context, which is where the ombudsman community. In fact, rather than in a universe inspired by the principle of separation of powers, predominant in Western democracies, in Maastricht, the ombudsman system is, as it were, immersed in an environment based on the principle of specificity of competence (Ubertazzi, 1992). The law is the product of a common organization, but has no constitutional foundations as national law. And an anomalous union constitutions, a new order in middle between international law and domestic law (Morbidei, 2009). As of February 7, 1992, when the Maastricht Treaty was signed at the European level was settled the European Ombudsman. And just art. 138E is made clear that the institution of the European Ombudsman. Literally art. 138E (1) provides: "The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration activities of the institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role". So the art.138E, does not determine clearly and precisely what skills has the Mediator. It only puts limits that are connected with the explicit acts in the exercise of judicial functions by the Court and the Court of First Instance. In Art. 138E can be deduced that the recurs of European Mediator is a right that belongs to every citizen of the European Union. So when the EU citizen has recourse to the Ombudsman exercises his right of citizenship, which in fact belongs to them as a European citizen. But that article also shows that EU citizens are not the only ones who have the right to appeal to the Ombudsman. In fact, the other category of persons recognized as entitled persons are also citizens of third States, which enjoy such rights as they have their registered office in a Member State of the European Union. In a Union "ever closer union among the peoples of Europe, in which decisions are always taken as close as possible to the citizen" (Article A),

the introduction of citizenship is a means to achieve one of the objectives of the Union same, namely "strengthen the protection of the rights and interests of the nationals of its Member States". In addition to identifying individuals who may have recourse to the Ombudsman, it remains important to identify the subject of a possible appeal to the Ombudsman. Article. 138E was very clear in this direction. Subject of an appeal to the Ombudsman may be situations of maladministration by EU institutions. But, unfortunately, the Maastricht Treaty was not so clear in defining what situations fall in cases of poor administration. Thus leaving ample space in the courts in the interpretation of that provision. And on the other side, leaving puzzled Europeans on a possible competence of the Ombudsman or less a matter of maladministration. A particular importance also takes the analysis of the relationship between the European Parliament and the European Ombudsman. Is easy to see that the appointing authority in accordance with Art. 138E of the Maastricht Treaty for the European Parliament. But once the Ombudsman is appointed by its parliament, the latter still continues to exercise powers on it. In fact, it is still the European Parliament to determine the regulations and general conditions of functioning of the Ombudsman in accordance with section 4 of Art. 138E of the Maastricht Treaty. To my opinion the art.138E is itself contradictory, because on the one hand as the European Parliament with powers so large that go beyond the appointment of the Ombudsman, and therefore Parliament has powers of control estimates on the Ombudsman, as the Statute of the Ombudsman is determined by the Parliament and also the general conditions of the progress of the Ombudsman. And on the other hand, provides a point 3 in that article. 138E, according to which, the Ombudsman shall perform his duties in full independence and in the performance of its functions do not take instructions from anyone. I think it is on these bases if the model of the European Ombudsman chosen by the Treaty of Maastricht was considered a "parliamentary model"(Rinaldi 1992). Precisely for this reason in the European Parliament has emphasized that "the nature and purpose (the Ombudsman) can not be understood without reference to the control functions of the European Parliament, with respect to which the Ombudsman plays the role of high responsibility for the control of smooth administrative functioning of the institutions and bodies"(Rinaldi, 1992). So framed and finalized the tasks of the European Ombudsman, the European Parliament is "the conditions of complementarity" between that institution and the right to petition, "essentially trying to strengthen the protection of the citizen before administration, and at the same time, to maintain control of their own political system of the petition". About the power of the petition it is worth mentioning another article of the Maastricht Treaty, art. 8 -8D. This article provides: " Every citizen of the Union has the right to petition the European Parliament in accordance with Art.138D. Every citizen of the Union may apply to the European Ombudsman in accordance with Article .138E ". Apparently , art. 8 -8D opens a path with two possibilities for European citizens: or a petition to the European Parliament, or the complaint to the European Ombudsman. In this way, once again end up being contradictory, as it does not specify exactly which cases fall within the competence of Parliament and such cases, however, fall within the remit of the Ombudsman. But there is even more. There is a certain tendency to qualify as such a discriminatory provision in the Treaty of Maastricht (Saulle,1994). First of all because there is a difference between the petition and the complaint, which must be grasped in the fact that, while in the case of the petition calling for the establishment of a form of protection where this is absent in the case, however, a complaint you have the demand to assert and exercise a specific right of the individual or group. And then, " compete ", ask, to advocate the creation of a rule of law that previously did not exist. It is worth to mention a very important historical event in the context of petitions. Even before they signed the Maastricht Treaty on European Union, the European Parliament has decided to create a Committee on Petitions in all respects. In doing so, the European Parliament "external" about his opposition about a possible opportunity to

