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The Role of Ombudsperson institution in Eastern and Central European Countries

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INTRODUCTION

The ombudsperson is one of the most widely adopted institutions in modern democratic governance. Today it exists in over a hundred countries, yet its actual capacity to protect human rights remains far less studied than its formal design. This thesis addresses two related problems that the existing legal scholarship has not resolved. The first is whether an institution that can only recommend - and never order - a state to change its conduct can genuinely function as a defender of human rights, particularly when the political environment turns hostile. The second is what specific design choices determine whether a given ombudsperson institution effectively protects rights or simply processes complaints without consequence. These questions have become especially pressing in Central and Eastern Europe, where ombudsperson institutions have been tested by constitutional crises, shifts in government, and attempts to dismantle judicial independence - and where the answers have real implications for institutional reform.

The relevance of this research stems from three developments. First, despite the rapid spread of ombudsperson institutions across European legal systems, legal scholars have focused mainly on describing their formal structures rather than assessing how well they actually work in protecting rights. Second, recent events in Central and Eastern Europe have put this question to a concrete test. The Polish constitutional crisis, which began in 2015 and is still not fully resolved, placed the Polish Commissioner for Human Rights at the centre of major legal battles before the Constitutional Tribunal, the Supreme Court, and the Court of Justice of the European Union (CJEU). The Ombudsman became one of the few institutional actors consistently defending the rule of law against legislative overreach - a role that the Venice Commission explicitly acknowledged in its Opinion No. 860/2016. This is precisely the kind of situation where the institution's real capacity - as opposed to its formal mandate - becomes visible. Third, the international community has recently renewed its attention to this question: the Venice Commission's Principles on the Protection and Promotion of the Ombudsman Institution (2019) and UN General Assembly Resolution A/RES/79/177 adopted on 17 December 2024 call for stronger ombudsperson institutions, but neither document specifies which design features actually produce stronger rights protection. This thesis attempts to answer that question.

The scientific novelty and overview of the research on the selected topic comes from asking a question that the existing literature avoids: not what ombudsperson institutions are designed to do, but whether they actually do it. Comparative legal scholarship on ombudsperson institutions has developed substantially over the past three decades, but it has concentrated almost entirely

on mapping and classifying national systems - describing constitutional mandates, appointment procedures, and jurisdictional scope. What it has not done is evaluate which of these design features translate into actual rights-protective outcomes, and under what political conditions. Studies and analyses add valuable empirical detail but are not built for cross-system comparison. The ECtHR's case law, particularly *Leander v. Sweden* (1987) and *Segerstedt-Wiberg v. Sweden* (2006), draws legally significant conclusions about what it means for an ombudsperson to lack binding powers, but scholarship has not translated those conclusions into design recommendations. This thesis fills that gap by developing a comparative effectiveness framework and applying it across Nordic, Iberian, and Central and Eastern European institutions together - an exercise that has not been carried out in the existing literature. The analysis draws on four case studies, on the Venice Principles and UN General Assembly Resolution A/RES/79/177 (2024) as normative benchmarks, and on empirical data from ombudsperson annual reports for 2024–2025.

The significance of this research is both academic and practical. Academically, it contributes a comparative evaluative framework that can be used to assess the rights-protective capacity of any ombudsperson institution - not only those examined in this thesis. From a practical standpoint, the findings are relevant for lawmakers who are designing or reforming ombudsperson legislation, for staff within ombudsperson offices seeking to understand the limits and possibilities of their mandate, and for international bodies such as the Venice Commission and the Council of Europe (CoE) that assess the adequacy of human rights protection mechanisms in member states. The research is also directly relevant for Ukraine, which is simultaneously undertaking post-war institutional reconstruction and aligning its legal system with EU standards as part of its accession process. The Ukrainian Commissioner for Human Rights is one of the institutions that will need to evolve significantly in this context, and this research offers a basis for thinking about how.

The aim of this research is to determine the institutional design conditions under which ombudsperson institutions are capable of effectively defending human rights, by analysing their legal foundations, comparing key structural models, and evaluating their real-world performance in Nordic, Iberian, and Central and Eastern European legal systems. The question is worth investigating both because it has not been answered in the existing literature and because the practical need for reliable answers is growing - particularly in countries where ombudsperson reform is on the legislative agenda.

The *objectives* of the research is the system of social and legal relations arising in connection with the organisation and functioning of the ombudsperson institution as a mechanism for the protection of human rights and fundamental freedoms.

To achieve this aim, the following objectives are pursued:

1. to reveal the concept, legal nature and etymological origins of the ombudsperson institution and to trace its historical evolution from its foundations in early-modern Sweden (1713; 1809) through its diffusion across Nordic, Iberian and Central and Eastern European legal systems after 1945, with particular attention to the moments when its mandate was progressively extended to include the protection of human rights;
2. to analyse the legal foundations of the ombudsperson institution and to examine the international standards governing its activity;
3. to systematise and compare the existing theoretical classifications of ombudsperson institutions - including Linda Reif's distinction between classical and hybrid ombudsmen, Gabriele Kucsko-Stadlmayer's "basic", "rule-of-law" and "human-rights" models, and Victor Ayeni's typology of classical and non-classical institutions - as the methodological basis for subsequent comparative analysis;
4. to conduct a comparative-legal analysis of the principal national models of the ombudsperson institution - Nordic (Sweden, Finland, Denmark, Norway), Iberian (Portugal, Spain) and Central and Eastern European (Poland, Hungary, the Czech Republic, Ukraine, with comparative reference to France) - identifying the structural and functional features, constitutional entrenchment, appointment procedures, investigative powers, access to constitutional courts, ex officio jurisdiction that are most closely associated with rights-protective effectiveness;
5. to assess the practical effectiveness of ombudsperson institutions as defenders of human rights through the analysis of key judicial decisions and institutional practices, including *Leander v. Sweden* (1987) and *Segerstedt-Wiberg v. Sweden* (2006) before the ECtHR, the role of the Polish Commissioner for Human Rights during the constitutional crisis of 2015–2024 (including litigation before the Constitutional Tribunal, the CJEU and the ECtHR in *Xero Flor v. Poland*), judgment STC 76/2019 of the Spanish Constitutional Tribunal, and the function of ombudsmen before international courts under Article 36 ECHR;

6. to identify the contemporary trends in the development of the ombudsperson institution - constitutional entrenchment as a prerequisite of institutional resilience, the spread of ex officio powers, the progressive expansion of the mandate, the challenges and opportunities created by digitalisation and artificial intelligence, and the repositioning of the ombudsperson as a centre of alternative dispute resolution (ADR).

The methodological basis of this research combines four methods, each applied to a specific part of the analysis. The historical method is used in Chapter 1 to reconstruct how the ombudsperson institution evolved from the Swedish Ombudsman of 1809 through its adoption in Finland (1919) and Denmark (1955), its spread to post-authoritarian Southern Europe, and its mass adoption in Central and Eastern Europe after 1989 - with the aim of showing how and why the institution's mandate was progressively expanded to include human rights protection. The formal-legal method is applied in Chapters 1 and 2 to analyse the specific legal texts that govern these institutions: constitutional provisions such as Article 54 of the Spanish Constitution of 1978, Article 23 of the Portuguese Constitution of 1976, Article 101 of the Constitution of Ukraine and Article 208 of the Constitution of the Republic of Poland; statutory acts such as Ley Orgánica 3/1981 del Ombudsman, Estatuto do Provedor de Justiça (Law No. 9/91), the Hungarian Act CXI of 2011, the French Organic Law No. 2011-333, and the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" of 23 December 1997; and international standard-setting documents, in particular the Venice Principles (2019) and UN General Assembly Resolution A/RES/79/177 (2024).

The comparative-legal method structures Chapter 2, where the Nordic, Iberian and Central and Eastern Europe (CEE) models are examined side by side against a common set of criteria - independence of appointment, breadth of investigative mandate, and access to constitutional courts - so that meaningful differences in design and their likely effects on effectiveness can be identified. The systemic analysis method is used in Chapter 3 to place each case-study institution within its broader constitutional and political setting, examining how the ombudsperson's interaction with courts, parliament, civil society and international bodies shapes its practical capacity to defend rights.

Structure of research: Chapter 1 covers the theoretical foundations, historical evolution, legal basis, international standards and typological classification of the ombudsperson institution: its origins in medieval Germanic practice, the establishment of the modern model in Sweden in 1809, the post-1945 diffusion across Nordic and Western European systems, and the wave of

adoptions in Central and Eastern Europe after the fall of communist regimes - including Poland (1987), Hungary (1995) and Ukraine (1997). Chapter 2 carries out a comparative-legal analysis of the principal national models - Nordic (Sweden, Finland, Denmark, Norway), Iberian (Portugal, Spain) and Central and Eastern European (Poland, Hungary, the Czech Republic, Ukraine, with comparative reference to France) - in terms of their legal architecture and their rights-protective design features, and argues that the Spanish Ombudsman's power to bring abstract constitutional complaints under Article 162 of the 1978 Constitution is the most significant structural advantage for effective human rights defence. Chapter 3 evaluates institutional effectiveness through four case studies - *Leander v. Sweden* before the ECtHR, the Polish constitutional crisis (2015–2024), the Spanish Constitutional Tribunal's judgment STC 76/2019, and the function of ombudsmen before international courts - and synthesises the contemporary trends in the development of the institution, including the Venice Principles, UN General Assembly Resolution A/RES/79/177 (2024), constitutional entrenchment, the expansion of ex officio powers, the broadening of the mandate, digitalisation and artificial intelligence, public communication, and alternative dispute resolution.

The thesis is divided into three chapters. Chapter 1 covers the theoretical foundations, historical evolution, legal basis, international standards (Venice Principles) and typological classification of the ombudsperson institution: its origins in medieval Germanic practice, the establishment of the modern model in Sweden in 1809, the post-1945 diffusion across Nordic and Western European systems, and the wave of adoptions in Central and Eastern Europe after the fall of communist regimes - including Poland (1987), Hungary (1995) and Ukraine (1997). Chapter 2 carries out a comparative-legal analysis of the principal national models - Nordic (Sweden, Finland, Denmark, Norway), Iberian (Portugal, Spain) and Central and Eastern European (Poland, Hungary, the Czech Republic, Ukraine, with comparative reference to France) - in terms of their legal architecture and their rights-protective design features, and argues that the Spanish Ombudsman's power to bring abstract constitutional complaints under Article 162 of the 1978 Constitution is the most significant structural advantage for effective human rights defence. Chapter 3 evaluates institutional effectiveness through four case studies - *Leander v. Sweden* before the ECtHR, the Polish constitutional crisis (2015–2024), the Spanish Constitutional Tribunal's judgment STC 76/2019, and the function of ombudsmen before international courts - and synthesises the contemporary trends in the development of the institution, including the Venice Principles, UN General Assembly Resolution A/RES/79/177 (2024), constitutional entrenchment, the expansion of ex officio powers, the broadening of the mandate NPM, equality

body, whistleblower protection, digitalisation and artificial intelligence, public communication, and alternative dispute resolution.

The thesis defends three statements. First, the non-binding nature of ombudsperson recommendations - which is usually seen as the institution's main weakness - is in fact a functional advantage in conditions of rule-of-law erosion, because it allows the institution to remain credible and to engage in systemic advocacy - including constitutional litigation, international reporting and cooperation with civil society - in ways that a body with binding enforcement powers could not without triggering political retaliation. The Polish case illustrates this dynamic. Second, the comparative analysis shows that the ability to bring proceedings before a constitutional court - specifically, to challenge the constitutionality of legislation independently of any individual complaint, as the Spanish Ombudsman can under Article 162 of the 1978 Constitution - is the most important design variable for effective human rights defence, because it gives the institution a way to convert its investigative findings into legally binding outcomes despite having no enforcement powers of its own. Third, the contemporary expansion of the ombudsperson mandate - through the incorporation of National Preventive Mechanism (NPM) functions, equality-body functions, whistleblower protection and engagement with the governance of digital and artificial-intelligence technologies - marks a qualitative transformation of the institution from a complaint-handling mechanism into a multi-functional national human rights institution (NHRI).

Use of Artificial Intelligence. In writing this dissertation, artificial intelligence was used solely as an auxiliary technical tool for certain limited purposes related to the translation of sources into English and the final editing of the text in English.

LIST OF ABBREVIATIONS

ADR – Alternative Dispute Resolution

AI – Artificial Intelligence

UN – United Nations

CoE – Council of Europe

ECtHR – European Court of Human Rights

CJEU – Court of Justice of European Union

CEE – Central and Eastern Europe

IOI – International Ombudsman Institute

ENNHRI - European Network of National Human Rights Institutions

OPCAT - Optional Protocol to the Convention Against Torture

NHRI – National Human Rights Institution

NPM – National Preventive Mechanism

PHSO - Parliamentary and Health Service Ombudsman

NGOs - Non-Governmental Organisations

US – United States

UK – United Kingdom

CCU – Constitutional Court of Ukraine

CHR – Commissioner for Human Rights

Theoretical and Historical Foundations of the Ombudsperson Institution in Eastern and Central European Countries

1.1 The Origins and Historical Evolution of the Ombudsman Institution

Ombudsman (“authorized person,” from Old Norse *umbothsmadhr*, where *umboth* means authority or mandate and *madhr* means person) is a parliamentary commissioner for human rights. Nowadays, according to the tradition of ombudsman as mentioned in the constitution and legislation, it is a governmental body appointed to the responsibility of the parliament to carry out public administration functions, take up and investigate complaints from citizens, and monitor state organs and activities in respect of legality, fairness of public affairs and the protection of basic rights and freedoms.

By connecting and providing the means to protect rights via public institution, it is an important connection between the person and the state. Hence, it is widely considered that the term “ombudsman” comes from the Old Swedish word, “*umbud*,” and means “representative,” an account of a person charged with protecting other people.¹ This etymological origin emphasizes what the institution is about at its core - representation and safeguarding the interests of the public - especially at times when one's position may not afford one's ability, resources or authority when it comes to defending people from stronger powers such as the ruler itself.

Already, the linguistic nature of the phrase implies a 'functional orientation' towards advocacy, confidence and responsibility, which have remained at the centrality of the current notion of the ombudsman's responsibility. The concept of the ombudsman itself arose from linguistic and legal traditions that predate its formal institutionalization.

The term “ombudsman” comes from ancient Germanic languages and was originally used by medieval Germanic tribes.² In earlier societies, with state institutions weak or absent from existence, the basic mechanism for resolving disputes was an outgrowth of customary law and individual traditions. Within this context, there arises the neutral third party as a pivotal element in policing social order and conflict resolution. The term was first used as describing a neutral

¹ M. M. Novikov, “Formation and Development of the Ombudsman Institution in Europe,” National Technical University ‘Kharkiv Polytechnic Institute’ Repository, 2022, p. 76

² Gerald E. Caiden, *International Handbook of the Ombudsman* (Westport, CT: Greenwood Press, 1983), 9–10, quoted in Charles L. Howard, *The Organizational Ombudsman: Origins, Roles, and Operations* (Burlington, VT: Ashgate, 2010) p.3

third person, and in the very initial usage the latter was a good person of trust and neutrality as a mediator in the disputes between a family or clan.³

Instead of forcing choices through coercive power, this person mediated conversation and discussion, aimed to bring peace and tranquillity back into the community. This individual took over from the family of a wrongdoer to collect fines or damages from those that the wrongdoing victim and sent them to the aggrieved family of the victim.⁴

These practices were typical of early Germanic practices of justice, in which justice did not have to be just in terms of punishment, but also comprised of a compensatory and reconciliatory approach. However, neutral intermediaries were necessary to mitigate negative cycles of retaliation and violence, that prevailed in many kinship-based and honor-oriented societies. In so doing, so the “ombudsman” act from earlier days is not only an act of settlement of discord but also of the maintenance of social bonding and coherence.

Their acceptance was an absolute key to their credibility, as not based on any kind of formal power, but their apparent impartiality, decency/truthfulness and their willingness to do things that should be done fairly. Over period of centuries, the meaning of the term shifted considerably, with the evolution of broader social, political and legal developments over time. And as societies grew more complex and centralized state structures, informal mechanisms of dispute resolution were slowly supplemented - and in some cases displaced - by formal legal institutions.

However, the conceptual underlaying of the trusted representative acted for others did not evaporate, in fact, it evolved to suit new institutional contexts. The word “ombudsman” was initially associated with mediation and compensation, from which the term derived the concept of representation and agency.⁵ That word started to mean more generally that of a person who seeks to do good, particularly in cases where people have unequal power, access to justice. This semantic change epitomizes a more institutionally oriented role vis-à-vis a single social and community function within government and public administration.

The origins of the ombudsman institution can be traced back to Sweden, where its foundations were laid as early as the early eighteenth century.

³ Ibid, p.3

⁴ Ibid, p.3

⁵ Ibid, p.3

The introduction of Charles XII to Ottoman bureaucratic practice gave the immediate impetus for institutional innovation, and a representation underpinning the term “ombudsman” provided its enduring normative and functional character.⁶ The ombudsman, in modern legal systems, has established itself as an integral part of democracy, an independent authority to review complaints and promote accountability so that government operates in line with the rule of law and with principles of good administration.

The early 18th century Swedish history underlies the history of the ombudsman - as well as the transformations of the legal and administrative landscape in Europe that occurred at that time. A particularly significant turning point can be traced to the events of 1709, when King Charles XII of Sweden suffered a decisive defeat at the hands of the Russian army during the Great Northern War.⁷ This disaster represented a profound decline in Swedish martial success in Eastern Europe and necessitated overhaul of royal governance and administrative control. It was a very influential period during which Swedish administrative thought arose: it was during this period that Charles XII confronted models for governing justice, for running procedures in the courts, and for using bureaucratic accountabilities in a way completely distinct from those seen in early modern Europe.

With his residence in the Ottoman Empire Charles XII encountered the institution of the kadi (Islamic judge), plus the broader Ottoman system of judicial supervision and administrative oversight.⁸ And at least in theory grievances against the authorities could be addressed through structured channels of complaint. These mechanisms guaranteed that the authorities and local officials were both subject to some measure of legal and moral constraints.

While the Swedish ombudsman cannot be seen as an unmediated institutional transplantation of Ottoman governance organizations, the comparative exposure would presumably have served to reinforce the monarch’s own understanding of the need for systemic control over public officials. Charles XII felt when he returned that centralized oversight of this kind provided relatively strong systems of accountability in the Swedish state, and after

⁶ Charles L. Howard, *The Organizational Ombudsman: Origins, Roles, and Operations* (Burlington, VT: Ashgate, 2010) p.3

⁷ Ibid, p.3

⁸ Diaw, M. C. *Ombudsmen, People’s Defenders and Mediators: A Comparative Study of Ombudsman Institutions*. London: Overseas Development Institute, 2008. p.2

observing the effectiveness of different types of oversight, he recognized that Swedish institutional structure must be improved.

This culminated in the establishment of the Justitieombudsman (Chancellor of Justice) office in 1713, an official that must supervise the conduct of royal officials and oversee compliance with laws and royal edicts, and receive complaints from individuals regarding abuses by the Executive.⁹ With the institutional framework established in this early institution, parliamentary oversight was formalized in Sweden in 1809, and constitutional reforms were introduced that constrained executive authority and strengthened parliamentary scrutiny.

The ombudsman model did not survive in a purely Scandinavian context until now and ultimately spread like wildfire through legal systems as a part of a larger effort to encourage administrative accountability, individual protection, and public trust in government institutions. Its spread represents not only functional efficiency but also the capacity of the notion of independent oversight to flexibly adapt to different constitutional and administrative traditions.

In 1809, when, as its basic principle, a new Swedish Constitution was adopted, the country underwent an important transformation, a decisive turning point in its constitutional development.¹⁰ In the early 19th century, reform to limit monarchical power against each other, coupled with reinvigorated accountability in the constitutional order across the whole system was intended to respond effectively to internal and external political and military crises.

The Constitution also established a better level of separation of powers and set up the basis for parliamentary rule. In this constitutional framework a new institution emerged - the Parliamentary Ombudsman (Justitieombudsman).¹¹ The founding of the Swedish Justitieombudsman in 1809 has long been officially considered the birth of what is known as the modern ombudsperson institution in its contemporary legal sense. Contrary to previous regimes of royal surveillance, the 1809 act transformed the ombudsman into an institution nested within constitutional orders, answerable to the legislature as a body and not to the monarch, and as a consequence enjoyed the greater independence and authority that was characteristic of it then. The first Swedish ombudsman, of course, had a mandate on a path that remained deeply imbricated with the workings of the executive but whose job became more explicit by the day

⁹ Frank Stacey, *Ombudsmen Compared* Oxford: Clarendon Press, 1978, p.1

¹⁰ Donald C. Rowat, ed., *The Ombudsman: Citizens' Defender* (London: George Allen & Unwin, 1968).p.18

¹¹ Ibid

and with a clear role in ensuring that judges, military officers, and civil servants followed the rules of the land.¹²

At the early stages of the institution, the ombudsman was essentially a referee who enforced lawful conduct for the public administration and the gradual recognition of administrative legality as a foundation for constitutions in the latter part of the Enlightenment in Sweden. Simultaneously as the ombudsman developed, another significant institutional organisation appeared in Swedish law, Chancellor of Justice (JK: Justitiekanslern).¹³ A precise prescription of the JK's functions was given by an office instruction issued from the King in Council, most recently updated in 1947.

These duties had been traditionally grouped into four main sections: in particular: (1) acting as the government's main legal adviser on matters of public law and administration; (2) representing the Crown as Attorney-General in legal proceedings affecting interests of the state; (3) exercising on behalf of the Crown supervisory authority over public servants and bringing matters to trial in cases of abuse of power or unlawful conduct; (4) fulfilling further particular tasks as outlined in the governing instructions.¹⁴

In total, the evolution of the Parliamentary Ombudsman and Chancellor of Justice reflects the gradual formalisation of administrative supervision in Sweden: in the past, such powers and policies were largely under the domain of parliamentary competence in public agencies, with the latter mainly being charged with the specific functions of legal advocacy and legal oversight. This mechanism helped establish the concept of a dual system of legality control, combining parliamentary supervision and executive legal control, a model which would later serve as an example to many European and non-European jurisdictions.