create a "European Ombudsman". This is because it would weaken the powers of the Parliament and its committees about the control of the Commission and its services and would represent a new structure superposition and to the detriment of the already existing, represented by the Committee on Petitions. And in fact it is the subsequent behavior of the Parliament which states that hypothesis. After the Maastricht Treaty was signed, the Committee on Petitions wanted to point out that: "The Commission of the European Communities is the recipient of the 'natural', from the point of view of the institutional demands of the European Parliament. The petitions allow you to snap parliamentary control in areas that might not otherwise be subject to investigation, and also allow the Commission to intervene in member states in accordance with the procedures in force if the petitions highlighting the existence of infringements of Community law. Through petitions, in particular, you can examine the application of the law and its control by the Commission. The Commission itself (...) states that it is based on very considerable extent on complaints and petitions to exert its main activity as "guardian of Community law". A mechanism such petition has delineated a primary role is to solicit business "investigation" which in turn strengthens the controlling power of the European Parliament. In this role, looking for any small space able to strengthen its position in the inter-institutional relations, obviously does not want to give up (Rinaldi, 1992). In these reflections I add also one definitive. We must not forget that the European Parliament of the European Union does not represent the traditional model of the national parliament. The European Parliament does not have the legislative power is the power that a fundamental characteristic of the national parliament. Being a weak parliament, not having the traditional power that is legislative, it is clear that Parliament would do anything to customize any power that could enhance its role and thus strengthen its position in front of the other EU institutions. Apart from the relations with the European Parliament, the European Ombudsman Institution is an organ of particular importance. Just as he says himself, he works at the same time as a body outside and inside the European Union. It acts as an external mechanism of control, instructing the appeals for maladministration and recommending corrective action where necessary. On the other hand, the Ombudsman serves as a resource for institutions helping them to improve their conduct in the performance of their duties by directing their attention on the areas where you need improvement. The sole purpose of both cases is to improve the service offered to its citizens. However, taking what we have stated previously, the European Ombudsman based its work on the same acts which it adopts European Parliament: The Statute and the Code of Good Administrative Behaviour. By its decision of 9 March 1994, the European Parliament adopted its Statute which governs the terms and conditions of exercise of the functions assigned to him. By virtue of this Statute, the Ombudsman has the following connotations:

- Is appointed by the European Parliament, to which every year sends them a report on its work, pointing to the abuses, irregularities and malfunctions encountered and suggesting remedies
- Is fully independent of the bodies and the term of office coincides with that of the legislature, and then he was appointed after each election of the European Parliament
- The dismissal is decided by the Court of Justice in cases where the holder of the organ is not the most suitable to perform the task or has been guilty of serious
- Is entitled to receive from anyone residing in the territory of the Union or is a national, complaints and reports in order to maladministration relating solely to the institutions and bodies
- Carries out the relevant investigations and activate its powers of intervention , questioning the purpose the officer in charge and try to get to a point of compromise
- Has no enforcement powers or binding powers

- Shall dismiss the complaint and shall terminate its examination in all cases where it concerns a "deal" (Mastropasqua 2003), in respect of which hangs or is subsequently established a procedure before a court of law. The Code of Conduct was adopted by a resolution of the European Parliament of 6 September 2001. The adoption of the Code of Good Administrative Behaviour aims precisely to achieve the goals of the institution. Given that the maladministration is presented as a key competence of the Ombudsman, it seems reasonable to specify which behaviors of the European administration may be designated as such. Just on that basis I think it is resentful at the beginning of the institution of the European Ombudsman, the need for the provision of a code of good conduct on which the Ombudsman was based on his work. It is worth mentioning that in earlier years of the adoption of this Code, the Charter of Fundamental Rights of the European Union, proclaimed at the Nice summit in 2000, contained in his art.41 a provision titled " Right to good administration." Article . 41 provides: "

- 1.Any citizen has the right to the issues that concern are handled impartially , fairly and within a reasonable time by the institutions and bodies of the Union .