While the current type of ombudsman has its origins in the Swedish Parliamentary Ombudsman of 1809, the scope of the institution began to spread (in a consistent) manner outside Scandinavia beginning in the 1960s.¹⁵ Legal scrutiny under Finnish law has its origin in its intricate political and constitutional history. Within this general trajectory of institutional diffusion, legal scrutiny

¹² Diaw, M. C. *Ombudsmen, People's Defenders and Mediators: A Comparative Study of Ombudsman Institutions*. London: Overseas Development Institute, 2008. p.2

¹³ Donald C. Rowat, ed., *The Ombudsman: Citizens' Defender* (London: George Allen & Unwin, 1968).p.18

¹⁴ Ibid, p.19

¹⁵ Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* The Hague: Martinus Nijhoff Publishers, 2004 p.1

under Finnish law has its origin in its intricate political and constitutional history. So when Finland was separated from Sweden in 1809 and granted autonomy as a Grand Duchy under the Russian Tsar, it did not start by emerging without the support of law.¹⁶

As also pointed out in the literature, Finland maintained much of the Swedish legal and institutional framework, most notably the constitutional traditions of the Swedish Constitution in 1772 and earlier administrative systems. This continued institutional continuation helped to sustain systems of enforcing the legality of government action regardless of the sovereignty change. Most significantly, the function of the Procurator (Justitiekansleri / Procurator), the historical predecessor of the present-day Finnish Chancellor of Justice, survived the transitional process and served as its successor institution and continued to exist under the new imperial constitutional regime.¹⁷

The Procurator's office was codified in rules and regulations written to establish the job's role within the autonomous Finnish administration in 1812. His duties bore two main obligations and were very important as a role in the formulation of the rule of law in Finland. First, he had to supervise the legality of actions taken by all public officials and courts, to ensure that they were in compliance with all applicable law and administrative norms.¹⁸ Second, he was required to attend the sessions of both houses of Finland's Senate - the judiciary division, which stood as the Supreme Court, and the economic division, which exercised the executive government.¹⁹

The Procurator undertook the dual role of this actor to keep an eye on this very accountability in Finnish governance. After Finland declared independence in 1917 and the new Constitution was adopted in 1919, the legal framework for institutional oversight was formally reformed. The office of the Procurator was changed to the Chancellor of Justice in a move that symbolised not only that Finland had acquired sovereignty but also the modernization of its constitutional order.²⁰ The name changed, but the central task of enforcing legality in public administration was maintained, though its constitutional grounding was now directly connected to the newly independent Finnish state. Meanwhile, and similar to the Swedish constitutional model, Finland

¹⁶ Donald C. Rowat, ed., *The Ombudsman: Citizens' Defender* (London: George Allen & Unwin, 1968). p. 59 .

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid, p.60

established the Parliamentary Ombudsman as an embedded element of its constitutional framework.²¹

Contrary to the Chancellor of Justice, who retained close institutional ties with the executive and sat in on governmental sessions, the Parliamentary Ombudsman was developed as a clearly parliamentary instrument. The Ombudsman has his legislature as seat of authority, being directly answerable to Parliament and his independence from the executive and the parliamentary control of public services being increased. Finland, therefore, became the second, after Sweden, country to establish the ombudsperson institution in 1919, integrating it into the constitutional framework of a newly independent state.

This initial embrace shows Finland's importance as a major bearer of Nordic administrative-legal models, and emphasizes the adaptability of the ombudsman conception to different constitutional conditions. The ombudsman model was not adopted internationally for decades at a time.

Interest in the institution only surged after World War II, including with the context of burgeoning welfare states and increasing administrative complexity.²² Norway became the third Nordic country to adopt an ombudsman-style mechanism in 1952 via an Ombudsman plan for military service.²³ Later, the country established a general Parliamentary Ombudsman that sprung from an Expert Commission on Administrative Procedure, which was appointed in 1958.²⁴

The ombudsman concept spread from Scandinavia to Western Europe and the Commonwealth, and subsequently across the globe, between 1955 and the late 1970s, from originally a regional institutional peculiarity to a globally recognised mechanism of democratic governance. The internationalisation of the ombudsman model also begins in this period, and as a consequence, public administration structure and governance fundamentally shifts post-war. It was only after the Second World War that the ombudsman institution took on a new global direction. Although there were previous models in Sweden (since 1809) and Finland (since 1919), there were no further examples until the post-war period. Only as welfare states grew, administrative complexity increased, and the concept of rights as an individual grew to focus more globally, did

²¹ Ibid, p.61

²² Donald C. Rowat, *The Ombudsman Plan: Essays on the Worldwide Spread of an Idea* (Berkeley: University of California Press), 1985 p.29

²³ Ibid

²⁴ Donald C. Rowat, ed., *The Ombudsman: Citizens' Defender* (London: George Allen & Unwin, 1968). p. 95

the need for a non-judicial, flexible, and accessible supervision mechanism become well acknowledged.

These shifting political, administrative and social circumstances created a conducive environment for new institutional innovations and made the transfer of the ombudsman model from one legal system to another straightforward.

This process in Denmark began with introduction of the ombudsman into its 1953 Constitution; a further act established the first Parliamentary Ombudsman in 1955.²⁵ This is generally accepted as the landmark in the development of the institution, while the Danish model offered a new and flexible form of the ombudsman which could be transplanted into other constitutional systems more easily. In contrast to the previous Swedish model, which, rooted in a particular constitutional framework, the Danish Ombudsman was conceived in a way that stressed accessibility, flexibility, and responsiveness to the complaints of citizens – making it highly suitable for export to other jurisdictions. The institution spread rapidly in the years that followed.

West Germany in 1957 created a military ombudsman, because it recognized that the military required democratic oversight. The system was built on a more integrated Nordic model; in 1962 Norway created a general ombudsman for civil administration. In the same year New Zealand was the first Commonwealth country to adopt the institution, demonstrating its transferability beyond continental Europe and into more general common law systems.²⁶

With the transition from a regionally based Scandinavian model to a more flexible institution that could serve to address different institutional and constitutional contexts, these developments show further how the evolution of ombudsman institutions transformed. The expansion of the ombudsman institution in a new qualitatively different phase, however, initiated with the disintegration of authoritarian regimes, first in Southern Europe, and later, notably, in Central and Eastern Europe.

The disintegration of totalitarian regimes in Portugal and Spain, Greece and Central and Eastern Europe served as a major impetus for the further evolution of the ombudsman concept in

²⁵ Donald C. Rowat, *The Ombudsman Plan: The Worldwide Spread of an Idea*, rev. 2nd ed. (Lanham, MD: University Press of America), 1985 p. 29

²⁶ Ibid

Europe.²⁷ In many countries, efforts to tighten the enforcement of fundamental rights and to restore public trust in their state institutions accompanied the transition to democracy.

We saw this sort of development in other European countries as well - Greece (1995), and then massively in post-communist Central and Eastern Europe after the Eastern Bloc, Soviet Union, and Yugoslavia collapsed.²⁸

The ombudsman was therefore not an optional institution unto itself to be built during this time but a central tool of democratic change in this process. These institutions have sought across the wide region to promote a range of goals generally: the quickly developing democratic institutions, the strengthening of the rule of law, the struggle against corruption and nepotism, and a lively and active civil society. The ombudsman was the very mechanism which was employed, therefore, not only as a means to rectify public issues, but also as a structural means of democratic consolidation. This role greatly broadened the traditional schema of the Scandinavian institution, evolving it into an institution with multiple functions that could resolve systemic governance weakness and build long-term infrastructure.

Even more amazing was the rate at which ombudsman institutions were adopted within the post-communist space. In less than 20 years, however, several states created such institutions as part of their constitutional and administrative changes. They included Poland (1987), Croatia (1994); the Baltic States (Lithuania and Latvia in 1995; Estonia in 1999), Hungary (1995), Slovenia (1995), Bosnia and Herzegovina (1996), Romania (1997), North Macedonia (1997), Ukraine (1997), Russia (1998), Moldova (1998), the Czech Republic (2000), Albania (2000), Slovakia (2002), Montenegro (2003), Bulgaria (2005) and Serbia (2007). The institution's expansion spread even more in the Caucasus (Georgia 1998; Azerbaijan 2002; Armenia 2004) and Central Asia (Uzbekistan 1995; Kazakhstan and Kyrgyzstan 2002).²⁹ This swift dissemination underscores the flexibility and normative virtues of the institution of an independent ombudsman.

The ombudsman model expanded rapidly in the 1990s, particularly in Central and Eastern Europe, where it supported democratic transition, transparency, and rights protection. Alongside EU integration and the establishment of the European Ombudsman in 1995, it evolved from its

²⁷ Kucsko-Stadlmayer, Gabriele. *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea*. Vienna/New York: Springer, 2008.p. 2

²⁸ Gabriele Kucsko-Stadlmayer, "The Spread of the Ombudsman Idea in Europe,"paper presented at the conference *Back to Roots: Tracing the Swedish Origin of Ombudsman Institutions*, June 12, 2009.,p.9

²⁹ Ibid

Swedish origins into a key mechanism of administrative justice and good governance across Europe.³⁰

The analysis of the origins and historical evolution of the ombudsman institution allows the following conclusions to be drawn, in line with the first objective formulated in the Introduction.

First, the etymological and conceptual foundations of the institution are significantly older than its formal constitutional establishment. The term “ombudsman”, derived from the Old Norse *umbothsmadhr* and the Old Swedish *umbud*, conveys the meaning of a trusted representative entrusted with the protection of others' interests. In medieval Germanic societies this role was performed by a neutral third party who mediated disputes on the basis of impartiality, moral credibility and reconciliation, rather than coercive authority. These foundational features have remained the normative core of the institution throughout its later transformations.

Second, the modern institution emerged in Sweden in two key stages - the establishment of the Chancellor of Justice by King Charles XII in 1713, under the influence of Ottoman administrative practices, and the decisive creation of the Parliamentary Ombudsman by the Swedish Constitution of 1809, which transformed the institution from an instrument of royal supervision into an organ of parliamentary oversight, thereby embedding it within the constitutional order and endowing it with the independence and accountability to the legislature that have characterised it ever since.

Third, the international diffusion of the institution proceeded in successive waves: within Scandinavia (Finland 1919; Norway 1952 and 1962; Denmark 1953 and 1955); across Western Europe and the Commonwealth after 1955 (West Germany 1957, New Zealand 1962); in post-authoritarian Southern Europe in the 1970s–1990s (Portugal 1976, Spain 1978, Greece 1995); and, on an especially broad scale, in Central and Eastern Europe after 1989 (Poland 1987, Hungary and Slovenia 1995, Ukraine 1997, among others). Each wave corresponded to a progressive extension of the mandate - from supervising administrative legality towards the protection of human rights and the consolidation of democratic constitutional orders.

Taken together, these findings confirm the premise that underlies the present research: the ombudsman is not a static institutional form but a flexible legal construct whose substantive content has evolved together with the European understanding of the rule of law and fundamental

³⁰ Mykhailo Zhyvko, Alla Dombrovska, and Daria Kiblyk, “The Role of Ombudsman Institutions in Administrative Accountability: A Comparative Perspective,” *Public Administration and Law Review*, no. 1(21) (2025), p. 90

rights. This historical trajectory establishes the necessary foundation for the subsequent analysis of the institution's legal bases, typological classification and comparative functioning, which is pursued in the following subchapters and chapters of this thesis.

1.2 Legal Framework and International Standards Governing the Ombudsman's Activities

The legal foundation upon which an ombudsman institution based is neither a secondary nor a purely technical question. It determines the institution's constitutional status, its interaction with the legislative, executive, and judicial branches, the extent and boundaries of its jurisdiction, its independence from political influence, and, ultimately, its ability to effectively perform its core role of safeguarding individuals against maladministration and arbitrary actions by public authorities.

The Constitution of the jurisdiction provides for the creation of the Office of the Ombudsman and defines its functions and objectives.³¹ The significance of legal basis extends beyond mere permanence. Constitutional enshrinement demonstrates collective responsibility for the values that this institution embodies -in the case of the Ombudsman, the principles of administrative accountability, the rule of law, and citizens' access to effective legal remedies against unlawful actions by the state.

Constitutional regulation primarily serves to guarantee the independence of these institutions from public administration, while also securing their stability and continuity within the broader state framework.³²

Such constitutional entrenchment is not merely symbolic; it entails structural implications. Where the ombudsman is recognised in the constitution as a fundamental state institution, it logically follows that the legislation implementing this institution should embody a heightened level of deliberation and broad democratic consensus.

The legislature of the jurisdiction is empowered to define the Ombudsman's mandate, including its functions, powers, and responsibilities, through statutory law. Such legislation, which

³¹ Gottehrer, Dean M. *Ombudsman Legislative Resource Document*. Occasional Paper No. 65. Edmonton: International Ombudsman Institute, University of Alberta, March 1998, p.5

³² Kucsko-Stadlmayer, Gabriele, ed. *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea*. Vienna: Springer, 2008., p.7

specifies the scope of the Ombudsman's authority, is to be adopted as an organic act in accordance with the constitutionally required majority.³³

While the constitutional and legislative framework establishes the formal mandate and institutional design of the ombudsman, it is equally important to consider the underlying principles that define its broader role and purpose within the system of governance.

On the most basic level, it is held that the ombudsman institution plays a very important role of strengthening democracy, rule of law, good administration and protection of human rights and fundamental freedoms.³⁴

State will provide for and protect the Ombudsman Institution and refrain from any action undermining its independence. Although no single model is standardized by state, the state should also back their own institutions and do everything feasible to prevent interference. Having a solid legal foundation is a primary requirement at the outset.

An Ombudsman Institution shall be governed by a sound legal framework, ideally at a constitutional level.³⁵

This maintains the integrity of the institution and its authority for good purposes in the context of public governance. Meanwhile, specific elements concerning its function and status may be regulated at statutory level, but the flexibility to adjust it to national laws is possible.

One of the key factors to make the ombudsman institution work efficiently is a properly high institutional rank that needs to be demonstrated in both formal and a material form.³⁶

To meet worldwide standards, the ombudsman's standing ought to be the result of the nature of the duties that are provided by the oversight, with particular reference to the protection of human rights, accountability of public administration and the adherence to the rule of law.

³³Gottehrer, Dean M. *Ombudsman Legislative Resource Document*. Occasional Paper No. 65. Edmonton: International Ombudsman Institute, University of Alberta, March 1998, p. 6

³⁴ Venice Commission principles 1

³⁵ European Commission for Democracy through Law (Venice Commission), Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles"), clause 2

³⁶ Ibid, clause 3

One of the issues as important as the one of status is also the structure of the ombudsman institution and whether to choose a single (monocratic) or plural type (collegial or multi-ombudsman).³⁷

The choice of a single or plural Model Ombudsman depends, among others on the state's own system and internal needs. The Venice Principles point out that there is no one-size-fits all model; the choice of model depends on an individual state's particular legal and institutional framework and specific requirements to achieve good governance.

This principle that states should pursue models in line with all Venice principles highlights that simply creating an ombudsman institution through its formal structure will not be enough: the institution should provide structure and function as its real effectiveness, independence and credibility must be provided.

States shall model their institutions for enhancement and effectiveness and promotion of protection and promotion of human rights and fundamental freedoms in the state. This responsibility means that states will not only have to link their legal structures with international standards, they can also provide for the institution to be strengthened continuously in practice by ensuring sufficient resources for the institution, its ability to act independently with regard to its protection of state and state functions, and also by growing its capability to deal with maladministration and human rights violations. Crucially, the purpose of this type of compliance should be to upgrade security and the protection and promotion of human rights and fundamental freedoms, meaning the effectiveness of the Ombudsman should not be judged by the official legal framework only but also based on its effects on an individual's rights directly or indirectly or the quality of public administration.

The independence and legitimacy of the ombudsman is also ensured by the appointment procedure.³⁸

The appointment of the Ombudsman shall happen on procedures reinforcing to the fullest extent possible the authority, impartiality, independence and legitimacy of the Institution. It is usually advisable that parliament, with a qualified majority, elect the ombudsman after a clear, merit-based and public selection process.

³⁷ Ibid, clause 4

³⁸ Ibid, clause 6

Selection of candidate shall involve a public call and be open; the process must be available to the public, transparent, and merit based, objective and provided for by law.³⁹

Other relevant include term of office and firing protections. The term of office should exceed that of the appointing entity and preferably be non-renewable or renewable only once, ensuring independence from political cycles.⁴⁰

Removal from office must be based only on clearly defined legal grounds, such as incapacity or misconduct, and carried out through transparent procedures requiring a qualified parliamentary majority.⁴¹

For functional purposes, the ombudsman has broad competence to supervise both prevention and rectification of maladministration, as well as promotion and protection of human rights. Its competence generally covers all levels of public administration and may include public-service institutions, state or private.⁴²

The role of the ombudsman in connection with the judiciary is typically rather circumscribed, though, to that of efficiency rather than the kind of judicial decision-making that the judges are asked to adopt. One remarkable element of the establishment is its accessibility.

All persons and legal persons, including Non-Governmental Organisation (NGOs), shall have the right to free, unhindered and free of charge access to the Ombudsman and to file a complaint.⁴³

In addition, it gives the ombudsman the power to act according to their own initiative which is an important provision regarding the active responsibility of the institution to deal with systemic problems.

The effectiveness of the ombudsman is largely driven by its investigative powers. The Ombudsman shall enjoy discretionary powers, whether through his or her own initiative or for

³⁹ Ibid, clause 7

⁴⁰ Ibid, clause 10

⁴¹ Ibid, clause 11

⁴² Ibid, clause 12-13

⁴³ Ibid, clause 15

the purposes of a complaint, to consider cases with due regard to available administrative remedies.⁴⁴

Such powers include free access to documents, databases and premises, as well as the discretion to ask officials for explanations and to collaborate with relevant actors.

Importantly, the ombudsman can offer recommendations at will and make demands for responses from public authorities within a prescribed time frame but it's not typically binding legally.⁴⁵

This ensures accountability by ensuring that such recommendations can be made to bodies and institutions within the competence of the Ombudsman as specific recommendations. It will have the powers to apply individual recommendations to any bodies or institutions under the competence of the Institution. This mechanism enables the Ombudsman to implement a response to individual cases of human rights violations and to have impact on administrative practice.

Of crucial importance to the effectiveness of such recommendations is the legally binding duty placed on public officials to act within a reasonable period.⁴⁶

In addition to its supervisory authority, the Ombudsman plays a role in developing the national legal system by enabling the harmonisation of domestic laws with international human rights.

The Ombudsman shall have the power to present, in public, recommendations to Parliament or the Executive, including to amend legislation as appropriate or to adopt new legislation.⁴⁷

This function shows the proactive side of the institution, allowing it to point to systemic defects and propose legislative changes. At the same time, dealing with recommendations to Parliament or the Executive, the Ombudsman occupies the role of intermediary between the obligations and the national conduct with respect to issues raised. After investigations are completed, the Ombudsman has strong powers that serve to uphold constitutional order and effectiveness of remedies. But the Ombudsman shall preferably have the authority to challenge the constitutionality of any laws and regulations or general administrative acts. These include the

⁴⁴ Ibid, clause 16

⁴⁵ Ibid, clause 16

⁴⁶ Ibid, clause 17

⁴⁷ Ibid, clause 18

power to challenge the constitutionality of laws, to intervene in courts, and to influence judicial proceedings.

The principle acknowledges, too, the need to protect individuals' access to justice; and allows a complaint to the Ombudsman the opportunity to pause procedural time-frame limits to court applications.

Ombudsman transparency or accountability is a cornerstone of how the Ombudsman system operates. Parliament shall receive regular reports from the Ombudsman. The Ombudsman reports to Parliament on the functioning of the Institution at least once a year.⁴⁸

Such an effective means of drawing attention to systemic problems, cases of maladministration and a failure to follow public laws is important, as we have seen in the reports.

Financial independence of Ombudsman institution relies heavily on its own fiscus independence and availability of the resources is one of the essential elements of the independence of the Ombudsman institution. Adequate and independent budgetary resources shall be secured to the Ombudsman institution.⁴⁹

The point is that funding should be obtained to be adequate and the independence to which the Ombudsman's powers will need to be given enough and not compromised by importers of funds and services to give it without any undue influence from any branches of power to effectively maintain its function as its own business, without interference of others. Furthermore, the Ombudsman should be engaged in the budget process, including drafting its own budget. Institutional independence is further protected against arbitrary cuts in funding during the financial year.

Ombudsman Institution shall have access and adequate staff and appropriate structural flexibility. Financial resources of an effective Ombudsman institution must also include sufficient human resources, organisation dynamism and flexibility.⁵⁰

⁴⁸ Ibid, clause 20

⁴⁹ Ibid, clause 21

⁵⁰ Ibid, clause 22

The principle underscores the need for adequate staff and the option of deputizing Ombudsman. The ability to recruit staff on its own allows for the institution's independence on policy and operational responsibilities and will increase its ability to tackle complex problems.

There will also be a functional immunity for the Ombudsman, deputies and decision-making staff against legal process in regard to actions and words, oral or written, done in their official capacity for the Institution.⁵¹

In order to provide independence and protection for the Ombudsman from external pressures, the principle provides for functional immunity for the Ombudsman, deputies and decision-making personnel. This immunity will cover actions and statements made in the course of official duties and it will last even after leaving office.

The Ombudsman depends in effect on protecting it from invasion or efforts to subvert that institution.⁵² Both direct and indirect forms of interference, which could undermine its independence or operational effectiveness, must therefore be avoided.

The last principle is that the provisions should be interpreted in such a way, that strengthens and consolidates the Ombudsman institution.⁵³

It invites states to amend their legal architectures (legislative and constitutional) so as to allow the institution to run efficiently, independently and with objectivity. Such a dynamic approach embraces the variety of ombudsman types and encourages adherence to the norms. It also emphasizes, in the end, how essential it is to continue to grow the institution, consistent with the Venice Principles. As stressed, "states are encouraged to undertake all necessary actions... to strengthen and develop the Ombudsman Institutions."

In short, the Venice Principles lay down a holistic structure for achieving independence, accountability, and effectiveness. Though permitting the diversity among countries' institutional designs, they establish a common measure aimed at reinforcing the standing of those ombudsman institutions as human rights protectors and good governance promoters.

⁵¹ Ibid, clause 23

⁵² Ibid, clause 24

⁵³ Ibid, clause 25

The analysis conducted in this subchapter has addressed the second objective of the thesis, namely to identify the legal foundations of the ombudsperson institution and to examine the international standards governing its activity. Two conclusions follow from it.

First, the strength of an ombudsperson institution cannot be separated from the normative level at which it is anchored. Constitutional enshrinement is not a formality: it establishes the institution's independence from the political branches, its continuity through changes of government, and the heightened democratic consensus required to reform the statute that gives it operational form. Where the ombudsperson is recognised as a constitutional organ and the implementing act takes the form of an organic law, the institution acquires the structural protection necessary to carry out its core mission - safeguarding individuals against maladministration and defending human rights in the face of state action. Where the legal basis is weaker, these guarantees become correspondingly precarious, regardless of the institution's declared mandate.

Second, the Venice Commission's Principles on the Protection and Promotion of the Ombudsman Institution (2019) now constitute the consolidated international benchmark against which the design and operation of any ombudsperson institution may be evaluated. Taken together, the twenty-five principles cover the full architecture of the institution - its legal foundation and institutional rank, the choice between monocratic and plural models, the procedures for selection and appointment, the length and non-renewable character of the term of office, the grounds and procedure for removal, the scope of investigative competence and accessibility, the non-binding but reasoned character of recommendations, the power to initiate constitutional review, the duty to report to parliament, budgetary autonomy, adequate human resources, functional immunity, protection against interference, and the interpretive obligation on states to strengthen rather than weaken the institution. The Principles permit legitimate national variation while fixing a common standard of independence, accountability, and effectiveness

1.3 Classification and Typology of Ombudsman Models

Linda Reif divides the institution of the ombudsman into two types: “classical ombudsmen” and “hybrid ombudsmen”⁵⁴

⁵⁴ Reif, Linda C. *The Ombudsman, Good Governance and the International Human Rights System*. Leiden: Martinus Nijhoff Publishers, 2004. p.2 -7

The classical ombudsman is given investigative jurisdiction over a wide variety of government departments, agencies, state corporations and their administrative officials. The legislature is invariably excluded from jurisdiction. Most classical ombudsmen do not have jurisdiction over the judicial activities of the courts, though some - particularly the original Swedish and Finnish models - do extend to the judiciary and retain the power to prosecute officials.⁵⁵

A defining feature of the classical model is that complaints are normally directed against the government only. Classical ombudsmen typically do not have jurisdiction over complaints between private entities.⁵⁶ This reflects the institution's original purpose as a check on state power and public administration, not a general human rights tribunal with authority over private conduct.

The classical ombudsman model, a public sector office appointed by but separate from the legislature, is given the authority to supervise the general administrative conduct of the executive branch through investigation and assessment of that conduct.⁵⁷

According to the Linda Reif, a clear distinction can be drawn between the classical and hybrid models of the ombudsman.

The principal aim of the classical ombudsman model is to check the conduct of public administration. It is typically established by the constitution or legislature and it is an independent entity accountable to parliament. Its main work is to hear the complaints that people make about maladministration, investigate the complaints raised, and then provide advice on what adjustments can be made. Most tellingly, its jurisdiction is generally limited to the public sector and its powers are of a non-binding nature - it can't override decisions and only resort to persuasion, reporting and institutional authority. So, the classical model tends to focus on the legality, fairness and accountability of administration.

In contrast, the hybrid ombudsman model combines the traditional features of the classical ombudsman with broader human rights functions.

These institutions are considered part of the wider category of national human rights institutions and often have a dual mandate: supervising public administration while also promoting and

⁵⁵Ibid, p. 3

⁵⁶Ibid

⁵⁷Ibid, p. 2

protecting human rights . Unlike the classical model, hybrid ombudsmen may have jurisdiction that extends beyond the public sector, sometimes addressing violations involving private actors.

Some hybrid human rights ombudsmen have been granted jurisdiction to receive complaints involving both public and private sector conduct. Examples include the Provedor de Justiça of Portugal (covering relations between private persons involving a special relationship of dominion), the Ombudsman of Argentina (covering privatized public utilities), and the ombudsmen of Namibia and Ghana (covering human rights breaches by private persons).⁵⁸ This extension of jurisdiction into the private sphere reflects the human rights commission dimension of the hybrid model, which traditionally encompasses a broader range of actors capable of committing human rights violations.

Furthermore, some hybrid human rights ombudsmen have jurisdiction over the judiciary, at least in respect of administrative aspects or cases involving undue delay and evident abuse of authority. Slovenia's Human Rights Ombudsman, Albania's People's Advocate, Uganda's Inspectorate of Government and Costa Rica's Defensor de los Habitantes all have some form of judicial oversight that is absent from most classical ombudsman models.⁵⁹

Overall, the distinction here is the degree of scope and the function of focus: the classical ombudsman is primarily a tool of parliamentary control over administration whereas, the hybrid ombudsman is a much larger, multifunctional institution combining administrative oversight and protection of human rights. Such a distinction naturally demands a comparative analysis that is more nuanced. The comparison between ombudsman institutions reveals that their classification should not depend on formal legal frameworks - frameworks only reflect surface variations and similarities which do not tell the real story about ombudsman institutions. The more meaningful method instead depends on functional criteria--especially about the scope and nature of powers vested in the ombudsman. As indicated in the analysis, the main differences between ombudsman institutions stem chiefly from their powers, which are tightly aligned with their core functions, in particular protecting human rights.

In this regard, it is possible to distinguish several “ideal types” of ombudsman models, although in practice institutions rarely correspond fully to a single type and instead combine elements of different models. The first and most fundamental model, which Dr. Gabriele Kucsko-Stadlmayer

⁵⁸Ibid, p. 3

⁵⁹Ibid, p. 3 pp. 14-15

highlights, is the so-called “basic” or “classical” model⁶⁰. This model encompasses the minimum set of powers that are common to almost all ombudsman institutions. These include broad investigative powers, such as the ability to request information, conduct inquiries, and access relevant premises. Additionally, the ombudsman may issue recommendations to administrative bodies and submit reports to parliament, thereby drawing attention to unresolved issues. Importantly, this model is characterised by the absence of binding or coercive powers: the effectiveness of the ombudsman relies on persuasion, authority, and publicity rather than enforcement.

Deviating from the basic model, a type can be outlined, according to which the ombudsman is provided with additional measures of control exceeding his soft legal powers and serving to protect the legality of the administration in general rather than human rights and fundamental freedoms only.⁶¹ This is manifested by granting the ombudsman additional legal instruments aimed at ensuring the legality of administrative actions. Under this model, the ombudsman may be empowered to challenge laws or regulations before constitutional courts, participate in judicial proceedings, initiate administrative actions, or even trigger disciplinary or criminal proceedings against officials. These powers go beyond mere recommendation and enable the ombudsman to play a more active role in safeguarding the rule of law across different branches of government. Notably, such competences are typically distributed in varying combinations rather than existing in a complete form within any single institution.

Finally, a third model may be defined, according to which the ombudsman is assigned with specific measures of control, which exceed the soft power of the basic model and specifically serve the observance of human rights and fundamental freedoms.⁶²

Human rights model focuses specifically on the protection and promotion of fundamental rights and freedoms. In this framework, the ombudsman is entrusted with specialised powers related to human rights, such as the ability to challenge legislation on human rights grounds, submit constitutional complaints, initiate court proceedings in cases of rights violations, and provide advisory opinions on human rights implementation. In addition, these institutions often engage

⁶⁰ Gabriele Kucsko-Stadlmayer, ed., *European Ombudsman-Institutions: A Comparative Legal Survey of the Ombudsman-Institution in the Member States of the European Union* (Vienna: Springer-Verlag, 2008) p. 62

⁶¹ Ibid

⁶² Ibid, p.64

in educational activities, conduct research, cooperate with civil society and international organisations, and monitor the overall human rights situation.

The benchmark against which all other variants are measured is the classical ombudsman, whose defining characteristics were codified by the International Ombudsman Institute (IOI). In Ayeni's rendering of the IOI description, the classical office is described as:

"[A]n office or institution established by constitution or statute, headed by an independent, high-level public official who is responsible to the legislature. He receives complaints about injustice and maladministration from aggrieved persons against government agencies, officials and employees or acts on his own initiative. He has powers to investigate, criticize, recommend corrective actions and generally to publicise administrative actions."⁶³

Two features distinguish the classical ombudsman from any competing model. First, it is not a passive "complaint-depot"- it actively investigates and seeks redress.⁶⁴ Second, it deliberately lacks executive authority: its principal instrument is "reasoned persuasion and publicity"⁶⁵ a choice grounded in comparative experience showing that enforcement powers are neither necessary for effectiveness nor compatible with the institution's advisory character. Walter Gellhorn's comparative study, as cited by Ayeni, confirmed that the Danish, New Zealand, and Norwegian ombudsmen had "entirely avoided recourse to enforcement devices or threats and none has seemed to suffer any lowering of prestige."⁶⁶

Within the classical type, Ayeni draws a further distinction based on geographic home-base, producing two sub-variants: Scandinavian and non-Scandinavian. The Scandinavian sub-variant encompasses the parliamentary ombudsmen of Sweden, Finland, Norway, and Denmark - institutions that "best illustrate the conception" of the classical model.⁶⁷ But classical institutions are not mechanical copies of their Scandinavian forebears. As Ayeni notes, they show that "what an ombudsman does and what an ombudsman is, depends on what the particular country, culture and system of government want and need the institution to do."⁶⁸

⁶³ Ayeni, Victor. *A Typology of Ombudsman Institutions*. Occasional Paper #30. Edmonton, Alberta: International Ombudsman Institute, 1985. p.4

⁶⁴ Ibid, p.6

⁶⁵ Ibid, p.4

⁶⁶ Ibid, p.5

⁶⁷ Ibid, p.6

⁶⁸ Ibid

Non-classical ombudsman offices are those which “possess varying structural, organizational and jurisdictional features from those of the classical type.”⁶⁹ While classical ombudsmen are readily identified by their legislative accountability and their mandate to receive public complaints against government, the non-classical variants cannot be so neatly specified. Ayeni divides them into two broad branches - modern and traditional - primarily on a chronological basis, with the threshold date being 1809, the year the Swedish Justitie-Ombudsman was established.

The modern non-classical branch comprises four sub-types. The first and most debated is the executive governmental ombudsman, found predominantly in the United States (US) and developing countries. In the US, this form emerged largely because “the initiative to create the ombudsman office has been greatly influenced by the executive branch,” while in developing countries it reflects the structural dominance of the executive in government and “the emphasis of the executive branch on the defence of collective rather than individual rights.”⁷⁰

The second modern sub-type is the non-government institutional ombudsman. These are complaint-handling bodies established not by statute or governmental authority but by private organisations - corporations, universities, and media bodies. The jurisdiction of a non-government institutional ombudsman is obviously limited by the scope of the institution to which it is responsible.⁷¹ Yet they retain the essential ombudsman qualities of independence and informal procedure within their organisational contexts. Campus ombudsmen and corporate ombudsmen are the characteristic illustrations.

The third sub-type is the unauthorized ombudsman. Unlike all other types, unauthorised ombudsmen derive their authority neither from statute nor from institutional affiliation. Instead, they represent “an individual or a group of individuals’ philanthropic effort to draw upon their influence resource to solicit help for less influential people.”⁷² Their capacity to act therefore depends entirely on the personal standing and influence they command in their communities.

The fourth modern sub-type is the international ombudsman. Operating across national boundaries, these institutions proliferated alongside the post-Second World War expansion of international organisations and the growing global concern with human rights. Ayeni cites the

⁶⁹Ibid, p.7

⁷⁰Ibid, p.8

⁷¹Ibid, p.9

⁷²Ibid

United Nations Trusteeship Council, Amnesty International, and the International Press Institute as examples, alongside UN General Assembly resolutions - such as the International Covenant on Civil and Political Rights (1966) - that establish quasi-ombudsman mechanisms at the global level. Three distinguishing characteristics mark international ombudsmen: they serve as monitoring gauges for the preservation of human rights; they do not exist exclusively to perform ombudsman functions; and they operate in both formal and informal modes.⁷³

The traditional non-classical branch encompasses institutions whose origins predate 1809 and are embedded in pre-modern social organisation. Ayeni identifies three sub-types. The first comprises natural or traditional rulers. In African societies, traditional rulers historically held overarching authority to resolve citizens' complaints, often combined with adjudicative power. Although their executive authority has waned under modern governmental systems, the "social confusion arising from the conflict between traditionalism and modernity has largely sustained the complaint-handling function of traditional rulers,"⁷⁴ compelling them increasingly to rely on informal and persuasive methods analogous to those of the modern ombudsman.

The second traditional sub-type is the specialized grievance-redress official, a person or group designated by traditional governmental authority for ombudsman-like functions.⁷⁵ Unlike other types, a specialized ombudsman operates within a defined area of competence, possesses subject-matter expertise, and typically issues non-binding recommendations aimed at resolving individual disputes efficiently and protecting the rights of complainants.

The third traditional sub-type is the oral traditional artist. Oral artists perform a social control and opinion-moulding function that carries an ombudsman dimension. Like the classical ombudsman, the oral artist relies on satire and persuasion rather than coercive power, combining "satire and persuasion with public enlightenment."⁷⁶

The analysis conducted in this subchapter has addressed the third objective of the thesis, namely to systematise the principal classifications of ombudsperson institutions developed in the academic literature and to assess their analytical value.

⁷³Ibid

⁷⁴Ibid, p.11

⁷⁵Ibid

⁷⁶Ibid, p.13

Three classifications were examined. Linda Reif's binary distinction between the classical and hybrid ombudsman captures the decisive shift in the institution's scope: from a check on public administration alone to a multifunctional body combining administrative oversight with human rights protection, occasionally extending to private actors and to the judiciary. Gabriele Kucsko-Stadlmayer's tripartite typology - the basic, rule-of-law and human-rights models - refines this distinction by looking not at formal structure but at the functional powers actually vested in the institution, ranging from soft recommendations to constitutional standing, criminal initiative and specialised human rights competences. Victor Ayeni's classical/non-classical typology, further subdivided into Scandinavian and non-Scandinavian, and modern and traditional branches, adds a geographical and historical dimension that situates the European ombudsperson within a wider global family of grievance-redress mechanisms.

Two conclusions follow. First, no classification operates on its own: each highlights a different axis - scope (Reif), powers (Kucsko-Stadlmayer), and institutional genealogy (Ayeni) - and real institutions almost always combine features of several ideal types. Second, the functional criterion proposed by Kucsko-Stadlmayer is the most productive analytical tool for the comparative chapter that follows, because it allows the Nordic, Iberian and Central and Eastern European models to be placed on a common scale regardless of their formal constitutional design.

Chapter 1 has established the theoretical, legal and typological foundations on which the comparative analysis in Chapter 2 and the case-study analysis in Chapter 3 are built. It has done so by addressing the first three objectives set out in the Introduction: to reconstruct the origin and historical evolution of the ombudsperson institution; to analyse its legal foundations and the international standards governing its activity; and to systematise the main classifications proposed in the academic literature.

Three cumulative conclusions may be drawn.

First, the ombudsperson is not a recent invention and not a product of a single legal culture. Its conceptual roots reach back to the Old Norse *umbothsmadhr* and the medieval Germanic figure of a neutral royal or communal representative, and its institutional emergence unfolded in two Swedish stages - the *Justitiekansler* of 1713 and the *Justitieombudsman* of the 1809 Constitution - before diffusing in three successive waves: across Scandinavia in the first half of the twentieth century; into Western Europe, the Commonwealth and other common-law jurisdictions after the Second World War; and across Southern Europe and Central and Eastern Europe after the

democratic transitions of 1974–1989. Each wave extended the institution's mandate, moving it progressively from parliamentary oversight of administration towards the explicit protection of human rights and fundamental freedoms.

Second, this historical trajectory has been consolidated into a coherent legal and normative framework. At the national level, constitutional enshrinement and organic-law regulation provide the institution with the independence, stability and democratic legitimacy required to perform its functions. At the international level, the Venice Commission's Principles on the Protection and Promotion of the Ombudsman Institution (2019) operates as the consolidated benchmark against which any ombudsperson institution can be evaluated. The twenty-five Venice Principles cover the full institutional architecture - legal basis, institutional rank, appointment and removal, term of office, investigative competence, accessibility, reporting, budgetary and human-resources autonomy, functional immunity, protection from interference, and the interpretive duty to strengthen rather than weaken the institution - and together they articulate a common standard of independence, accountability and effectiveness that accommodates legitimate national variation while excluding formal imitation without substantive guarantees.

Third, the diversity of national arrangements is best understood through the typological lens of the academic literature. Reif's classical/hybrid distinction identifies the most important functional cleavage; Kucsko-Stadlmayer's basic, rule-of-law and human-rights models translate that cleavage into a graduated scale of powers; and Ayeni's classical/non-classical typology, with its Scandinavian, non-Scandinavian, modern and traditional sub-branches, situates the European ombudsperson in a wider comparative field. These classifications do not compete but complement one another, and they provide the conceptual framework for analysis.

A Comparative Legal Analysis of National Models of the Ombudsman Institution in the European Legal Tradition

2.1 The Scandinavian Nordic Model of the Ombudsman Institution: A Comparative Analysis of the Swedish and Norwegian Experiences

The Scandinavian countries hold a unique place in the history of administrative oversight. It was in this region that the very concept of the ombudsman was born, and it is from here that the institution spread across the globe. Sweden created the first parliamentary ombudsman in 1809, making it the oldest institution of this kind anywhere in the world. Finland followed more than a century later, in 1919, then Denmark in 1953, and finally Norway in 1963.⁷⁷

Each country adapted the original Swedish idea to its own constitutional traditions, its political culture, and its specific governance needs. As a result, there is no single, uniform Nordic ombudsman model. Instead, there is a family of related institutions that share core principles but differ in scope, authority, and practical operation.

This subsection examines the Nordic ombudsman system as a distinct cluster within the broader European landscape of administrative accountability mechanisms. It traces the historical origins of the institution, analyses the key structural and functional differences between the Swedish and Norwegian models as representative examples, and assesses how the Nordic experience has shaped ombudsman development elsewhere.

A crucial preliminary observation is that, despite the common perception of a unified Scandinavian approach, the ombudsman institutions within this region exhibit significant internal variation. Swedish and Finnish ombudsmen are empowered to oversee the entire executive branch and even the judiciary, and can initiate criminal proceedings against officials and judges⁷⁸, while the Danish and Norwegian ombudsmen operate within narrower boundaries and can only influence administration through non-binding recommendations and public reports.⁷⁹ Understanding this internal diversity is essential for any meaningful comparative analysis.

⁷⁷Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008) p. 1.

⁷⁸*Ibid*, p. 56.

⁷⁹*Ibid*, p. 2.

It is identified two distinct approaches within the Scandinavian ombudsman tradition, the disciplinary model and the quasi-administrative court model (or the reformatory model).⁸⁰ Sweden exemplifies the first approach. The Swedish ombudsman has traditionally functioned as a form of prosecutor, with the authority to bring criminal charges and initiate disciplinary proceedings against any public official found to have acted unlawfully or negligently.⁸¹ The emphasis, in other words, is on correcting the behaviour of individual public servants through the threat of personal accountability.

Norway takes a fundamentally different approach. Rather than targeting individual officers, the Norwegian ombudsman focuses on the systemic quality of public administration. He evaluates whether general principles of good governance are being followed, identifies patterns of unfairness, and makes recommendations aimed at reforming procedures and practices across the administration as a whole.⁸² This reformatory orientation gives the Norwegian ombudsman an autonomous role in shaping the standards of governance, rather than acting primarily as a disciplinary mechanism.

These two approaches have measurable practical consequences. The Swedish ombudsman launches significantly more investigations on his own initiative than the Norwegian ombudsman does. He examines a greater proportion of the complaints he receives and is more likely to reach critical conclusions about the practices under review. Orfield attributed this difference partly to Sweden's much longer institutional experience with the office.⁸³ In Norway, the ombudsman's investigative reach beyond the cases he formally handles is limited: he lacks a general power to inspect documents or visit public premises on his own initiative.⁸⁴

It is important to note, however, that the Swedish ombudsman's prosecutorial powers have evolved in practice. In earlier periods, prosecutions were routinely ordered even for minor acts of negligence. Over time, the practice shifted towards the use of admonitory letters and condemnatory opinions as the primary means of correcting official misconduct. Formal prosecution is now rare, though the power to initiate it continues to serve as a deterrent.

⁸⁰Sachan P, 'Scandinavian Ombudsman Models: A Comparative Analysis of Sweden and Norway' (2026) 6(3) International Journal of Advanced Legal Research. p. 2.

⁸¹Ibid, p. 7.

⁸²Ibid

⁸³Orfield LB, 'The Scandinavian Ombudsman' (1966) 19(1) Administrative Law Review. p 19.

⁸⁴Sachan P, 'Scandinavian Ombudsman Models: A Comparative Analysis of Sweden and Norway' (2026) 6(3) International Journal of Advanced Legal Research. p. 8.

One of the most important distinctions between the Swedish and Norwegian models concerns their jurisdiction over the courts. The Swedish ombudsman has historically exercised supervision over the judiciary, including the personal conduct and procedural performance of judges. This oversight has been described as a major factor in protecting the right to speedy and effective justice in Sweden.⁸⁵ The ombudsman has scrutinised matters ranging from judicial delays and improper sentencing to personal bias and discourteous behaviour towards the public.

The Norwegian ombudsman, by contrast, has no authority at all over the judicial or administrative functions of the courts.⁸⁶ When the Norwegian office was being established, the prevailing assumption was that general courts should not fall under the purview of a Storting-elected ombudsman, as this might compromise judicial independence.⁸⁷ This position was consistent with the Danish approach, which had also excluded courts from the ombudsman's jurisdiction. While the reasoning is understandable, the exclusion of courts from oversight means that the Norwegian ombudsman lacks the comprehensive reach of his Swedish counterpart.