- 2.Such right includes :

- A. the right of every person to be heard against him before any individual measure is taken that would adversely affect

- B . the right of every person to have access to his or her file , while respecting the legitimate interests of confidentiality and professional secrecy

- C . the obligation of the administration to give reasons for its decisions

- 3.Any individual has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties in accordance with the general principles common to the laws of the Member States .

- 4.Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language .

The same European Ombudsman in his report in 1997 helped in the definition of maladministration by stating that "we are in the presence of maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it". Among the principles that are laid down in the Code we may mention that of legality (Art. 4), the absence of discrimination (Art.5), proportionality (Art.6), the absence of abuse of power (Art.7), impartiality and independence (art.8), objectivity (Art. 9), legitimate expectations, consistency and advice (Art.10), equality (Art.11), courtesy (Art.12) , response to letters in the language of the citizen (Art.13), notification of decisions (Art. 20), data protection (Art. 21). As you can see it is already known from first principles in the European context . Apart from the recovery of these principles, art. 26 is also taken recourse through complaints to the Ombudsman as a means of security against any default on the part of an officer of such principles .

1.3 A model of regional ombudsmen: the Italian case

It should immediately be pointed out that in Italy there isn't an ombudsman at the national level. But on the other hand, the ombudsman is very present at the regional level, in the provinces and municipalities. This fact may lead us to think that so many experiences ombuds constructed so they can consolidate a single model of civic defense. But, instead, lead to a fragmentation and disarticulation of the civic culture(La Bella, 2004). Fragmentation and disarticulation which in turn are due to a lack of entrenchment of a culture of political-administrative unit, or due to the objective difficulty to design and implement coordinated strategies for regulating relations between the community and the state administration. Various were the negotiations to adopt an ombudsman at the national level in Italy. The first and foremost was the bill on February 5, 1965(La Bella, 2004), but

failed due to the fact that the institutional architecture of the Italian system, provided that these powers were reserved to the Chambers, being that you initially wanted to adopt a model of the Parliamentary Commissioner, the appointing authority of which rests with the parliament. Given that the attempt to adopt an ombudsman at the national level failed, in the 70's you have the "regionalization" of the phenomenon. We can identify three historical phases of the adoption of the Regional Ombudsman(La Bella, 2004):

- The phase "constituent" "which takes place in the years 1974-75 and coincides with the adoption of the first two regional laws of Tuscany and Liguria .

- The stage of "transition" , "which takes place in the years 1976-80, when this phenomenon is spreading to other Italian regions.

- The phase of "consolidation", which takes place since the early 90's. It is characterized by redefining the one hand the type of public bodies should be subject to review by the ombudsman and the other, the type of subjects that can enable the regional office of the ombudsman .

The practice of the regional ombudsman testifies to a widening " fact" of its responsibilities(Comba,1995). The main functions of the Ombudsman are:

- The protection of individual positions of citizens towards the Administration
- Ensuring efficiency and good performance in general administration.

Both see the ombudsman in an intermediate position between the citizen and the administration, but while the former emphasizes the link between the ombudsman and citizen, the second gives the Ombudsman a role almost Auxiliary Administration (Sandulli,1989). With regard to this second function, so in relation to the control on the efficiency and smooth running of the government, it would not be too dissimilar, despite the obvious difference of situation, that of the administrative law judge under the supervision of the operations of the legitimacy public administration. The administrative judge, according to the known theory of protection reflex protects the legitimate interests of citizens as such, but because doing so also serves the public interest of the legality of administrative action.

Already from its first reports, the Ombudsman notes that the Tuscan most of the requests of citizens is not related to regional authorities, but mainly in those state. This is because perhaps the beginning of the adoption of this figure at the regional level, the citizens knew what were the powers and limits of such a body. Or because, for me it is a fundamental reason, the needs of citizens at the time felt the need for an ombudsman just at the national level. And it was precisely these needs who founded an *opinio iuris* in the matter, which in turn leads to two figures in the creation of civic defender(Comba,1995):

- The " de jure "
- And the " de facto ".