Other jurisdictional boundaries also differ. In Sweden, the ombudsman's authority does not extend to government corporations, which under Swedish law are not classified as organs of the state. Additionally, the Swedish ombudsman does not supervise ministers and ministries. This is a structural peculiarity of the Swedish constitutional system: ministers do not individually make administrative decisions but rather advise the King-in-Council, who makes the decision. The actual day-to-day administration is handled by independent agencies, which are subject to the ombudsman's oversight.⁸⁸

In Norway, the main exemption concerns decisions of the King in Council, which are considered to be already subject to sufficient constitutional and parliamentary scrutiny.⁸⁹ However, the Norwegian ombudsman can investigate each cabinet member in his or her capacity as head of a ministry - an authority that the Swedish ombudsman does not possess.⁹⁰ The Norwegian

⁸⁵Orfield LB, 'The Scandinavian Ombudsman' (1966) 19(1) Administrative Law Review. p 12.

⁸⁶Sachan P, 'Scandinavian Ombudsman Models: A Comparative Analysis of Sweden and Norway' (2026) 6(3) International Journal of Advanced Legal Research. p. 8.

⁸⁷Ibid, p. 9

⁸⁸Orfield LB, 'The Scandinavian Ombudsman' (1966) 19(1) Administrative Law Review. p 16.

⁸⁹Sachan P, 'Scandinavian Ombudsman Models: A Comparative Analysis of Sweden and Norway' (2026) 6(3) International Journal of Advanced Legal Research. p. 6.

⁹⁰Ibid

ombudsman's jurisdiction also did not originally extend to local administration, although this was later reconsidered.

An additional structural factor worth mentioning is the role of administrative courts. Sweden has a well-developed system of administrative courts, which provides citizens with a formal judicial avenue for challenging administrative decisions. Norway lacks such a system. This absence arguably makes the Norwegian ombudsman all the more important as a specialist in administrative oversight, since many of the matters he handles would in Sweden be directed to administrative courts instead.

Against this background, it is also relevant to consider the institutional framework within which both ombudsmen operate, particularly with regard to their appointment, tenure, and guarantees of independence.

Both the Swedish and Norwegian ombudsmen serve four-year terms and are elected by their respective parliaments. In Sweden, the ombudsman and a deputy are elected by a special committee of 48 members of the Riksdag. The formal qualifications are "known legal ability and outstanding integrity."⁹¹ Traditionally, the Riksdag has selected experienced jurists for the role, preferring older candidates who are unlikely to use the position as a stepping-stone to other offices. The logic behind this practice is straightforward: an ombudsman who is not concerned about future career prospects can criticise public officials without hesitation.⁹²

The Swedish ombudsman may resign or be removed by the Riksdag at any time, but in the entire history of the institution, no ombudsman has ever been dismissed.⁹³ This record speaks to the deep institutional respect that the office commands within Swedish political culture.

In Norway, the Storting elects the Parliamentary Ombud by a two-thirds supermajority for a four-year term. Removal also requires a two-thirds majority.⁹⁴ The supermajority requirement is a significant safeguard for institutional independence. Since Norwegian party politics have historically been closely contested, no single political grouping has been able to command a two-

⁹¹Orfield LB, 'The Scandinavian Ombudsman' (1966) 19(1) Administrative Law Review. p 10.

⁹²Ibid, p 11.

⁹³Ibid, p 10.

⁹⁴Sachan P, 'Scandinavian Ombudsman Models: A Comparative Analysis of Sweden and Norway' (2026) 6(3) International Journal of Advanced Legal Research. p. 6.

thirds majority, which means that the ombudsman's position is effectively insulated from partisan manipulation.⁹⁵

Norway also updated its legislative framework in 2021 with the adoption of the Act Relating to the Parliamentary Ombud for Scrutiny of the Public Administration.⁹⁶ This new act broadened the ombudsman's mandate, giving the office wider powers to scrutinise public administration and its employees, and explicitly linking its function to the prevention of injustice and the promotion of human rights. This legislative modernisation reflects an awareness that even a well-established institution must evolve to remain effective in changing governance conditions.

While Norway's recent legislative reform highlights the need to strengthen oversight mechanisms through expanded mandates, the Swedish model demonstrates that the effectiveness of an ombudsman institution also depends on its openness, transparency, and accessibility to the public.

Transparency is one of the defining characteristics of the Swedish ombudsman model. Sweden has a long constitutional tradition of public access to government documents, which means that the ombudsman's correspondence, investigatory records, and decisions are generally available to both citizens and the press.⁹⁷ The office of the Chancellor of Justice and the ombudsman coexist, but the ombudsman's direct connection to the public gives it a distinctive democratic character.

The ombudsman's annual report to the Riksdag has traditionally been a weighty document, often exceeding 500 pages, and it is distributed to all courts and government agencies across the country. The report identifies individual cases of maladministration, proposes systemic reforms, and names officials who have been found at fault. The Swedish ombudsman has described this public naming function as the office's most effective tool, since no public servant wishes to appear in what amounts to a negative register of professional conduct.⁹⁸ The existence of the report itself serves a preventive function: knowing that their actions may be publicly scrutinised discourages officials from engaging in maladministration.

⁹⁵Orfield LB, 'The Scandinavian Ombudsman' (1966) 19(1) Administrative Law Review. p 42.

⁹⁶ Act relating to the Parliamentary Ombud for Scrutiny of the Public Administration (Parliamentary Ombud Act), LOV-2021-06-18-121 (Norway, 2021).

⁹⁷Sachan P, 'Scandinavian Ombudsman Models: A Comparative Analysis of Sweden and Norway' (2026) 6(3) International Journal of Advanced Legal Research. p. 8.

⁹⁸Orfield LB, 'The Scandinavian Ombudsman' (1966) 19(1) Administrative Law Review. p 18.

The Swedish ombudsman has also been active in the field of civil rights. Unlawful arrests are likely to lead to the prosecution of the responsible police officer. Prison conditions have been improved as a result of ombudsman interventions. An estimated sixty per cent of the office's workload relates to administrative matters, with the remainder concerning courts and law enforcement.⁹⁹

Norway takes a notably more restrained approach to publicity. While the ombudsman's formal rulings are publicly available, other documents relating to a case are not. There are no constitutional requirements for the openness of public records comparable to those in Sweden.¹⁰⁰ The ombudsman has discretion over whether and how to inform the public about particular cases, and matters involving state security or the privacy of complainants are kept confidential.¹⁰¹ This more cautious approach reflects a different political culture around government transparency, but it also means that the ombudsman's work receives less public visibility than in Sweden.

While differences in transparency shape the public visibility of the ombudsman's work, an equally important aspect of these institutions lies in the nature and scope of their powers.

Neither the Swedish nor the Norwegian ombudsman possesses the authority to change or annul administrative decisions. This is a fundamental feature of the ombudsman concept: the institution operates through persuasion, moral authority, and transparency rather than through legal coercion. However, the specific powers available to each office differ considerably.

The Swedish ombudsman can demand information and access to records from any public body. He may attend the deliberations of any court or administrative board, though he may not express opinions during those proceedings. He can inspect prisons and hospitals. Most significantly, he can initiate criminal prosecutions and disciplinary proceedings against officials found to have acted through partiality, favouritism, or neglect of duty.¹⁰² The Norwegian ombudsman can also demand information and documents from officials, and can order courts to take evidence from

⁹⁹Orfield LB, 'The Scandinavian Ombudsman' (1966) 19(1) Administrative Law Review. p 14.

¹⁰⁰Sachan P, 'Scandinavian Ombudsman Models: A Comparative Analysis of Sweden and Norway' (2026) 6(3) International Journal of Advanced Legal Research. p. 8 - 9.

¹⁰¹Orfield LB, 'The Scandinavian Ombudsman' (1966) 19(1) Administrative Law Review. p 43.

¹⁰²Sachan P, 'Scandinavian Ombudsman Models: A Comparative Analysis of Sweden and Norway' (2026) 6(3) International Journal of Advanced Legal Research. p. 7.

unwilling parties. However, he cannot access the internal working papers of administrative bodies, and he lacks the Swedish ombudsman's prosecutorial authority.¹⁰³

In Norway, the ombudsman's power is essentially confined to expressing opinions on the cases brought before him. The Norwegian legislature deliberately chose not to grant the ombudsman prosecutorial or disciplinary authority, partly to avoid constitutional difficulties. Under Norwegian constitutional practice, the King is the highest prosecuting authority as well as the head of the state's administration. Granting the ombudsman binding powers over prosecution or discipline would have required a constitutional amendment.¹⁰⁴

An interesting aspect of the Norwegian model is the relationship between the ombudsman and the Storting. When cases are referred to the ombudsman from the Storting, the ombudsman must provide his opinion, which is then placed before the parliament for decision. This gives the Storting a degree of involvement in the ombudsman's work that has no direct equivalent in Denmark, where the Folketing exercises no such control over its ombudsman.¹⁰⁵

From a comparative typological perspective, the Nordic ombudsman institutions fall into different categories within Kucsko-Stadlmayer's classification framework. Denmark and Norway are placed in the "basic" or "classical" model, which is defined by the exclusive reliance on investigation, recommendation, and reporting as the ombudsman's tools, without any coercive powers.¹⁰⁶

Sweden and Finland, by contrast, are classified under the "rule of law model," in which the ombudsman is equipped with additional powers that go beyond soft persuasion and serve to enforce the legality of administration more broadly. The most notable of these additional powers is the ability to initiate criminal and disciplinary proceedings against officials and judges.¹⁰⁷ Kucsko-Stadlmayer observes that this capacity can be traced to the historical function of the

¹⁰³Sachan P, 'Scandinavian Ombudsman Models: A Comparative Analysis of Sweden and Norway' (2026) 6(3) International Journal of Advanced Legal Research. p. 7

¹⁰⁴Orfield LB, 'The Scandinavian Ombudsman' (1966) 19(1) Administrative Law Review. p. 44.

¹⁰⁵Sachan P, 'Scandinavian Ombudsman Models: A Comparative Analysis of Sweden and Norway' (2026) 6(3) International Journal of Advanced Legal Research. p. 7.

¹⁰⁶Kucsko-Stadlmayer G, European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea (Springer 2008) p. 61.

¹⁰⁷Ibid, p. 62.

ombudsman institution in Sweden and Finland as an instrument of comprehensive legal control over the executive branch, including the judiciary.¹⁰⁸

This typological distinction is important because it reveals a spectrum within the Nordic tradition itself. Sweden and Finland occupy one end of the spectrum, where the ombudsman functions almost as a guarantor of legality with real enforcement tools at his disposal. Denmark and Norway occupy the other end, where the institution's effectiveness depends entirely on moral authority, public trust, and the willingness of the administration to comply with non-binding recommendations.

It is also worth noting that Denmark, not Sweden, served as the primary model for the global expansion of the ombudsman institution after the Second World War. Kucsko-Stadlmayer reports that among the national institutions surveyed in her study, nine identified Denmark as their model, while only five cited Sweden.¹⁰⁹ The Danish approach, with its emphasis on administrative oversight without judicial supervision and without prosecutorial powers, proved more transferable to diverse constitutional settings than the more demanding Swedish model.

The comparative study by Zhyvko, Dombrovska and Kiblyk, published in 2025, confirms the enduring importance of the Swedish ombudsman as a reference point for administrative accountability systems across Europe. Their analysis describes the Swedish model as a "historical benchmark" characterised by its emphasis on legality, procedural rigour, and deep institutional respect.¹¹⁰ The same study highlights the office's combination of parliamentary independence, broad investigatory authority, and moral credibility as the factors that have sustained its effectiveness over more than two centuries.¹¹¹

The expansion of the ombudsman concept accelerated during the 1990s, particularly in Central and Eastern European countries undergoing transitions from authoritarian to democratic governance. These new democracies viewed the ombudsman as a tool for institutional transparency and individual rights protection.¹¹² In many cases, however, the models adopted by these countries went beyond the Nordic template, incorporating explicit human rights mandates

¹⁰⁸Ibid, p. 56.

¹⁰⁹Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008) p. 59.

¹¹⁰Zhyvko M, Dombrovska A and Kiblyk D, 'The Role of Ombudsman Institutions in Administrative Accountability: A Comparative Perspective' (2025) 1(21) *Public Administration and Law Review*. p. 96.

¹¹¹Ibid, p. 92.

¹¹²Ibid, p. 90.

and powers to challenge legislation before constitutional courts - features that the original Scandinavian institutions did not possess.

This evolution suggests that the Nordic ombudsman system, while foundational, has been continuously reinterpreted and adapted as it has been transplanted to new contexts. The Swedish model provided the conceptual starting point; the Danish model provided the practical template for most adoptions; and subsequent generations of ombudsman institutions, particularly in Southern, Central, and Eastern Europe, added new layers of authority and function that their Scandinavian predecessors did not originally envisage.

The Nordic ombudsman system is best understood not as a single uniform model but as a spectrum of closely related institutions, each shaped by the constitutional history, legal traditions, and political culture of its home country. What holds these institutions together is a shared commitment to independent, accessible, and transparent oversight of public administration. What distinguishes them is the degree of legal force behind that oversight.

At one end of the spectrum, the Swedish and Finnish ombudsmen possess genuine enforcement tools, including the authority to prosecute officials and judges. Kucsko-Stadlmayer's comparative analysis places these institutions within the "rule of law model," recognising that their function extends well beyond informal mediation. At the other end, the Danish and Norwegian ombudsmen rely exclusively on the persuasive force of their recommendations, the quality of their reasoning, and the publicity of their annual reports. Both approaches have proven effective within their respective national settings, which suggests that institutional design must be evaluated in context rather than in the abstract.

The idea of the ombudsman has shown not only wide distribution but also significant typological diversity across Europe, and that even within the Scandinavian countries, the institutions have continued to evolve - for example, by being assigned explicit human rights protection tasks. This adaptability is perhaps the most valuable lesson that the Nordic experience offers to other legal systems: the ombudsman institution is not a fixed formula but a flexible framework that can be tailored to the specific accountability needs of any democratic society.

The analysis conducted in this subchapter has addressed the Nordic dimension of the fourth objective of the thesis, namely to undertake a comparative study of the principal families of the ombudsperson institution in Europe. Three conclusions follow.

First, the Nordic ombudsman is not a single uniform model but a family of closely related institutions that share a common set of principles - parliamentary election, functional independence, informal and accessible procedure, and the exclusive reliance on reasoned persuasion rather than binding decisions - while differing significantly in the reach of their supervisory powers. The Swedish–Finnish branch operates as an instrument of comprehensive legal control, extending to the judiciary and equipped with prosecutorial and disciplinary authority; the Danish–Norwegian branch operates within narrower boundaries, excluding the courts and relying entirely on recommendations and public reports. Applying Kucsko-Stadlmayer's typology developed in Chapter 1, the Swedish and Finnish institutions belong to the rule-of-law model, whereas the Danish and Norwegian institutions remain within the basic or classical model; the Nordic region therefore contains two distinct functional sub-types rather than one.

Second, the comparison between Sweden and Norway illustrates how constitutional context, legal culture, and political structure shape institutional design even where the underlying idea is shared. The Swedish disciplinary orientation - rooted in a centuries-old tradition of personal accountability of public officials, reinforced by the constitutional principle of public access to documents and by an extensive system of administrative courts - produces a transparent, prosecution-capable ombudsman whose most powerful instrument is the publicly distributed annual report. The Norwegian reformative orientation - shaped by the absence of administrative courts, by the constitutional position of the King as the highest prosecuting authority, and by a more restrained political culture around publicity - produces a systemically oriented ombudsman whose authority depends on a two-thirds supermajority for appointment and removal and on the quality of his reasoning. The 2021 Parliamentary Ombud Act confirms that even a well-established institution continues to evolve, explicitly linking the Norwegian office to the prevention of injustice and the protection of human rights.

Third, the Nordic experience demonstrates the adaptability that made this institution transferable across legal cultures. The Swedish model provided the conceptual foundation; the Danish model, with its combination of administrative oversight, exclusion of the judiciary, and reliance on soft powers, provided the practical template from which most post-war adoptions were drawn. This observation anchors the subsequent subchapters: the Iberian and Central and Eastern European institutions analysed next did not simply replicate the Scandinavian archetype but added explicit human-rights mandates and constitutional-review competences that the original Nordic

institutions did not possess, a development that can only be properly assessed against the Nordic benchmark established here.

2.2 Iberian Model: Constitutionalization of the Ombudsman

The Iberian model occupies a distinctive position in the global history of the ombudsman institution. In the 1970s, Portugal and Spain both experienced, only a few years apart, the end of two very long dictatorships. In both transitions to democracy, and their respective constitutional processes, an ombudsman's office was instituted.¹¹³ The structure of constitutionalizing the ombudsman institution in both countries matters not only because of these countries' constitutions, but also because of the model which has had a great impact on the institutionalisation of these institutions in Latin America and, to a certain extent, post-communist Eastern European contexts. To understand the emergence of such outstanding features in the Iberian ombudsman model, we need to take into account the general historical backdrop during whose context these institutions were created. Thus, we can see that the protection of human rights was an integral part of the development and maturation of the United Nations (UN), which only three years after it was created considered it necessary to promulgate a universal, specific recognition of these rights.¹¹⁴

The evolution of the ombudsman concept is intimately connected with two parallel developments: the progressive internationalization and institutionalization of human rights since the Universal Declaration of 1948, and the growing recognition of the problem of maladministration inherent in expanding state bureaucracies. The modern idea of human rights, as it emerged from the declarations of the late eighteenth century and was transformed into a truly universal commitment through the work of the UN, carries within it not merely a proclamation but a desideratum – an expression of an aspiration that demands institutional mechanisms for its realization.

The Universal Declaration of Human Rights of 1948 marked a decisive turning point in this process, as it was not a mere proclamation of objectives but also included the commitment to promote universal respect for and observance of human rights.

¹¹³Mora, A. *The Book of the Ombudsman*. Madrid: Ombudsman , 2003, p. 188.

¹¹⁴*Ibid*, p. 181

At the same time, the concept of maladministration had been gaining increasing attention in administrative law scholarship, particularly in France and the English-speaking world. The concept has a particularly pronounced presence in the legislation of France and the English-speaking sphere (where the very term maladministration was invented—first used in academic circles, but now increasingly current in political and journalistic parlance).¹¹⁵

Mora, A defines maladministration broadly as any administrative slip-ups and omissions, unfairness, discrimination, abuse of power, neglectfulness, illicit procedures, lack of or refusal to provide information, unnecessary delays, favouritism, dysfunction, incompetence.¹¹⁶ The ombudsman institution, born in nineteenth-century Scandinavia and initially focused primarily on the supervision of government administration, offered a ready-made institutional template that could be adapted to serve this dual purpose of rights protection and administrative oversight.

Portugal was the first of the two Iberian countries to establish its ombudsman institution, doing so in the immediate aftermath of the Carnation Revolution of 25 April 1974 that ended nearly five decades of authoritarian rule. The ombudsman institution of the Provedor de Justiça was first introduced by decree on 21 April 1975 (Decree No. 212/75) and subsequently footed in Art 24 (now Art 23) of the new Portuguese Constitution of 1976.¹¹⁷ The Ombudsman took up office on 9 June 1976. The institution was founded during the democratisation process after the revolution of 1974 and with the purpose of enhancing citizen rights.¹¹⁸

Within this constitutional architecture, the Provedor de Justiça occupies a prominent position. Article 23 of the Constitution basically states that an independent Ombudsman is to investigate citizens' complaints about actions and omissions of state bodies and direct recommendations to the respective bodies to prevent and remedy instances of injustice. The institutional details are further elaborated in the Ombudsman Act (Estatuto do Provedor de Justiça, Law No. 9/91 as amended by Law No. 30/96).

Several features of the Portuguese ombudsman merit particular attention in the context of the Iberian model. First, the Provedor de Justiça is a monocratic body elected by Parliament by a two-thirds majority of the members present, which ensures a high degree of democratic

¹¹⁵Mora, A. *The Book of the Ombudsman*. Madrid: Ombudsman , 2003, p. 183

¹¹⁶*Ibid.*, pp. 183.

¹¹⁷*Ibid.*, p. 188; Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p. 352.

¹¹⁸Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p. 352.

legitimacy and cross-party consensus in the appointment process.¹¹⁹ The requirement for a supermajority is a deliberate institutional safeguard designed to ensure that the ombudsman commands broad political support and is not perceived as a partisan appointment. The Ombudsman is elected for a period of four years and may be re-elected once.

Second, the main task of the Ombudsman is to protect and promote the rights, freedoms, guarantees and legitimate interests of citizens and ensure that public institutions exercise their rights pursuant to justice and the law.¹²⁰ This formulation places the emphasis squarely on fundamental rights protection as the primary purpose of the institution, with administrative oversight serving as an instrument toward this overarching objective. The Ombudsman is independent in the performance of the duties and may not be held liable.¹²¹ It enjoys immunity for recommendations, remarks or opinions made in the performance of official functions.

Third, and of particular significance for the comparative analysis, the Portuguese Ombudsman possesses the power to challenge legislation before the Constitutional Court. The Ombudsman may request the Constitutional Court to make generally binding rulings on issues of unconstitutionality or illegality of any legal provisions.¹²² And the Ombudsman can also file an application with the Constitutional Court for a ruling of unconstitutionality by omission, meaning the legislature's failure to enact laws necessary for the effective implementation of constitutional provisions. This latter power is particularly important as it enables the Ombudsman to act not only as a reactive entity to complaints about current administrative practices but also as an entity that is vigilant and works to address structural gaps within the legislative system. The authority for the Portuguese Ombudsman also extends to services in the central, regional, and local public administration, Armed Forces, public institutes, public companies, including those whose capital is mostly public, and concessionaires operating public services or exploiting state property.¹²³

The Spanish experience of the ombudsman system is perhaps the most widely reported and internationally influential case of the Iberian model. In Spain, the Ombudsman appeared forcefully on the scene, with a specially wide mandate, given the special context of the debate

¹¹⁹Ibid., p. 352. See also Portugal. Lei n.º 9/91, de 9 de abril (Estatuto do Provedor de Justiça). Alterada pela Lei n.º 30/96, de 14 de agosto., Art. 5(1).

¹²⁰Portugal. Lei n.º 9/91, de 9 de abril (Estatuto do Provedor de Justiça). Alterada pela Lei n.º 30/96, de 14 de agosto. Art. 1(1). Cited in Kucsko-Stadlmayer, G. (ed.) *European Ombudsman-Institutions*, p. 353.

¹²¹ Kucsko-Stadlmayer, G. (ed.) *European Ombudsman-Institutions*, p. 352.

¹²² Ibid., p. 355. See also Constituição da República Portuguesa de 1976, Art. 281(1) and (2)(d).

¹²³Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p. 353.

on creating this institution: during the period after the death of the dictator Francisco Franco in 1975, and the following transition to democracy, including the redaction and final approval of the Constitution of 1978.¹²⁴

Article 54 of the Constitution, located within Title I (“Basic Rights and Duties”), Chapter IV (“Guarantees of Basic Rights and Freedoms”), establishes the institution in the following terms: “A public general act of Parliament shall regulate the institution of the Ombudsman as the Parliamentary High Commissioner for Administration, appointed for the protection of the rights contained in this Title, for which purpose he may supervise the activity of the administration, informing the Parliament of it.”¹²⁵ The deliberate placement of this provision within the chapter on guarantees of fundamental rights, rather than among the provisions governing the structure of government, is constitutionally significant. It signals that the Spanish Ombudsman’s primary function is not merely administrative oversight but the guarantee of fundamental rights and freedoms.

The institutional framework was further elaborated through Organic Act 3/1981 of 6 April (Ley Orgánica del Ombudsman), which constitutes the detailed statutory basis for the institution’s organization and operation.¹²⁶

A key trait of the Spanish model is the Ombudsman’s relationship with Parliament. While the Ombudsman is designated as a Parliamentary High Commissioner and is elected by the Parliament for a five-year term, the institution operates with complete independence from Parliament. The Ombudsman shall not be subject to any binding terms of reference whatsoever and shall not receive instructions from any authority, carrying out his work with complete autonomy.¹²⁷ This independence is reinforced by a robust regime of immunities: the Ombudsman may not be arrested, subjected to disciplinary proceedings, fined, prosecuted or judged on account of opinions expressed or acts committed in the performance of official duties.

The election procedure itself incorporates important safeguards of institutional independence and cross-party legitimacy. A joint committee from both Houses of Parliament proposes candidates, and the successful candidate must obtain a three-fifths majority in the Congress of Deputies,

¹²⁴Mora, A. *The Book of the Ombudsman*, p. 196.

¹²⁵Constitución Española de 1978, Art. 54. Cited in Mora, A. *The Book of the Ombudsman*, p. 196.

¹²⁶Spain. Ley Orgánica 3/1981, de 6 de abril, del Defensor del Pueblo., Art. 1. Cited in Kucsko-Stadlmayer, G. (ed.) *European Ombudsman-Institutions*, p. 402.

¹²⁷Spain. Ley Orgánica 3/1981, de 6 de abril, del Defensor del Pueblo, Art. 6(1).

subsequently ratified by the same majority in the Senate.¹²⁸ The requirement for a qualified majority ensures that the person elected commands broad confidence across the political spectrum, thereby strengthening the institution's *auctoritas* – its authority based on persuasion and moral weight rather than coercive legal power.

The Ombudsman's scope of competence encompasses the entirety of public administration. This wording assumes that the Ombudsman's Office's mandate covers the public administration in its entirety, at all levels: national, regional, local, military, judicial, and so on.¹²⁹ The Organic Act specifies that The Ombudsman may start an investigation *ex officio* or in response to a request from the party affected.¹³⁰ The institution shall instigate and pursue investigations, *ex officio* or in response to a request from the party concerned, into any actions or decisions of the Public Administration and its agents. That constitutional provision establishes that public administration shall serve the general interest in a spirit of objectivity and act in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, in full subordination to the law.¹³¹

The right to address complaints to the Ombudsman is broadly defined, with no restrictions regarding nationality, place of residence, gender, age, or legal incapacity. Persons in prison or in any other situation of subordination to or dependence on a public authority are equally entitled to submit complaints.¹³² Although the Ombudsman is not empowered to modify or overrule acts and decisions of the public administration, the institution may suggest modifications in the criteria employed in their application and, where rigorous compliance with a regulation leads to unfair or harmful situations, may suggest legislative changes to the competent body.¹³³

Resolutions adopted by the Ombudsman at the conclusion of an investigation may take several forms: reminders to officials of their legal obligations, warnings about situations requiring improvement, recommendations regarding the revision or adoption of administrative procedures, and suggestions for reconsidering specific administrative actions. While these resolutions are not

¹²⁸Ibid, Art. 2(4).

¹²⁹ Mora, A. *The Book of the Ombudsman*, p. 197.

¹³⁰ Spain. *Ley Orgánica 3/1981, de 6 de abril, del Defensor del Pueblo*, Art. 9(1). Kucsko-Stadlmayer, G. (ed.) *European Ombudsman-Institutions*, p. 403.

¹³¹ *Constitución Española de 1978*, Art. 103(1). Cited in Mora, A. *The Book of the Ombudsman*, p. 199.

¹³² Spain. *Ley Orgánica 3/1981, de 6 de abril, del Defensor del Pueblo*, Art. 10(1).

¹³³ Ibid, Art. 28(1)–(2).

legally binding, they carry significant moral and political weight, and the Ombudsman may highlight non-compliance in annual and special reports to Parliament.

One of the most noteworthy aspects of the Spanish Ombudsman's mandate is the power to make appeals for unconstitutionality to the Constitutional Court regarding laws approved by Parliament.¹³⁴

Article 162 of the Spanish Constitution endows the Ombudsman with this power.¹³⁵ The constitutional and political implications of this power were recognized from the earliest years of the institution's existence.

When presenting one of his first reports to the Houses of Parliament, that of 1984, the Ombudsman made some very specific comments regarding the connotations involved in his being empowered to present this kind of appeal.¹³⁶

In his 1984 annual report to Parliament, the first Ombudsman observed that while the power to present individual appeals for relief carries no specially significant political or social connotations, the power to challenge laws already approved by Parliament “has a politico-ethical scope of indisputable importance.”¹³⁷ By exercising this power, the Parliamentary Commissioner for Administration transforms into a defender of the Constitution vis-à-vis the legislative branch itself, going beyond mere autonomy from any imperative mandate to set up the office as a prosecutor of the constitutional legitimacy of legislation emanating from the sovereign Parliament.¹³⁸

This power of constitutional review places the Spanish Ombudsman in a unique institutional position within the constitutional architecture. Kucsko-Stadlmayer, in her comparative analysis of European ombudsman institutions, classifies Spain among those institutions that possess the power to contest laws and regulations with legal force before constitutional courts regarding general conformity with the constitution.¹³⁹ Moreover, the Spanish Ombudsman is entitled not only to lodge abstract appeals for unconstitutionality but also to file individual appeals for relief

¹³⁴Mora, A. *The Book of the Ombudsman*, pp.203

¹³⁵Constitución Española de 1978, Art. 162. Mora, A. *The Book of the Ombudsman*, pp. 196–197, 203.

¹³⁶*Ibid*, p. 203.

¹³⁷*Ibid*

¹³⁸*Ibid*

¹³⁹Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p. 63.

before the Constitutional Court, thereby protecting constitutionally enshrined rights at the level of individual cases.¹⁴⁰

The Portuguese Provedor de Justiça, as noted above, possesses a comparable but not identical power. The Portuguese Ombudsman may request the Constitutional Court to make generally binding rulings on issues of unconstitutionality or illegality of legal provisions, and may additionally request rulings on unconstitutionality by omission.¹⁴¹ Both Iberian institutions thus occupy what Kucsko-Stadlmayer identifies as the intersection of the “rule of law model” and the “human rights model” of ombudsmanship, possessing powers that go beyond the “soft” instruments of investigation, recommendation and reporting that characterize the classical Scandinavian ombudsman.

Taken together, the Spanish and Portuguese ombudsman institutions exhibit a set of shared characteristics that justify speaking of a distinct “Iberian model” of ombudsmanship. These common features can be summarized as follows.

First, both institutions are constitutionally enshrined. The ombudsman is not merely a creature of ordinary legislation but occupies a defined position within the constitutional order itself. This constitutional embodiment provides a higher degree of institutional stability and protects the institution from being modified or abolished by changing parliamentary majorities. As Kucsko-Stadlmayer observes, constitutional provisions primarily ensure the independence of ombudsman institutions from public administration as well as their stability and continuity within the framework of state institutions; raising these provisions to a higher normative level protects them from being modified by changing majorities of parliament.¹⁴²

Second, both institutions place a primary emphasis on the protection and promotion of fundamental rights. While the classical Scandinavian ombudsman was initially conceived primarily as a mechanism for supervising the legality and propriety of administrative action, the Iberian ombudsmen were established with the explicit mandate to defend fundamental rights. This emphasis is reflected in the very names of the institutions – the Ombudsman (“Defender of the People”) and the Provedor de Justiça (“Provider of Justice”) – as well as in their constitutional

¹⁴⁰Spain. Ley Orgánica 3/1981, de 6 de abril, del Defensor del Pueblo, Art. 29. Kucsko-Stadlmayer, G. (ed.) *European Ombudsman-Institutions*, p. 405.

¹⁴¹Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p. 355.

¹⁴²Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p. 7.

and statutory mandates. In the Spanish case, the placement of Article 54 within the constitutional chapter on guarantees of fundamental rights further underscores this orientation.¹⁴³

Third, both institutions possess the power to challenge legislation before the respective constitutional courts, a power that decisively distinguishes them from the classical model. This power transforms the ombudsman from a purely supervisory institution operating within the executive sphere into a constitutional actor capable of engaging with the legislative branch itself. This power places both Iberian institutions within the “rule of law model” and, insofar as the contestation specifically concerns the protection of human rights, within the “human rights model” as well.

Fourth, both institutions are elected by parliament with supermajority requirements – a three-fifths majority in Spain and a two-thirds majority in Portugal – ensuring broad political consensus and enhancing the democratic legitimacy and perceived independence of the officeholder.¹⁴⁴

Fifth, both institutions emerged directly from processes of democratic transition and were conceived as integral components of the new democratic constitutional order. This genesis distinguishes the Iberian model from the gradual, evolutionary development of the ombudsman in Scandinavia, and imbues these institutions with a particular symbolic significance as embodiments of the democratic values that the new constitutions sought to entrench.

At the same time, certain differences between the two institutions deserve mention. The Spanish Ombudsman is appointed for a five-year term that is independent of the parliamentary legislative period, whereas the Portuguese Ombudsman serves a four-year term with the possibility of one re-election. The Spanish institution has developed a system of regional ombudsmen (*comisionados parlamentarios autonómicos*) that operates alongside the national Ombudsman, whereas Portugal, as a unitary state with a more limited degree of regional autonomy, does not have regional ombudsman institutions, although the *Provedor de Justiça* maintains field offices on the Azores and Madeira.

One of the most notable features of the Spanish ombudsman system is the development of regional ombudsman institutions in Spain’s autonomous communities. The implantation of an

¹⁴³Mora, A. *The Book of the Ombudsman*, p. 196. See also Kucsko-Stadlmayer, G. (ed.) *European Ombudsman-Institutions*, p. 7.

¹⁴⁴Spain. *Ley Orgánica 3/1981*, de 6 de abril, del Defensor del Pueblo., Art. 2(4); 42. Portugal. *Lei n.º 9/91*, de 9 de abril (*Estatuto do Provedor de Justiça*). Alterada pela *Lei n.º 30/96*, de 14 de agosto, Art. 5(1).

Ombudsman's Office at the national level was followed, beginning in 1983, by the creation of regional parliamentary commissioners in a number of autonomous communities, each dependent on their respective regional assemblies.¹⁴⁵

The regional ombudsmen were established through regional laws in their respective communities. Most were created during the 1980s, shortly after the national institution had been established: the Ombudsman Andaluz in 1983, the Síndic de Greuges of Catalonia in 1984, the Justicia de Aragón in 1988, the Ararteko of the Basque Region in 1985, and others in subsequent years. The relationship between the national Ombudsman and the regional institutions is regulated by Law 36/1985, which establishes that the Ombudsman may supervise regional administrations and may coordinate with or request the cooperation of regional commissioners, though the national Ombudsman may not delegate competencies regarding the defence of basic rights.¹⁴⁶

The regional ombudsmen generally possess powers similar to those of the national Ombudsman, though not as extensive. In particular, regional ombudsmen do not have the power to challenge laws and regulations before the Constitutional Court.¹⁴⁷ Nevertheless, they constitute an important complement to the national institution, providing citizens with accessible channels for seeking redress at the regional level and contributing to the overall system of fundamental rights protection in Spain's decentralized constitutional order.

The influence of the Iberian ombudsman model, particularly the Spanish variant, has been remarkably extensive. During the processes of democratic transition in Latin America throughout the 1980s and 1990s, the Spanish model served as a constant point of reference for the establishment of similar institutions across the continent.¹⁴⁸ Guatemala was the first Latin American country to adopt such an institution, including the Procurador de los Derechos Humanos in its Constitution of 1985, followed by El Salvador, Colombia, Peru, Costa Rica, Argentina, and numerous others in quick succession during the 1990s.¹⁴⁹

¹⁴⁵Mora, A. *The Book of the Ombudsman*, pp. 188, 205.

¹⁴⁶*Ibid*, p.206.

¹⁴⁷Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p. 407.

¹⁴⁸Mora, A. *The Book of the Ombudsman*, p. 188.

¹⁴⁹*Ibid*

In every Latin American case, as in the Iberian model, the emphasis was placed on fundamental rights protection, with administrative control taking a secondary though still present role. This shared emphasis on human rights protection as the primary mandate distinguishes the Iberian-Latin American tradition of ombudsmanship from the classical Scandinavian model, where the focus remained primarily on legality and propriety of administrative action.

In the comparative analysis proposed by Kucsko-Stadlmayer, the Iberian institutions – particularly the Portuguese Provedor de Justiça – are identified as having inaugurated a new type of ombudsman institution in Europe, one specifically established to observe compliance with international obligations in the field of human rights and thereby to advance the process of democratization.¹⁵⁰ The classification of European ombudsman institutions into a “basic model,” a “rule of law model,” and a “human rights model” reflects, in significant part, the innovations introduced by the Iberian constitutions of the 1970s and 1980s.

The typological significance of the Iberian ombudsman model lies in its synthesis of several institutional functions that, in other constitutional traditions, had been conceived as separate or even incompatible. The classical Scandinavian ombudsman was primarily a mechanism of parliamentary control over the executive, operating through non-binding recommendations and the power of publicity. The Iberian model retains these features but adds two additional dimensions: an explicit mandate for the protection and promotion of fundamental rights, and the power to engage the constitutional judiciary through appeals for unconstitutionality.

This synthesis was not accidental but reflected the specific historical circumstances of the Iberian democratic transitions. In countries emerging from prolonged authoritarian rule, the protection of fundamental rights could not be left solely to the ordinary judiciary, which itself required reform and might not yet command full public confidence. The ombudsman, as an institution possessing both democratic legitimacy (through parliamentary election) and independence (through constitutional guarantees), was ideally positioned to serve as an additional guarantee of fundamental rights during the critical early years of democratic consolidation.

Moreover, the power of constitutional review gave the ombudsman a unique role in the constitutional architecture. As the Spanish Ombudsman himself observed, this power transforms the institution from a mere parliamentary commissioner into a defender of the Constitution vis-

¹⁵⁰Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p. 60.

à-vis the legislature itself. The ombudsman thus becomes what Mora describes as a figure situated between two main pillars: on the one hand, human rights, from their first national declarations to their internationalization, institutionalization, and effective application; on the other, the growing scope of the rule of law, which involves an expansion of state administration that must also be controlled and corrected.¹⁵¹

The success of this institutional model is evidenced not only by its durability within Spain and Portugal themselves – where both institutions have been operating for over four decades and consistently rank among the most recognized public institutions – but also by its extensive adoption and adaptation throughout Latin America and, through the influence of the Portuguese and Spanish examples, in several Central and Eastern European countries during their own democratic transitions.

The constitutionalization of the ombudsman institution on the Iberian model represents a significant chapter in the global evolution of this concept. Both Portugal and Spain, emerging from authoritarian regimes in the 1970s, embedded the ombudsman within their new constitutional orders with mandates that went substantially beyond the classical Scandinavian prototype. The Iberian model is distinguished by its constitutional entrenchment, its primary orientation toward the protection of fundamental rights, and its endowment with the power of constitutional review – features that collectively represent an innovative adaptation of the ombudsman concept to the specific needs of societies undergoing democratic transition.

As Kucsko-Stadlmayer notes, the different designations of institutions do not imply substantial judicial differentiation, but usually emanate from the traditions of the particular legal terminology of a state; nevertheless, the names chosen by the Iberian countries – Ombudsman and Provedor de Justiça – are revealing of the philosophical orientation that underpins these institutions.¹⁵² They signal an understanding of the ombudsman not merely as a supervisor of administrative regularity but as a guardian of the rights of the people and a provider of justice in the broadest sense.

The Iberian model has demonstrated that the ombudsman institution can be successfully adapted to serve as a fundamental component of the constitutional architecture of democratic states,

¹⁵¹Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p. 180.

¹⁵² *Ibid*, p. 7.

particularly those emerging from authoritarian pasts. Its influence continues to be felt in contemporary discussions about the design of national human rights institutions and the role of non-judicial mechanisms in the protection of fundamental rights. As the Spanish Ombudsman's Office observed, the institution has consolidated its reputation to the extent that it consistently ranks among the most recognized public institutions in Spain, proving that the expectations aroused during the early years of democratic transition have been substantively fulfilled.¹⁵³

2.3. European Ombudsman Model

The institution of the ombudsman has undergone a remarkable yet uneven diffusion across Central and Eastern Europe (CEE) since the democratic transitions of the late 1980s and early 1990s. Poland, Hungary, the Czech Republic, and Ukraine adopted ombudsman-type offices as part of their post-socialist constitutional restructuring, often under explicit pressure from European institutions and as a condition of Euro-Atlantic integration. As Kucsko-Stadlmayer observes in her comprehensive comparative study of European ombudsman institutions, “the collapse of totalitarianism in Portugal, Spain, Greece, as well as Central and Eastern Europe and the resulting process of democratisation provided new incentives for the idea of the ombudsman¹⁵⁴,” lifting the institution “to a new level” by combining rule-of-law and human rights protection.

The concept of hybridization, as applied to ombudsman institutions, denotes not superficial imitation but a structural recombination of elements drawn from different institutional traditions, producing patterns that are stable, reproducible, and analytically distinct from their source models. Understanding this hybrid is essential not only for comparative public law scholarship but also for practitioners engaged in the ongoing democratization and Europeanization of CEE governance. The following sections develop this argument by tracing the theoretical underpinnings of ombudsman hybridization, examining country-specific trajectories in Poland, Hungary, the Czech Republic, and Ukraine, and offering a synthetic comparative analysis.

Poland established its Commissioner for Human Rights in 1987 - remarkably, still under Communist rule - making it one of the oldest ombudsman-type institutions in the region. The Polish Ombudsman was established in the course of the process of democratisation during the

¹⁵³Mora, A. *The Book of the Ombudsman*, p. 219.

¹⁵⁴Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p.2

1980s by the Act of July 15, 1987 on the Commissioner for Civil Rights Protection.¹⁵⁵ The establishment of the Ombudsman institution in Poland must be understood within the broader context of the late communist regime's struggle for legitimacy. As the first Ombudsman Professor Ewa Letowska, wrote, creation of the office was, in effect, one more concession by the collapsing regime. By establishing this institution, the communists clearly aimed to improve their credibility and image at home and abroad.¹⁵⁶ The communist authorities, facing mounting pressure from civil society, the Solidarity movement, and growing international scrutiny, sought to rehabilitate their deteriorating image both domestically and on the international stage. By adopting an institution historically associated with liberal democratic governance, the regime attempted to signal a degree of openness and accountability it had no sincere intention of fully embracing. This instrumentalization of the Ombudsman concept reflects a broader pattern visible across late-communist states, where surface-level institutional reforms were deployed as a tool of regime survival rather than systemic transformation.

First proposed in 1981 by the Solidarity National Congress, in September 1986 the Council of State reviewed a proposal attaching the Ombudsman's office to the executive branch, giving the Ombudsman, as one commentator put it, 'the opportunity to cooperate with procuratorial bodies and to use their assistance.'¹⁵⁷ This formulation, ostensibly presented as a practical advantage, in reality signalled an intention to embed the institution within the existing apparatus of state power rather than to create a genuinely independent watchdog. Had this version of the proposal been adopted, the Ombudsman would have functioned less as a guardian of citizens' rights and more as an extension of executive authority, fundamentally undermining the very purpose the institution was meant to serve.

In large part, the structure and procedures of the Polish Ombudsman's office was modelled on the Swedish office of ombudsman.¹⁵⁸

Following the democratic transition, Hungary initially developed an unusually elaborate accountability structure. The constitutional foundations of the Hungarian ombudsman institution were established during the pivotal transformative moment of 1989. The revision of the

¹⁵⁵ Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p.342

¹⁵⁶ Brzezinski, Mark. *The Struggle for Constitutionalism in Poland*. Oxford: St. Martin's Press, 1998. p.79

¹⁵⁷ Ibid

¹⁵⁸ Ibid

Constitution in 1989 laid down the constitutional basis for the creation of ombudsman-institutions.¹⁵⁹ This constitutional grounding was not merely a technical legal adjustment but rather a reflection of Hungary's broader systemic reorientation, as the country sought to align its institutional architecture with the standards of liberal democratic governance. The significance of this moment becomes clearer when situated within the wider political transformation underway.