The ombudsman "in fact", where it acts outside the jurisdiction conferred by law, has not provided even though the limited range of technical and legal instruments which are instead provided for by the legislation establishing the ombudsman "of law". For a greater extension of the sphere of action of the ombudsman "in fact" corresponds to a minor technicality of the instruments used , compared to those that the law provides to the ombudsman "of law". As early as the 80s had noticed the changes that it had begun to play "on the role of a broker firm that the role of controller" (Pizzeti,1984). Instead, the prediction of the ombudsman at the provincial and municipal starts from the 90's. The first laws to the rank of municipalities and provinces were those n.142 and n.241 of 1990. We can say that these two laws are different by nature and goals(Pizzeti,1993). In fact, while the Law n. 241 of 1990 directly protects the procedural rights of the individual , the law n .142 of 1990 protects them indirectly through the enhancement of local self-government, and then through the differentiation of guarantee schemes. The Ombudsman referred to in Law no. 142 of 1990 can be understood as an instrument additional to those provided for by Law no. 241 of

1990 , from which it is distinguished by its greater variety of its forms and its mode of action. Exactly the art . 8 of Law no. 142 titled "ombudsman " includes:

1 . The Statute may provide for the municipal and provincial institution of the ombudsman, who plays the role of guarantor of impartiality and good performance of the municipal or provincial public administration, reporting, on their own initiative, abuse, malfunction, the shortages and delays of the administration towards the citizens .

2 . The statute governing the election, the powers and resources of the Ombudsman as well as its relations with the municipal or provincial council. Therefore, the provision in question states that the statute is to provide for the establishment of the ombudsman, that statute must have a minimum content required with regard to the rules governing the election, the powers and means of action and the type of relationships that are established by the City Council (Gorga, 2005). Thus was preserved the value of the constitutionally guaranteed autonomy of local authorities, but at the same time it is threatened and you are likely to create a different system of guarantee for citizens depending on the municipality or province. At provincial and municipal level, there has been a mass distribution of Ombudsmen. It is a completely legitimate behavior because each statute has the right to establish its own ombudsman. But in addition to providing the right to appoint their own ombudsman, statutes and regulations also provide, especially in smaller municipalities, the possibility :

- Or agree with other administrations to establish an ombudsman only
- Or to make use of already established an ombudsman, which is generally the regional level(Comba,1995).

Particular attention I think deserve the powers of appointment and the requirements for the office of the ombudsman. The Ombudsman is elected by the regional council by a majority of two-thirds of the directors and may be revoked for serious reasons by the same majority. An exception to the rules provided by the Lazio Region in which it is established for the appointment and revocation of the three-quarters majority. Its headquarters is everywhere scheduled at the Regional Council (de Vergottini,1994). Several regional laws cases of ineligibility for the office of the ombudsman. The ineligibility is provided particularly for :

- Members of the National Parliament
- The regional, provincial and municipal
- The members of the Regional Monitoring Committee
- The directors of institutions and public enterprises, semi-public or otherwise restricted to the region to work or administration of contracts or grants.

They recognized, however, such as eligibility requirements:

- The right to vote in a town in the region
- A particular legal-administrative competence that gives "guarantee of independence, objectivity, serenity of judgment "
- Belonging to some specific categories such as "professors of the University in the fields of law, judges of the ordinary courts even at rest or administrative sponsoring lawyers in the Supreme Court for more than 10 years".

Conclusion

The first thing to point out , just after finishing the analysis of this argument is that it does not matter if it comes from different countries in which the institution of Ombudsman has been provided, or the different times in which the institution has been adopted. The Ombudsman has characteristics that are common to many experiences. These features are:

- The Ombudsman is an emanation of the legislative power

- And, in principle, also independent from the legislative power, although a parliamentary committee can oversee the administration, the staff and the decisions of the Ombudsman
- Is a prestigious and influential figure that these characteristics based on the independence, objectivity, competence and impartiality. He is seen as the personification of the law and ensuring that the law is not upheld by public officials.
- The Ombudsman may act on its own but in most cases, are private litigation that put it in motto.
- An Ombudsman conducts impartial investigations, has the right to call anyone to get information, and has free access to official documents
- Usually used procedures free, quick and informal
- It does not have the power to issue orders and impose sanctions
- Keeps continuous reports and annual reports with the parliament, which contains specifically of all the activity in this time
- Always communicates the reasons for which a claim can not be taken into account by him, is that it is unfounded or that does not fall within its jurisdiction
- You can always make inspection visits to the authorities , either because that option falls within its powers of a general nature or to investigate a complaint about
- You can always suggest or recommend changes or improvements in administrative procedures
- He has a great psychological value for the population.

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