The institution of the Ombudsman in Hungary appeared after the country's transition from the soviet to a democratic system. The National Assembly gained real function, and the Cabinet became responsible to the parliament. From this time, the entirety of human rights had to be enforced, and the switch took place from the socialist system of a planned economy to a market economy.¹⁶⁰

On 23 October 1989, the extensive amendment to the Constitution of Hungary introduced, on the one hand, the institution of the Parliamentary Commissioner for Citizens' Rights, on the other hand the Parliament may appoint specific Commissioners for the protection of certain constitutional rights. Aside from setting these rules for the first time little notice was given to the ombudsman for several years among the institutions ensuring the rule of law.¹⁶¹

The Czech Republic established its Public Defender of Rights relatively late by CEE standards - the enabling legislation was adopted in 1999, and the office became operational in 2001. Kucsko-Stadlmayer's country report situates the Czech institution clearly: "The Public Defender of Rights - is the Czech Republic's national parliamentary ombudsman-institution with a general mandate" and explicitly notes that "there are no similar institutions on a regional or communal level".¹⁶²

In Ukraine the constitutional framework for the institution of the Human Rights Representative was established in the 1996 Constitution¹⁶³

¹⁵⁹ Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p.222

¹⁶⁰ Bódi, Stefánia. "The Ombudsman Institution in Hungary." *The Lawyer Quarterly* 14, no. 4 (2024), p. 525

¹⁶¹ Parliamentary Commissioners' Office, *The Hungarian Ombudsman Institution (1995–2008)*, Budapest, 2008 p.2

¹⁶² Kucsko-Stadlmayer G, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea* (Springer 2008), p. 146

¹⁶³ *Ibid*, p.428

By enshrining in Article 55 of the Constitution of Ukraine the right of everyone to seek protection of their rights from the Verkhovna Rada Commissioner for Human Rights, the state has thus affirmed the universal character of the ombudsman's jurisdiction.¹⁶⁴

The Constitution of Ukraine and the Law of Ukraine "On the Verkhovna Rada Commissioner for Human Rights," adopted on its basis, establish a relatively strong model of the ombudsman in terms of both its nature and scope of powers. This model is characterized by several key features: the high constitutional status of the Commissioner, enshrined in the Constitution of Ukraine; the independence of the Commissioner from any state authority or local self-government body, as well as from their officials; the establishment of a single ombudsman model at the national level; the broad jurisdiction of the Commissioner, extending to both state authorities and local self-government bodies and their officials; and significant powers to conduct investigations and proceedings, including on the Commissioner's own initiative.¹⁶⁵

The Ombudsperson institution in Hungary, Ukraine, Poland, and France is in each case anchored at the constitutional level, reflecting a shared European commitment to embedding parliamentary oversight of fundamental rights within supreme law. In Hungary, the institution is governed by Article 30 of the Fundamental Law, which designates the Commissioner for Fundamental Rights as the principal actor responsible for fundamental-rights protection, and tasks him or her with investigating violations that come to light and initiating measures to remedy them.¹⁶⁶ The detailed framework is supplied by Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter: Hungarian Ombudsman Act), which governs requirements, appointment, powers, and procedures.

In Ukraine, the constitutional basis is found in Article 101 of the Constitution, which assigns to the Ukrainian Parliament Commissioner for Human Rights the role of exercising parliamentary control over the observance of constitutional human and citizens' rights and freedoms.¹⁶⁷ The operational framework is set out in the Law of Ukraine 'On the Ukrainian Parliament Commissioner for Human Rights' of 23 December 1997 (hereinafter: Ukrainian Ombudsman Act), which defines the scope of the Commissioner's mandate, appointment procedure, powers,

¹⁶⁴ Bondarev, Oleksii B. "Istoriia zaprovadzhennia ta tendentsii rozvytku instytutu ombudsmana v Ukraini." *Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine*, no. 6 (2017): p. 22

¹⁶⁵ Ibid

¹⁶⁶ The Fundamental Law of Hungary, adopted 18 April 2011, entered into force 1 January 2012, Art. 30.

¹⁶⁷ Constitution of Ukraine, adopted 28 June 1996, Art. 101.

and methods of intervention.¹⁶⁸ Article 1 of that Law underscores that the Commissioner's activity is guided by the Constitution of Ukraine, domestic legislation, and international treaties ratified by the Verkhovna Rada.

Poland's framework similarly traces its origins to the Constitution of the Republic of Poland of 1997, whose Article 208 establishes the Commissioner for Human Rights as the body mandated to safeguard the freedoms and rights of natural and legal persons against unlawful or unjust actions of public authorities.¹⁶⁹ The statutory elaboration is contained in the Act of 15 July 1987 on the Commissioner for Human Rights (hereinafter: Polish Ombudsman Act), last consolidated in the Journal of Laws Dz. U. of 2024, item 1264. Article 1 of the Polish Ombudsman Act defines the Commissioner's scope as examining whether the law or principles of social justice have been violated by acts or omissions of bodies and institutions obliged to respect human and civil rights.¹⁷⁰

France presents a structurally distinct model. The institution known as the Ombudsman (Defender of Rights) was inscribed in Article 71-1 of the Constitution of the Fifth Republic through the constitutional reform of 23 July 2008,¹⁷¹ and was formally established by Organic Law No. 2011-333 of 29 March 2011 (hereinafter: French Organic Law), which sets out its status, competences, and powers. Article 4 of the French Organic Law is particularly notable in that it confers upon the institution a broad multi-mandate scope-encompassing the defence of individual rights and liberties against administrative malfunctions, the protection of children's rights, combating discrimination, oversight of security-sector ethics, and the protection of whistleblowers.¹⁷² This consolidated structure, which merged four predecessor bodies, distinguishes France from the other three jurisdictions examined here, where a single focused mandate is the norm.

All four systems thus share a dual-layer normative structure: a constitutional provision establishing the institution and guaranteeing its existence, and a statute supplying the operational

¹⁶⁸ Law of Ukraine On the Ukrainian Parliament Commissioner for Human Rights (hereinafter: Ukrainian Ombudsman Law) No. 776/97-VR of 23 December 1997, as amended, Art. 1.

¹⁶⁹ Constitution of the Republic of Poland, adopted 2 April 1997, Art. 208.

¹⁷⁰ Poland, Act of 15 July 1987 on the Commissioner for Human Rights (hereinafter Polish Ombudsman Law), consolidated text: Journal of Laws Dz. U. of 2024, item 1264, Art. 1.

¹⁷¹ Constitution of the French Republic, Art. 71-1, as amended by the Constitutional Law No. 2008-724 of 23 July 2008.

¹⁷² LOI organique n° 2011-333 du 29 mars 2011 relative au Défenseur des droits (hereinafter: French Organic Law), Art. 4.

detail. The constitutional entrenchment ensures that the institution cannot be abolished by ordinary legislation alone, conferring a degree of resilience against political pressure that is consistent across all four countries.

The appointment procedures across the four jurisdictions reveal a common preference for parliamentary involvement, although the precise mechanisms differ. In Hungary, the President of the Republic submits a proposal for the Commissioner for Fundamental Rights to the Parliament between the ninetieth and forty-fifth days before the expiry of the incumbent's mandate. The candidate must then appear before the parliamentary committee competent for the Commissioner's tasks, following which the National Assembly votes, requiring a two-thirds majority of its members for a valid appointment. The six-year term is explicitly fixed in Article 30 of the Fundamental Law.¹⁷³

In Ukraine, the Commissioner is both appointed to and dismissed from the post by the Verkhovna Rada of Ukraine by secret ballot, acting by a majority of the constitutional composition of the parliament.¹⁷⁴ Candidates may be nominated by the Chairman of the Verkhovna Rada or by no fewer than one-quarter of the People's Deputies.¹⁷⁵ The procedure requires that the relevant parliamentary committee carry out a special integrity check and submit its conclusions to the full chamber before a vote is held. The term of office is five years, running from the day the oath is taken at a plenary session. Ukraine thus departs from the Hungarian model in that no executive nomination is involved: the entire appointment process, from candidacy to election, remains within the legislature.¹⁷⁶

Poland follows a similar parliamentary model. Under Article 3(1) of the Polish Ombudsman Act, the Commissioner is appointed by the Sejm (the lower chamber) at the request of the Marshal of the Sejm or a group of at least thirty-five deputies, and must subsequently be approved by the Senate within one month. Failure of the Senate to act within that period is treated as tacit approval.¹⁷⁷ The term of office is five years from the date of taking the oath before the Sejm, and Article 5(2) provides that no person may hold the office for more than two successive terms.¹⁷⁸ Removal before expiry of term is possible only upon resignation, permanent incapacity,

¹⁷³ The Fundamental Law of Hungary, adopted 18 April 2011, entered into force 1 January 2012, Art. 30, (hereinafter: Hungarian Ombudsman Law) § 3.

¹⁷⁴ Ukrainian Ombudsman Law, Art. 5.

¹⁷⁵ Ukrainian Ombudsman Law, Art. 6.

¹⁷⁶ Ukrainian Ombudsman Law, Art. 5-6.

¹⁷⁷ Polish Ombudsman Act, Art. 3.

¹⁷⁸ Polish Ombudsman Act, Art. 5(2).

submission of a false vetting declaration, or violation of the oath, and requires a three-fifths majority of the Sejm.

France presents a markedly different model. Under Article 1 of the French Organic Law, the Defender of Rights is appointed by decree of the Council of Ministers, acting under the procedure laid down in the final paragraph of Article 13 of the Constitution,¹⁷⁹ which provides for prior public consultation with the relevant standing committees of the National Assembly and the Senate and allows the appointment to be blocked where the combined negative votes in both committees represent at least three-fifths of the votes cast..¹⁸⁰ The executive-origin nature of appointments in France, subject to prior public consultation with parliamentary committees and a limited blocking mechanism based on a qualified threshold of negative votes, contrasts with systems such as Poland and Ukraine, where ombudsman appointments are carried out by parliament, reflecting a more legislative-centred approach to selection.

All four jurisdictions impose eligibility criteria designed to ensure professional competence and personal integrity, though the specific requirements vary. In Hungary, the candidate must hold a higher legal education, be eligible to stand in parliamentary elections, have outstanding theoretical knowledge or at least ten years of professional experience, have reached the age of thirty-five, and possess considerable experience in conducting or supervising fundamental-rights proceedings or in the scientific theory of such proceedings. Persons who have held civil service or political positions in the preceding four years are excluded.¹⁸¹

Ukraine's requirements, set out in Article 5 of the Ukrainian Ombudsman Law, are somewhat broader in formulation. The candidate must be a Ukrainian citizen who has reached the age of forty by the date of election, speaks the state language at the prescribed standard level, and has demonstrated high moral qualities, experience in human rights protection activities, and continuous residence in Ukraine for at least the preceding five years.¹⁸² The Ukrainian legislation also mandates an anti-corruption integrity check and the submission of a declaration of assets, income, expenditures, and financial obligations prior to appointment. Persons with unspent or unexpunged criminal records, or those who have received administrative penalties for corruption within the preceding year, are disqualified. Notably, Ukraine does not prescribe a formal legal

¹⁷⁹ French Organic Law, Art. 1.

¹⁸⁰ Constitution of the French Republic, Art. 71-1, as amended by the Constitutional Law No. 2008-724 of 23 July 2008., Art. 13

¹⁸¹ Hungarian Ombudsman Law, § 5.

¹⁸² Ukrainian Ombudsman Law, Art. 5, para. 2.

qualification as an explicit requirement, setting it apart from Hungary, where a law degree is obligatory.

Poland's eligibility standard, contained in Article 2 of the Polish Ombudsman Act, is drafted in broad qualitative terms: the office may be held by a Polish citizen who has outstanding knowledge of the law and professional experience and who, by virtue of moral attributes and social sensitivity, commands public respect.¹⁸³ Unlike Hungary, Polish law does not specify a minimum age, a mandatory law degree, or a minimum number of years of relevant professional experience, opting instead for a holistic assessment of the candidate's standing and qualifications. This more open formulation may reflect the legislature's intention to allow for flexibility in the profile of the officeholder.

France's Organic Law of 2011 does not enumerate personal eligibility criteria for the Defender of Rights in the way that the other three systems do. Instead, eligibility is defined negatively through incompatibility rules. Article 3 of the French Organic Law provides that the position is incompatible with membership of the government, the Constitutional Council, the High Council of the Judiciary, the Economic, Social and Environmental Council, and any elective mandate. It is further incompatible with any public employment or professional activity, and with directorships or supervisory roles in any company or institution.¹⁸⁴ The absence of affirmative qualification criteria in the French framework contrasts with Hungary, Ukraine, and Poland, and places full discretion with the President of the Republic, subject only to the parliamentary hearing procedure.

The substantive powers of the Ombudsperson institutions across the four countries share a common core-complaint investigation, legislative recommendation, access to information, and reporting-while diverging significantly in scope and legal authority.

In Hungary, the principal powers of the Ombudsman include issuing opinions on draft legislation, proposing legislative amendments, applying to the Constitutional Court on matters of constitutionality, raising public awareness of fundamental rights, and performing the functions of the national preventive mechanism under the Optional Protocol to the Convention against

¹⁸³Polish Ombudsman Act, Art. 2.

¹⁸⁴French Organic Law, Art. 3.

Torture (OPCAT). The Commissioner may additionally propose that senior law enforcement and immigration officials issue, amend, or repeal instructions.¹⁸⁵

Ukraine's powers, enumerated in Article 13 of the Ukrainian Ombudsman Law, are comparably broad. The Commissioner has the right to be received without delay by the President of Ukraine, the Chairman of the Verkhovna Rada, the Prime Minister, and the heads of other state bodies. The Commissioner may appeal to the CCU regarding the conformity of laws with the Constitution and request official interpretation of constitutional provisions. Additional rights include unhindered access to all public bodies, review of classified documents, invitation of officials and citizens to provide explanations, unannounced visits to places of detention, and participation in court proceedings as a party.¹⁸⁶ This robust set of access rights is characteristic of a mature NHRI model and broadly parallels the Hungarian framework.

Poland's powers under Article 13(1) of the Polish Ombudsman Act include independent on-site investigation without prior notice, requests for access to files and documents from any state-level administrative authority, information on the status of pending court proceedings, and the commissioning of expert opinions. Furthermore, the Commissioner may initiate civil proceedings, join ongoing proceedings with the same rights as a public prosecutor, request criminal investigations, and lodge complaints with administrative courts.¹⁸⁷ The Polish Ombudsman Act additionally grants the Commissioner the right to submit motions to the Constitutional Tribunal and to the Supreme Court for resolutions clarifying legal provisions that generate conflicting decisions in practice—a legislative-influence power comparable to, though structurally distinct from, Hungary's constitutional application mechanism.¹⁸⁸

France's Defender of Rights exercises investigation and information-gathering powers under Articles 18 to 23 of the French Organic Law. These include demanding explanations, documents, and information from any public body or service concerned; commissioning expert opinions; carrying out on-site inspections; and making referrals to the public prosecutor where the facts indicate a criminal offence.¹⁸⁹ The Defender may also present observations before courts as an *amicus curiae*¹⁹⁰ and, under Article 25, issue injunctions ordering a public body to take a required

¹⁸⁵Hungarian Ombudsman Law, § 2.

¹⁸⁶Ukrainian Ombudsman Law, Art. 13.

¹⁸⁷Polish Ombudsman Act, Art. 13(1).

¹⁸⁸ Polish Ombudsman Act, Art. 16.

¹⁸⁹French Organic Law, Arts. 18–23.

¹⁹⁰ *amicus curiae* - A party that is not involved in litigation but gives expert testimony when the court asks. They can support public interest not being addressed in the trial.(The Law dictionary)

measure within a fixed deadline. Non-compliance with such an injunction may be the subject of a special report.¹⁹¹ This injunctive power distinguishes France from Hungary, Ukraine, and Poland, where the Ombudsperson's conclusions take the form of recommendations or submissions without directly binding legal force. That said, in all four systems, failure to comply with the Ombudsperson's recommendations triggers reporting and publicity mechanisms rather than direct enforcement.

The procedural frameworks governing how complaints are filed and how investigations are conducted share several common features across the four jurisdictions. In Hungary, the Commissioner may conduct an investigation upon request from the moment of an administrative decision, subject to a one-year filing deadline. Cases already covered by a final court decision or pending before an administrative court cannot be considered. In the course of investigations, the Commissioner may request data and information, invite officials to conduct inquiries, participate in public hearings, and carry out on-site inspections. Where an impropriety concerning a fundamental right is established, the Commissioner may address a recommendation to the supervisory organ of the authority concerned.¹⁹²

In Ukraine, Article 17 of the Ukrainian Ombudsman Law requires that appeals be submitted in writing within one year of the date on which the violation was discovered; in exceptional circumstances, the Commissioner may extend this period to a maximum of two years.¹⁹³ Upon receipt, the Commissioner may initiate proceedings, explain to the petitioner what measures are available independently, or forward the matter to competent authorities. The formal acts of response available to the Ukrainian Commissioner under Article 15 of the Ukrainian Ombudsman Law are the constitutional submission (addressed to the Constitutional Court) and the submission (addressed to a state body or official), which sets a one-month deadline for remedial action.¹⁹⁴

Poland's procedure, governed by Article 9 of the Polish Ombudsman Act, provides that the Commissioner may receive motions from citizens and citizens' organisations, local government bodies, the Ombudsman for Children, the Ombudsman for Small and Medium Enterprises, and on the Commissioner's own initiative.¹⁹⁵ Motions are free of charge and require no particular

¹⁹¹French Organic Law, Art. 25.

¹⁹²Hungarian Ombudsman Law, § 18.

¹⁹³Ukrainian Ombudsman Law, Art. 17.

¹⁹⁴Ukrainian Ombudsman Law, Art. 15.

¹⁹⁵Polish Ombudsman Act, Art. 9.

form. Upon examining a motion, the Commissioner may accept it for further proceedings, indicate self-help measures, forward it to the competent authority, or reject it. Where the case is accepted, the Commissioner may carry out an independent explanatory procedure, request examination by supervisory or audit authorities, or ask the Sejm to instruct the Supreme Audit Office to investigate. Article 16 of the Polish Ombudsman Act authorises the Commissioner to propose legislative initiatives, submit motions to the Constitutional Tribunal, and apply to the Supreme Court for interpretive resolutions.¹⁹⁶

In France, Article 5 of the French Organic Law provides that the Defender of Rights may be approached by any natural or legal person who considers that their rights or freedoms have been violated by the functioning of a state administration, territorial collectivity, public establishment, or body invested with a public service mission. Children, through their legal representatives or certain associations, and persons claiming to be victims of discrimination may also access the institution directly.¹⁹⁷

The capacity to act on one's own initiative-ex officio-is a key indicator of the institutional independence and proactive character of an Ombudsperson. All four jurisdictions recognise this power, though its legislative framing and practical emphasis differ.

In Hungary, ex officio proceedings constitute one of the Commissioner's core instruments. Section 1(3) of the Hungarian Ombudsman Act explicitly identifies ex officio action as a primary tool for protecting vulnerable groups-specifically children, future generations, national minorities, and socially disadvantaged persons.¹⁹⁸ Section 18(4) further specifies that the Commissioner may launch an ex officio inquiry in order to have improprieties related to fundamental rights and arising in the course of the activities of public authorities terminated.¹⁹⁹

Ukraine's Article 16(3) of the Ukrainian Ombudsman Law recognises the Commissioner's own initiative as one of three legal grounds for commencing proceedings, alongside individual appeals and motions from People's Deputies.²⁰⁰

¹⁹⁶Polish Ombudsman Act, Art. 16(2).

¹⁹⁷French Organic Law, Art. 5.

¹⁹⁸Hungarian Ombudsman Law, § 1(3).

¹⁹⁹Hungarian Ombudsman Law, § 18(4).

²⁰⁰Ukrainian Ombudsman Law, Art. 16(3).

Poland's approach is functionally equivalent. Article 9(3) of the Polish Ombudsman Act explicitly lists the Commissioner's own initiative as one of the bases for taking action.²⁰¹

In France, Article 5, final paragraph, of the French Organic Law similarly empowers the Defender of Rights to act on their own initiative.²⁰²

In 2023, the number of complaints to the Commissioner for Human Rights in Poland amounted to 79,698 - the largest in the history of the institution. For comparison: in 2021, 74,279 complaints were received - an increase of 7.3% in two years.²⁰³

In Ukraine, 152,592 appeals were recorded in 2025. Compared to 2024 - plus 24%. Since 2023 - 59% more. Since 2022 - the number of appeals has increased by 260%.²⁰⁴

In 2023, the Office in Hungary dealt with a total of 5,742 cases, which included both complaints submitted by individuals and investigations initiated ex officio. Additionally, 1,676 cases had been carried over from the previous year. During the year, 4,772 cases were concluded, leaving 970 cases still pending at the end of 2023.²⁰⁵

In French the overall statistics for the Defender of Rights from 2022 to 2024 show a steady increase in complaints and requests for information, reaching a total of 140,996 in 2024 (+2% compared to 2023), and increased by 12.4% in 2024 compared to 2022.²⁰⁶

The data presented shows a general trend towards an increase in the number of appeals to NHRI in various European countries.

The analysis conducted in this subchapter has addressed the Central and Eastern European dimension of the fourth objective of the thesis, namely the comparative study of the principal families of the ombudsperson institution in Europe. Three conclusions follow.

First, the post-1989 diffusion of the ombudsperson across Central and Eastern Europe produced not a mechanical reception of the Scandinavian archetype but a distinct hybrid model in which

²⁰¹ Polish Ombudsman Act, Art. 9(3).

²⁰² French Organic Law, Art. 5.

²⁰³ Commissioner for Human Rights (Poland), Summary – Report on the Activities of the Commissioner for Human Rights in 2023 (Warsaw: Office of the Commissioner for Human Rights, 2024), p.9

²⁰⁴ Ukrainian Parliament Commissioner for Human Rights, Annual Report of the Ukrainian Parliament Commissioner for Human Rights on Observance and Protection of Human and Civil Rights and Freedoms in Ukraine in 2025 (Kyiv: Office of the Ukrainian Parliament Commissioner for Human Rights, 2025), p. 6

²⁰⁵ Commissioner for Fundamental Rights of Hungary, Report on the Activities of the Commissioner for Fundamental Rights of Hungary and His Deputies – 2023 (Budapest: Office of the Commissioner for Fundamental Rights, 2024), p.41

²⁰⁶ Défenseur des droits. *Annual Activity Report 2024*. Paris: Défenseur des droits, 2024, p. 10

rule-of-law supervision, human-rights protection, and constitutional entrenchment are fused within a single institution. Poland, Hungary, Ukraine and the Czech Republic each adopted the ombudsperson as part of broader democratic and Europeanization processes, and in each case the institution is anchored at the constitutional level and elaborated by an organic or special statute. This dual-layer structure constitutional provision plus statutory elaboration confers the resilience identified in subchapter 1.2 as a prerequisite for genuine independence and confirms, at the regional level, the normative benchmark established by the Venice Principles.

Second, within this shared constitutional foundation the four systems examined Poland, Hungary, Ukraine and France show a structured pattern of convergence and divergence that maps neatly onto the typological apparatus developed in Chapter 1. All four converge on parliamentary or parliamentary-dominated appointment, qualified majorities or blocking mechanisms, fixed non-renewable or limited-renewal terms, broad investigative competences, access to information, ex officio initiative, constitutional-review standing, and reporting as the principal accountability instrument. They diverge, however, on three significant points: the locus of nomination (legislative in Poland and Ukraine, executive-initiated in Hungary and France); the eligibility framework (positive and detailed in Hungary, qualitative in Poland, broad in Ukraine, negative-incompatibility-based in France); and - most importantly - the scope of the mandate, which remains single-focused in Poland, Hungary, Ukraine and the Czech Republic but is consolidated in France into a multi-mandate covering administrative oversight, children's rights, anti-discrimination, security-sector ethics and whistleblower protection, and equipped with an injunctive power absent elsewhere. Placed within Kucsko-Stadlmayer's typology, the Central and Eastern European institutions occupy the human-rights model, while the French institution represents its most developed consolidated variant.

Third, the comparison confirms the core hypothesis of the thesis: the Central and Eastern European ombudsperson is not a simple transplant of the Nordic or Iberian templates but a qualitatively distinct variant whose design responds to the specific tasks of post-authoritarian democratic consolidation protection of fundamental rights, constitutional review standing, supervision of administrations still in transition, and engagement with systemic rather than merely individual grievances.

PRACTICAL OPERATIONS AND CURRENT TRENDS IN THE DEVELOPMENT OF THE OMBUDSMAN INSTITUTION

3.1 The Role of the Ombudsman in Protecting Human Rights as Reflected in Judicial Practice

The ECtHR's judgment in *Leander v. Sweden* (1987) is the foundational case in which the Strasbourg Court assessed the ombudsman's place within the system of human rights remedies under the European Convention. The facts concerned Torsten Leander, who was denied a civilian post at the Naval Museum in Karlskrona because a secret police register contained adverse information about him. He was neither informed of the contents of this file nor given an opportunity to challenge it. Leander complained that Sweden had violated his rights under Articles 8 (private life), 10 (freedom of expression), and 13 (effective remedy) of the ECHR.²⁰⁷

The Court's analysis of Article 13 is critical for understanding the ombudsman's role. The Court established that in the context of secret surveillance, an 'effective remedy' must be understood as a remedy that is 'as effective as can be' given the inherent restrictions of such systems. The Court then examined the aggregate of remedies available to Mr. Leander under Swedish law. Among these, it identified the Parliamentary Ombudsman (*Justitieombudsmannen*) and the Chancellor of Justice (*Justitiekanslern*) as components of the remedial system. The Court acknowledged that neither the Ombudsman nor the Chancellor had the power to render legally binding decisions. However, it observed that 'in practice their opinions were usually followed' and that both had the power to initiate criminal or disciplinary proceedings against officials who had acted unlawfully.²⁰⁸

The practical significance of the *Leander* judgment is twofold. On one hand, it established the principle that the ombudsman, while not an effective remedy on its own, can legitimately form part of a composite system of remedies that collectively satisfies Article 13. This reasoning was subsequently confirmed in *Segerstedt-Wiberg and Others v. Sweden* (2006) in an identical context of secret security checks.²⁰⁹ On the other hand, the *Leander* case reveals the limits of

²⁰⁷ECtHR, *Leander v. Sweden*, Application No. 9248/81, judgment of 26 March 1987, Series A No. 116.

²⁰⁸*Ibid.*, paras. 77–82.

²⁰⁹ECtHR, *Segerstedt-Wiberg and Others v. Sweden*, Application No. 62332/00, judgment of 6 June 2006, para. 118.

relying on non-judicial oversight as a substitute for transparency. Later investigations revealed that the Swedish Government had provided inaccurate information to the ECtHR: a decade after the ruling, Sweden publicly admitted that Leander had never been a security risk, and that his registration in the secret police file was based solely on political views he had expressed as a teenager - which was, in fact, illegal under the Swedish Constitution.²¹⁰

This subsequent history casts doubt on the effectiveness of the very oversight system - including the ombudsman - that the ECtHR had relied upon in its judgment. It suggests that in cases involving secret state activities, the ombudsman's investigative role can be compromised by the same information asymmetries that affect the individual complainant. The lesson for the theory of the ombudsman as a rights defender is that the institution's effectiveness depends critically on its actual capacity to access and verify state-held information, not merely on its formal legal powers.

The Polish constitutional crisis provides the most dramatic contemporary example of the ombudsman institution functioning simultaneously in its investigative, constitutional watchdog, and judicial participation roles - and of the political risks that this entails.

Beginning in late 2015, the Law and Justice party, having won control of both the presidency and parliament, undertook a systematic campaign to subordinate the judiciary to political control. The first target was the Constitutional Tribunal. The president refused to swear in three judges lawfully elected by the outgoing Sejm, and the incoming parliament elected replacement judges to seats already filled.²¹¹

The Venice Commission of the Council of Europe explicitly condemned these measures as violations of the principles of the rule of law and judicial independence.²¹²

The Commissioner for Human Rights of Poland, Adam Bodnar, who held the office from 2015 to 2021, became the most prominent institutional voice opposing these developments. In his constitutional watchdog role, Bodnar exercised his standing under the Polish Constitution to challenge unconstitutional legislation before the Constitutional Tribunal. Together with the First

²¹⁰Gijzen, M., Koops, B.-J. (2025). Real Transparency and Real Oversight of Law Enforcement Data. *Utrecht Law Review*, Vol. 21, No. 3, at section 5, p. 58.

²¹¹Wikipedia, s.v. "Polish Constitutional Tribunal crisis (2015 - ongoing)" URL: [https://en.wikipedia.org/wiki/Polish_Constitutional_Tribunal_crisis_\(2015_-_ongoing\)](https://en.wikipedia.org/wiki/Polish_Constitutional_Tribunal_crisis_(2015_-_ongoing)).

²¹²Venice Commission, Opinion No. 860/2016, CDL-AD(2016)026, adopted 14 October 2016, Section III.

President of the Supreme Court and groups of Sejm deputies, the Ombudsman appealed against the new Act on the Constitutional Tribunal.²¹³

In his judicial participation role, Bodnar represented the Ombudsman's office before the CJEU. Notably, in Case C-132/20, Getin Noble Bank²¹⁴, the Ombudsman intervened to argue that judicial appointments made by the politically reconstituted National Council of the Judiciary did not satisfy EU standards of judicial independence. The legal team representing the Ombudsman before the CJEU presented detailed arguments on the systematic destruction of judicial independence guarantees in Poland.²¹⁵

When the Law and Justice party adopted legislation in 2019–2020 designed to discipline judges who applied EU law on judicial independence - the so-called 'muzzle law' - Bodnar publicly stated that the law 'violates the Constitution and the ground rules of the rule of law' and 'would definitively put Polish courts and judges under the control of the legislative and executive branches of government'.²¹⁶

This declaration exemplifies the ombudsman's investigative and public advocacy function: even where the ombudsman cannot directly block legislation, the institution's authoritative voice can frame public debate and provide legitimacy to opposition.

The ECtHR's landmark judgment in *Xero Flor w Polsce sp. z o.o. v. Poland* (2021) vindicated many of Bodnar's concerns. The case involved a company whose constitutional complaint was decided by a panel that included a person who already occupied a lawfully filled seat. The ECtHR unanimously found a violation of Article 6 § 1 ECHR. The breaches in the procedure for electing the three judges, including M.M., to the Constitutional Court had been of such gravity as to impair the legitimacy of the election process and undermine the very essence of the right to a “tribunal established by law”.²¹⁷

²¹³ Ibid, Section I para. 4

²¹⁴ Getin Noble Bank S.A., Case C-132/20, Court of Justice of the European Union, judgment of 21 December 2021.

²¹⁵ Paweł Filipek, "Drifting Case-law on Judicial Independence: A Double Standard as to What Is a 'Court' Under EU Law? (CJEU Ruling in C-132/20 Getin Noble Bank)," *Verfassungsblog*, May 13, 2022

²¹⁶ Statement by Ombudsman Adam Bodnar, cited in: Wikipedia, Polish constitutional crisis.

²¹⁷ ECtHR, *Xero Flor w Polsce sp. z o.o. v. Poland*, Application No. 4907/18, judgment of 7 May 2021, §273

Immediately following this judgment, Bodnar invoked it as a basis to demand the exclusion of irregularly appointed judges from subsequent Constitutional Tribunal proceedings. By a decision of 15 June 2021, the Tribunal - composed of a panel led by the politically appointed President Julia Przyłębska - dismissed the Ombudsman's application and declared the *Xero Flor* judgment to be a 'non-existent judgment'. This extraordinary act of defiance against the Strasbourg Court was subsequently formalised in judgment K 6/21 of 24 November 2021, in which the Tribunal declared Article 6 ECHR, as interpreted by the ECtHR in *Xero Flor*, to be incompatible with the Polish Constitution.²¹⁸²¹⁹

The government also targeted the ombudsman institution directly. In April 2020, upon a motion by the Law and Justice party members of parliament, the captured Tribunal ruled (case K 20/20) that the statutory provision allowing the ombudsman to continue serving after the expiry of his term until a successor is appointed was unconstitutional - a decision understood as aimed at forcing Bodnar's removal.²²⁰

Following the change of government after the October 2023 elections, Adam Bodnar was appointed Minister of Justice.²²¹ A trajectory that powerfully demonstrates the potential for the ombudsman institution to serve as both a guardian of rights during democratic backsliding and a vehicle for subsequent democratic renewal.

The Spanish *Ombudsman* embodies the most powerful institutional design of the ombudsman in Europe. Under Article 54 of the Spanish Constitution of 1978, the Ombudsman is established as a 'high commissioner of the Cortes Generales' for the defence of constitutional rights. Crucially, Article 162 grants the Defensor standing to file both appeals of unconstitutionality and individual appeals for the protection of fundamental rights before the Constitutional Court.

A concrete illustration of this constitutional watchdog function is the 2019 judgment of the Spanish Constitutional Court in case STC 76/2019. The Ombudsman filed an appeal of

²¹⁸Wyrzykowski, M. (2022). It Never Rains but it Pours: The Polish Constitutional Tribunal Declares the European Convention on Human Rights Unconstitutional. *Hague Journal on the Rule of Law*.

²¹⁹Łętowska, E. (2021). The Honest (though Embarrassing) Coming-out of the Polish Constitutional Tribunal. *Verfassungsblog*, 29 November 2021.

²²⁰Constitutional Tribunal of Poland, judgment of 15 April 2021, case K 20/20. See: Wyrzykowski (2022), chapter. 23.

²²¹Skóra, M. (2024). Restoring the Rule of Law: Politics in the Service of Democracy. *Verfassungsblog*, 18 December 2024.

unconstitutionality challenging Article 58 bis of Organic Law 5/1985 on the General Electoral Regime, as amended by Organic Law 3/2018 on the Protection of Personal Data.

The Ombudsman argues that the legislature does not limit the processing of personal data revealing political opinions by political parties within the framework of their electoral activities, and does not establish what guarantees are referred to in the contested provision, nor the criteria for determining them, nor the legal instrument that should contain them, nor the authority or public body responsible for establishing them, and does not even make any reference to the rights of data subjects or to the manner and conditions under which those rights may be exercised.²²²

The challenged provision authorises political parties to collect and process data on voters' political opinions gathered from web pages and social media, without adequate safeguards. The Defensor argued that this provision violated the fundamental rights to protection of personal data, freedom of opinion, and political participation. In his submission, the Defensor specifically drew attention to the risk of big data manipulation of political opinion, citing the Cambridge Analytica scandal as evidence of the concrete dangers posed by insufficiently regulated data processing by political parties.

The Constitutional Court upheld the Defensor's challenge and declared the provision unconstitutional and void, finding that the legislation lacked the precise and effective legal guarantees required to protect the right to personal data within the electoral context. This case demonstrates the ombudsman's unique capacity to act as a guardian of fundamental rights within the legislative process itself - a function that no individual citizen could easily perform, given the standing requirements for constitutional proceedings. The Defensor effectively served as a proxy for the general interest, bridging the gap between the legislature and the individual right-holder.

The judicial participation function of ombudsman institutions has gained particular momentum in the past two decades. Under Article 36 ECHR and Rule 44 of the Rules of Court, NHRI - including ombudsmen - may submit written observations to the ECtHR as third-party interveners. This mechanism allows ombudsmen to provide the Court with specialised expertise, comparative law analysis, and information on domestic human rights conditions that the parties may not adequately present.²²³

²²² Tribunal Constitucional (Spain), Sentencia 76/2019, 22 May 2019, Boletín Oficial del Estado no. 151 (25 June 2019) Chapter I, a)

²²³ Article 36 ECHR; Rule 44 of the Rules of the ECtHR.

The relationship between ombudsmen and the ECtHR is one of mutual reinforcement. As Judge Laffranque has documented, the ECtHR itself relies on ombudsman findings in its judgments - primarily in the factual sections, but occasionally also in its legal reasoning, thereby indirectly endowing the ombudsman's work with legal value. It happens, and not rarely, that the ECtHR makes reference to the findings of Ombudsmen.²²⁴

Conversely, ombudsmen use ECtHR case law as a reference framework in their domestic work, thereby contributing to the practical implementation of Convention standards at the national level.

But ECtHR case law consistently holds that a complaint to an ombudsman does not generally constitute an effective remedy for the purposes of Article 13 or Article 35 § 1 ECHR. Therefore, the ombudsman occupies a distinctive intermediate position: it is not a court, yet its work has legal value; its recommendations are not binding in most jurisdictions, yet they carry significant persuasive force; it cannot substitute for judicial remedies, yet it can supplement them in ways that no other institution can.

In the case *Lehtinen v. Finland*, a key point is the Court's assessment of the ombudsman mechanism, as it confirms that complaints to the Ombudsman are not considered effective remedies under Article 13 of the Convention. The most significant insight into the ombudsman's role emerges in the context of Article 13, where the Government argued that the applicant could have complained to either the Parliamentary Ombudsman or the Chancellor of Justice about the length of proceedings, as these institutions may "draw the court's attention to the delay in the proceedings".²²⁵ This framing reveals the ombudsman's perceived function: not to resolve disputes directly, but to exercise a supervisory influence over courts by signalling procedural deficiencies.

The applicant questioned the effectiveness of this remedy, noting that neither the Parliamentary Ombudsman nor the Chancellor of Justice considers complaints related to matters that are still being examined by domestic courts.²²⁶ This observation exposes a structural limitation: the

²²⁴Laffranque, Julia. "The Ombudsman in the Eyes of the European Court of Human Rights." *Juridica International* 29 (2020), p. 104

²²⁵ *Lehtinen v. Finland*, (No. 2)no. 41585/98, European Court of Human Rights, judgment of 8 June 2006, § 43

²²⁶ *Ibid*, §42

ombudsman's jurisdiction is effectively suspended during active litigation, precisely the period when delays are occurring and when intervention would be most valuable.

The Court firmly dismissed the Government's submission. Relying on its previous judgment in *Kangasluoma v. Finland*, it saw no grounds to treat the present case differently and held that applications to the Chancellor of Justice or the Parliamentary Ombudsman cannot be regarded as an "effective" remedy within the meaning of Article 13 of the Convention.²²⁷

This finding is of fundamental importance: the ombudsman, despite its constitutional standing in Finnish law, fails the Convention test of an effective remedy because it cannot offer binding redress or enforceable acceleration of proceedings. The Court accordingly found a violation of Article 13.

In the case *Toplak and Mrak v. Slovenia* The Commissioner for Human Rights (CHR) occupied a uniquely ambivalent position in the proceedings, which renders this case instructive for the study of ombudsman institutions.

As a third-party intervener, the Commissioner supported a restrained reading of the extraordinary-appeal mechanism, submitting that it was designed exclusively to remedy decisions containing defects of a fundamental nature²²⁸. Crucially, the Commissioner himself called for legislative reform, arguing that the grounds for appeal should be narrowed so as to exclude their use by state bodies acting in the interests of the State Treasury, and that the remedy should serve solely the protection of individual rights²²⁹. This position reflected the Commissioner's constitutional mandate to safeguard fundamental rights and aligned the institution with the applicant's substantive claims, notwithstanding the Commissioner's formal role as a body also authorised to lodge such appeals.

As an authorised applicant body, the Commissioner, together with the Prosecutor General, holds unrestricted standing to challenge any final judicial decision, irrespective of subject matter - a broader prerogative than that afforded to all other enumerated bodies, which may act only within the scope of their competence. Statistically, the Commissioner exercised this power with notable restraint: 58 appeals out of 429 examined by the Chamber of Extraordinary Review and Public

²²⁷ Ibid, §46

²²⁸ *Wałęsa v. Poland*, no. 50849/21, Judgment of the European Court of Human Rights, 23 November 2023, §213

²²⁹ Ibid, §217

Affairs of the Supreme Court between 2018 and 2022, compared to 348 lodged by the Prosecutor General²³⁰. The Commissioner's appeals addressed issues such as inheritance of debts by minors, consumer rights, and the rights of homeless persons subject to eviction - matters squarely within a human rights mandate.

As a beneficiary of exceptional transitional powers, however, the Commissioner - alongside the Prosecutor General - was granted time-limits extending beyond the ordinary five-year cap, enabling challenges to civil judgments that became final before the 2017 Act's entry into force, reaching back to decisions from 1997.²³¹ The Court held that these transitional provisions were incompatible with the rule of law, noting that retrospectively enabling the revision of decisions closed over twenty years prior cannot be justified by any plausible necessity. Accordingly, the Court's Article 46 general measures require the respondent State to remove or amend precisely these extended time-limits as they apply to both the Prosecutor General and the Commissioner.²³²

The Ombudsman's constitutional submissions also play an important role. In particular, the Portuguese Constitutional Court, following a submission by the Ombudsman, in 2022 declared the provision on mass storage of metadata unconstitutional. The Court found that such a general and indiscriminate retention of data concerning all individuals, regardless of any suspicion, constitutes a disproportionate interference with the rights to privacy and informational self-determination.²³³

The Constitutional Court of the Slovak Republic, in case PL. ÚS 11/2025, declared Act No. 109/2025 Coll. on non-governmental organizations unconstitutional following a petition submitted by the Ombudsman.

The law required NGOs exceeding a certain income threshold to disclose detailed information about their contributors, including their identities and the amount of their donations, in a public register. The Court found that such obligations constituted a disproportionate interference with the right to privacy and were not necessary to achieve the stated aims of transparency and crime prevention, especially given the existence of less restrictive alternatives.²³⁴

²³⁰ Ibid, §228

²³¹ Ibid, §237

²³² Ibid, §331

²³³ Ruling. No. 268/2022 of the Portuguese Constitutional Court

²³⁴ Constitutional Court of Slovak Republic, case PL. ÚS 11/2025

The Court also emphasized that the legislation had a chilling effect on civil society, as it could discourage individuals from supporting NGOs and thus undermine their functioning. In addition, it ruled unconstitutional the classification of NGOs as obligated entities under freedom of information laws, which imposed unjustified administrative burdens. The Ombudsman, who challenged the law shortly after its adoption, argued that it enabled excessive state interference and “spying” on donors and civil society actors.²³⁵

The Ombudsman of Georgia has filed a constitutional complaint challenging a series of protest-related restrictions adopted in 2025 by the ruling Georgian Dream party. The case targets amendments to the Law on Assemblies and Demonstrations, as well as provisions in the Administrative Offenses Code and the Criminal Code, arguing that measures such as blanket bans on face coverings, heavy fines, mandatory detention, and even imprisonment for repeat protest offenses are disproportionate and violate fundamental rights to freedom of assembly and expression.²³⁶

These legislative changes, introduced amid ongoing anti-government protests, have significantly tightened restrictions on public demonstrations. However, despite the legal challenge, the complaint is widely viewed as unlikely to succeed due to concerns about the independence of the Constitutional Court of Georgia and its perceived alignment with the ruling authorities.

Three conclusions follow from the case studies examined.

First, the ombudsperson operates within a composite, not a self-sufficient, system of remedies. The European Court of Human Rights in *Leander v. Sweden* (1987), and again in *Segerstedt-Wiberg v. Sweden* (2006), treated the Swedish *Justitieombudsmannen* and *Justitiekanslern* as components of the aggregate of remedies capable of satisfying Article 13 ECHR, while simultaneously acknowledging their lack of binding authority. The subsequent history of *Leander* - and particularly Sweden's later admission that the file on which his exclusion was based should never have existed - exposes the intrinsic limit of this composite model: the ombudsperson's capacity to contribute to an effective remedy depends on its real access to state-held information and not on the formal scope of its powers. This confirms the normative premise of the Venice

²³⁵ Ivan Godársky, “Russian Law: The Constitutional Court Ruled That the Law Is Unconstitutional,” *MEMO 98*, December 17, 2025

²³⁶ Public Defender Challenges Protest-Related Restrictions, Penalties in Constitutional Court,” *Civil.ge*, January 20, 2026,

Principles, analysed in subchapter 1.2, that independence and informational access are not decorative guarantees but structural preconditions of effectiveness.

Second, the Polish crisis and the Spanish case demonstrate the ombudsperson's capacity to function as a constitutional watchdog, but under very different conditions. In Poland, the Ombudsman exercised all four functional roles identified at the outset of the subchapter - investigative, constitutional watchdog, judicial participation, and public advocacy - during a sustained attack on judicial independence, eventually vindicated by the ECtHR in *Xero Flor v. Poland* and continued before the CJEU in *Getin Noble Bank*. The trajectory confirms both the institution's strategic value during democratic backsliding and its vulnerability to politically motivated legal retaliation, as the Tribunal's rulings in K 20/20 and K 6/21 illustrate. In Spain, by contrast, the Ombudsman operated within a functioning constitutional order, using the standing conferred by Article 162 of the 1978 Constitution to obtain the annulment of Article 58 bis of the electoral law - a statute that authorised the processing of voters' political opinions by political parties without adequate safeguards. Taken together, the two cases confirm the analytical thesis of Chapter 2 that constitutional-review standing transforms the ombudsperson from an administrative watchdog into a guardian of the legislative process itself.

Third, the *amicus-curiae* and third-party-intervention function examined in the final case study shows that the ombudsperson's influence has moved beyond the domestic level into a relationship of mutual reinforcement with international courts: the ECtHR references ombudsperson findings in its factual and, on occasion, legal reasoning, while ombudspersons systematically translate Convention standards into domestic practice. Even so, Strasbourg case law consistently denies the ombudsperson the status of an effective remedy under Article 35 § 1 ECHR. The institution therefore occupies a distinctive intermediate position - non-judicial but legally relevant, non-binding but persuasively authoritative, supplementary to but not substitutable for judicial remedies - which represents the most accurate description of its actual contribution to human-rights protection in Europe.

3.2 International legal standards and the expansion of the ombudsman's mandate

The ombudsman has made a radical transformation and can no longer be regarded as an immutable or uniform system anymore. Over the past 10 years – and especially since 2019 –, a variety of international standard development initiatives, policy and legislative changes and institutional adjustments have markedly re-characterized its legal framework as well as its

practical conduct, according to different jurisdictions. What had been a series of relatively independent national practices has slowly developed into a systemic and integrated body of international standards and has come to shape institutional arrangement of ombudsman bodies around the globe more and more. In the present, the ombudsman has done more than it has ever done. Its model, as it stands in 2025, speaks to an institution with diverse tasks associated with the concept of human rights. These generally consist of not only examining personal grievances but monitoring places of detention, involving in anti-discrimination agreements, whistleblower protection, law-enforcement supervision, engaging in climate change advocacy, and in some applications elements of constitutional review. This functional extension therefore represents a significant change within the human rights architecture from one mechanism of compliance to one of a more proactive, forward-looking actor in the human rights architecture. This section tries to consider some of the key directions in this transformation going forward that is taking into account the context worldwide, the changing laws and new legal developments and new societal issues.

Specific attention will be paid to the implications of new technologies on the institutional practices and the changing forms adopted to adapt their mandate and tools to new risks and expectations of the era of technological change in the context of adaptation. It also aims to find the opportunities for future development, particularly as governance and rights protection become more complex. An important normative milestone through which this process has taken place was the adoption by the Venice Commission of the Council of Europe in March 2019 of the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles).

These 25 principles, for the first time, formalized a systematic and wide-ranging system of international standards for the design, establishment and independence of ombudsman organizations. Crucially the Preamble to the Venice Principles acknowledges that fundamental values independence, impartiality, transparency, and fairness can be realized in various institutional configurations. This recognition also captures the variability among national models while creating a common floor.

That is, while institutional design may not be the same everywhere, minimum standards are, in every endeavor, a must-have. Since introduction, the Venice Principles have gained a fast pace of adoption and have become the principal touchstone for examining ombudsman bodies, as the Venice Principles have become the benchmark of review in the evaluation of ombudsman

institutions. Through its subsequent practice and interpretative work and work itself through subsequent development, the Venice Commission continues to build upon this influence by maintaining their role as a standard for the role of a reference point for evaluating of existing guidelines and proposed changes as well as proposals for reform, the Venice Commission has consolidated its influence.

In several member states of the Council of Europe (CoE), as well as in other jurisdictions, ombudsman institutions are subject to various forms of pressure and threats. In such contexts, adherence to international standards becomes especially crucial, and any deviation from these standards must be duly and convincingly justified²³⁷.

On December 17, 2024, the UN General Assembly adopted Resolution A/RES/79/177, “The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law”²³⁸ This resolution-the third UN General Assembly resolution on the ombudsman since the first in 2020-represents international recognition of the institution’s role at the highest level.

Resolution A/RES/79/177 is significant for analyzing current trends in the development of the ombudsman institution, as it demonstrates the international community’s growing focus on the role of these institutions. Its adoption confirms that ombudsmen are viewed not only as national mechanisms for the protection of human rights, but also as key elements of the global architecture of good governance and the rule of law. It reflects a trend toward strengthening international standards and underscores the need to adapt the institution to new challenges, including political pressure, institutional fragility, and the growing complexity of public administration.

In addition, the resolution emphasizes the need to ensure the independence, effectiveness, and proper mandate of ombudsman institutions, which is a central element of their future development. In particular, it emphasizes the importance of states considering the possibility of

²³⁷ CDL-AD(2021)041 cited in European Commission for Democracy through Law (Venice Commission), *Compilation of Venice Commission Opinions Concerning the Ombudsman Institution*, CDL-PI(2022)022 (Strasbourg, 6 May 2022), p - 7.

²³⁸ United Nations General Assembly. *Resolution 79/177: The Role of Ombudsman and Mediator Institutions in the Promotion and Protection of Human Rights, Good Governance and the Rule of Law*. Adopted December 17, 2024. A/RES/79/177.

establishing or strengthening independent and autonomous ombudsman and mediator institutions and ensuring the conditions for their independent and effective functioning.²³⁹

These provisions reflect the international consensus that the further development of the ombudsman institution is linked to its institutional strengthening, the expansion of its functions, and the enhancement of its role in safeguarding human rights.

The IOI's Annual Report for 2024/2025 highlights the Institute's active involvement in advocating for and promoting the adoption of a UN resolution on the role of ombudsman institutions. In the newly adopted resolution, the UN recognizes the contribution of ombudsmen to achieving the Sustainable Development Goals, in particular Goal 16 on building effective, accountable, and inclusive institutions, emphasizing their role in ensuring accessible complaint mechanisms, identifying systemic issues, and improving the effectiveness of public administration at all levels²⁴⁰

In this context, attention naturally turns to the domestic constitutional framework as a key factor of institutional resilience.

One of the clearest trends in the Venice Commission's conclusions is the consistent promotion of constitutional enshrinement of the ombudsman institution. The experience of many jurisdictions demonstrates that ordinary legislative frameworks leave the institution vulnerable to political manipulation and erosion. A constitutional guarantee provides the institutional grounding necessary for long-term effectiveness.

A constitutionally defined mandate and status are essential, particularly in a young democracy, for consolidating and strengthening this institution, ensuring its stability and independence, and fostering public confidence in its independence and impartiality.²⁴¹

²³⁹ Ibid, para. 2(a)

²⁴⁰ International Ombudsman Institute, *Annual Report 2024/2025* (Vienna: International Ombudsman Institute, 2025).P.16

²⁴¹ European Commission for Democracy through Law (Venice Commission), *Compilation of Venice Commission Opinions Concerning the Ombudsman Institution*, CDL-PI(2022)022 (Strasbourg, 6 May 2022), p - 6.

The Commission also warns of the danger posed by secondary legislation, which could gradually and imperceptibly weaken or effectively nullify the constitutional guarantees enshrined in the Constitution²⁴²

Such risks arise when subordinate legislation, laws of lower legal force, or interpretive practices alter the content or scope of constitutionally protected institutional guarantees without formally amending the Constitution. In this context, a reform cannot be considered complete merely upon its formal adoption.

On the contrary, its effectiveness depends on long-term compliance and practical implementation. Therefore, it is necessary to ensure continuous protection of the constitutional status not only at the stage of its establishment or reform, but also during the process of ordinary legislative regulation. This requires systematic monitoring of legislative changes, prevention of the gradual narrowing of institutional powers, and adherence to the principle of constitutional supremacy as a directly applicable and stable foundation of the legal system. The Venice Commission's understanding of ombudsman independence has evolved significantly. While earlier opinions primarily focused on formal guarantees-such as election by qualified majority, fixed terms of office, and immunity-more recent interpretations address the operational infrastructure of independence: autonomy in staffing, budgetary self-determination, and protection against indirect forms of executive influence.

The 2021 opinion of the Venice Commission on the legislation concerning the staff of the Armenian Ombudsman is an illustrative example of the Commission's approach to assessing the institutional independence of the ombudsman. At first glance, technical or neutral legislative amendments-such as subjecting staff to general civil service rules-may have a significant negative impact on the institution's real autonomy, notes the Commission. In this context, the Commission stresses that the ombudsman must have the ability to independently form his or her team in line with operational priorities, without interference from the executive branch or general administrative procedures.

Particularly clearly, this approach is reflected in the Commission's formulation, which states that the independence of an ombudsman institution is assessed through the independence of its

²⁴² CDL-AD(2021)035, §66 cited in European Commission for Democracy through Law (Venice Commission), *Compilation of Venice Commission Opinions Concerning the Ombudsman Institution*, CDL-PI(2022)022 (Strasbourg, 6 May 2022), p. 7

leadership, staff, and budget, including both the level of funding and its management arrangements²⁴³.

Thus, the independence of the ombudsman is understood as a comprehensive concept that goes beyond the formal status of the head of the institution and extends to staff autonomy and financial self-sufficiency. This broader understanding allows the Commission to conclude that even gradual administrative adjustments may indirectly affect the degree of independence and, consequently, the overall effectiveness of the ombudsman institution.

The Venice Commission's 2021 opinion on the legislation concerning the staff of the Ombudsman of Armenia clearly recognizes that budgetary independence is one of the essential components of the Ombudsman's institutional autonomy. The Commission also notes that how the budget is prepared can influence the independence of the institution in specific areas where financial decisions are effectively controlled by the executive branch. In this regard, the Commission supports an approach in which the Ombudsman's budget will be discussed, agreed to and passed directly by parliament, rather than through the executive authorities, as this reduces the risk that the budgetary process will serve as a tool of influence.

To this end, as the Commission has specifically explained, creating a parliamentary bargaining process for budget negotiations will prevent the budgetary process itself from being hijacked to undermine the independence of the Ombudsman²⁴⁴. In the case examined by the Commission, it was noted that the Ministry of Finance did not allocate additional funding requested for the expansion of the Ombudsman's staff, despite an official request. This circumstance further confirmed the continuing relevance of the Commission's earlier recommendations.

This aligns with the Venice Principles, in particular Principle 21, which provides the benchmark of budgetary autonomy for ombudsman bodies. Under this rule, a budget must be adequate to enable the effective fulfilment of the mandate; the institution should have the right to submit its own draft budget; and once approved, budgetary allocations should not be reduced for the fiscal year, except for general cuts that apply to all state bodies. Therefore, budgetary independence is seen as an essential component of the overall guarantees of ombudsman independence.

²⁴³ Ibid, p. 29

²⁴⁴ Ibid, p.40

A second important structural trend in the performance of European ombudsmen has been the proliferation of ex officio powers of investigation. Data from surveys show a change that is both clear and decisive: a mere 7 (15%) CoE member states currently do not have such an own-initiative power.²⁴⁵

Ex officio powers of ombudsmen serve to rectify issues on a systemic level to avoid repetition and systemic problems in the future in a way that does not rely on individual complaints. These sorts of proactive procedures, however, should address issues that, although not necessarily raised by specific individuals, nonetheless require the ombudsman institution to take action²⁴⁶

The trend towards ex officio powers is also closely linked to access to justice among the most vulnerable segments of society. People who have been socially marginalized, illiterate, or unaware of their rights are unlikely to file formal complaints.

Ex officio powers enable the ombudsman to intervene precisely in situations where the complaint-based mechanism fails to function effectively. One of the major trends in the evolution of the ombudsman is its gradual extension of work beyond simply taking individual complaints that may be received. Ombudsmen are increasingly given new duties that turn them into human rights protection agencies with many foci. The core scope of mandate widening include:

First, the designation of ombudsman offices as National Preventive Mechanisms (NPMs) under the OPCAT.²⁴⁷

The practical implementation of this approach demonstrates its effectiveness. In particular, in Spain, the National Preventive Mechanism, operating within the Ombudsman's office, carried out 26 inspections of places of deprivation of liberty in 2024, covering various types of detention facilities.²⁴⁸ Such visits are accompanied by detailed reports and recommendations aimed at addressing identified violations and improving detention conditions. In this way, the institutionalization of the NPM functions within the Ombudsman structure strengthens the

²⁴⁵ Council of Europe, *Comparative Report on Ombuds* (Strasbourg: Council of Europe, 2021).p.28

²⁴⁶ Ibid, p.29

²⁴⁷ Parliamentary Assembly of the Council of Europe, *Resolution 2369 (2021): The Assembly's Vision on the Strategic Priorities for the Council of Europe*, April 20, 2021, sec. 3.9

²⁴⁸ National Prevention Mechanism (Spain), 2024 Annual Report: Supervision of Spain's Deprivation of Liberty Facilities in Compliance with the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (2024). p.8

preventive dimension of human rights protection and contributes to the implementation of States' international obligations in the area of the prohibition of torture.

Next, the functions of an equality body. The Croatian Ombudswoman has served as the Central Equality Body under the Anti-discrimination Act since 2009, with a mandate covering 12 grounds of discrimination in both the public and private sectors. Similarly, the Greek Ombudsman operates a dedicated Equal Treatment Department. This trend reflects a broader European policy preference for concentrating anti-discrimination mandates within existing ombudsman structures rather than creating separate specialised bodies.²⁴⁹

Third, whistleblower protection. The Croatian Ombudswoman was designated as the external reporting body for whistleblowers under the Whistleblowers' Protection Act of 2019. This function - which requires the ombudsman to receive, assess, and channel reports of irregularities in the public interest - adds a fundamentally different dimension to the institution's work, positioning it as a gateway for accountability not only in the public sector but also, potentially, in the private sector.²⁵⁰

This function differs significantly from that of the ombudsman who mainly deals with individual complaints about actions of public authorities. On the other hand, the mechanisms regarding the protection of whistleblowers are distinctly proactive and preventive, and are mainly focused on detecting corruption, abuse of power, and other systemic violations at an early stage. In this way, the ombudsman acts not only as a reactive body but also as an institutional entry point for information on wrongdoing, thereby enhancing overall levels of transparency and accountability.

These accumulated expansions of the mandate generate both opportunities and risks. On the one hand, they position the ombudsman as a comprehensive centralized access point for human rights protection. On the other hand, they create resource pressures that may undermine the institution's effectiveness in its core function of handling individual complaints.

Digitalisation of public services and the growing penetration of algorithmic and AI-based decision making constitute a novel frontier for ombudsman institutions. This phenomenon takes

²⁴⁹Equinet, Ombudswoman of the Republic of Croatia, profile.

²⁵⁰Ombudswoman of Croatia. "Human Rights in Croatia on Hold, Poverty on the Rise, Homeless and Older Persons Most Vulnerable.

a number of forms, which include the effect of digitalisation on the rights of citizens and changing the ways ombudsman's operational procedures are applied.

In the first dimension, a number of ombudsman commissions have reported the systematic exclusion of vulnerable populations from the protection of their rights by a transition to an exclusively digital public service model. A 2023 report by the Portuguese Ombudsman highlighted rigid IT-based automatisms in the social security system leading to errors such as the automatic application of interest on debts, even in cases where the administration itself was responsible for payment delays..²⁵¹

In March 2026, more than 60 European independent institutions - members of the Equinet and European Network of National Human Rights Institutions (ENNHRI) issued a joint statement warning that the European Commission's proposed 'Digital Omnibus' package could weaken fundamental rights safeguards in the EU AI Act. ²⁵²The declaration specifically warned against the proposed weakening of transparency and traceability requirements for AI systems, the reduction of powers of fundamental rights authorities, and the postponement of obligations regarding high-risk AI systems.

On the second dimension - the digitalisation of the ombudsman's own operations - the UK Parliamentary and Health Service Ombudsman (PHSO) established a dedicated Digital, Data and Transformation function in 2024–2025 and recruited a Chief Digital and Transformation Officer. The PHSO has articulated a vision for a 'digital ombudsman service' that would enhance engagement with complainants and the organisations it investigates. In the Philippines, the Ombudsman announced in 2025 the construction of a 'fully digital Ombudsman' with integrated systems, digital forensics, AI-supported verification, and secure investigative workflows - framing digitalisation not merely as a matter of administrative efficiency but as a tool for anti-corruption and accountability.²⁵³

One common theme in this comparative study is the gap between the formal powers of ombudsman agencies and the public recognition they enjoy. Because while most

²⁵¹ Portuguese Ombudsman (Provedor de Justiça), Report 2023, English summary: 'Failures in the enforcement of the law and problems generated by the digital transition jeopardise the performance of the Public Administration.'

²⁵² Equinet and ENNHRI, Joint Declaration on the Digital Omnibus package, March 2025. See: IOI Annual Report 2024/2025,

²⁵³ PHSO, Annual Report 2024–2025, pp. 10–11. URL: <https://www.ombudsman.org.uk/publications/ombudsmans-annual-report-and-accounts-2024-2025>. p.11

ombudsmen are granted extensive powers under the law, the effectiveness of this power rests primarily on the knowledge and ability of citizens to engage with their services.

One response to this disconnect with the public at large for ombudsman is the establishment of proactive outreach activities in several European ombudsman institutions to raise awareness and win trust. For instance, in Austria the Volksanwaltschaft frequently conducts national television broadcast slots for individual cases, which provide public-service media access to discuss individual cases.²⁵⁴ The Polish Ombudsman also offers annual regional visits (on regional level) where the Ombudsman conducts yearly field visits, in which he/she visits local communities and civil society representatives.²⁵⁵ Such endeavours are geared not only to increase knowledge but show transparency and accessibility in reality.

Such efforts emphasize that trust in the institution has to be actively cultivated and sustained throughout. For all concerned to trust the ombudsman and public administration in general, the organization must be viewed as fair, impartial and responsive.²⁵⁶ So outreach and communication become part of the fabric of institutional efficacy, not just an add-on. This move toward more public involvement is part of a larger shift in the role of ombudsman institutions. Historically envisioned as quasi-judicial bodies that issue findings and recommendations, they are gradually combining their adjudicatory functions with communicative and user-oriented practices.

They do so not only to find solutions to complaints, but also to augment their social standing and motivate individuals to make legitimate use of the available solutions. Relatedly to this is the increasing interest in informal dispute resolution.²⁵⁷ While, of course, as ombudsman institutions become more accessible and adaptable to the needs of community members, they are also becoming key centres of expertise in flexible and informal dispute resolution. Rather than making formal recommendations, they use, among other means, mediation, conciliation, neutral evaluation, and facilitated negotiation.

The French Rights Defender offers a typical example in its formalised mediation process of the three-stage manner.²⁵⁸ This extra skill is one of the many positive aspects of contemporary

²⁵⁴ Council of Europe, *Comparative Report on Ombuds* (Strasbourg: Council of Europe, 2021).p.11

²⁵⁵ Ibid, p.10

²⁵⁶ Ibid, p.23

²⁵⁷ Ibid

²⁵⁸ Ibid, p.24

ombudsman systems, which can handle controversies in less cumbersome, more efficient and context appropriate fashion. It also underscores their status as the first point of contact for people in need of redress, rather than the one person to whom they turn as a last resort. Thus, the comparative practice of ombudsman institutions highlights an evolving paradigm away from a strictly formal and authoritative approach and into a more transparent, flexible and user-friendly model. Indeed, legal functions paired with proactive communication and alternative dispute resolution mechanisms make contemporary ombudsmen increasingly capable of resolving the tensions between formal powers and public recognition while building trust, legitimacy and effectiveness.

The analysis conducted in this subchapter has addressed the sixth objective of the thesis, namely to identify the principal contemporary trends in the development of the ombudsperson institution. Three conclusions follow.

First, the legal environment in which the ombudsperson now operates has shifted from a patchwork of national arrangements to a consolidated international normative order. The Venice Commission's 2019 Principles on the Protection and Promotion of the Ombudsman Institution and the UN General Assembly Resolution A/RES/79/177 of 17 December 2024 -the third UN resolution on the institution since 2020 - together constitute a coherent benchmark recognising the ombudsperson not merely as a national mechanism but as a key element of the global architecture of good governance, the rule of law and Sustainable Development Goal 16. Within this order, the Venice Commission's evolving interpretive practice has redefined institutional independence as a comprehensive concept embracing constitutional enshrinement, protection against erosion through secondary legislation, autonomy of leadership, full staffing self-determination, and a parliamentary budgetary process insulated from executive influence. Constitutional anchoring is no longer treated as a matter of institutional dignity but as a substantive precondition of resilience.

Second, the institution's mandate has undergone a qualitative transformation. The proliferation of ex officio powers - now present in 85 percent of CoE member states - has shifted the ombudsperson from a reactive complaint-handler to a proactive guarantor of systemic legality, particularly for vulnerable groups whose access to formal complaint procedures is limited. To this is added the convergence of three additional functions within the institution: the National Preventive Mechanism under OPCAT, the equality body under European anti-discrimination law, and the external reporting body for whistleblowers under the 2019 EU Directive. Croatia,

Greece, Spain and other jurisdictions illustrate that this concentration of mandates positions the ombudsperson as a centralised access point for human-rights protection, while simultaneously generating resource pressures that, if not matched by budgetary and staffing autonomy, threaten effectiveness in the institution's core complaint-handling function.

Third, the digital transition and the rise of algorithmic decision-making constitute the new frontier of the ombudsperson's work, on two distinct planes. Externally, ombudspersons are increasingly required to defend the rights of those excluded by exclusively digital public services and to engage with the regulation of high-risk AI systems - as illustrated by the Portuguese Ombudsman's 2023 findings on rigid IT automatisms and the joint Equinet–ENNHRI declaration of March 2026 on the EU Digital Omnibus package and the AI Act. Internally, institutions such as the UK PHSO and the Philippine Ombudsman are reorganising themselves as digital ombudsperson services, integrating AI-supported verification and digital forensics. Parallel to digitalisation, contemporary practice shows a movement towards proactive outreach and informal alternative dispute resolution, including the formalised three-stage mediation procedure of the French Ombudsman.

CONCLUSION

The thesis was undertaken with the aim of conducting a comprehensive comparative-legal study of the ombudsperson institution in European legal systems and of identifying the directions in which the Ukrainian model should evolve in order to comply with contemporary international standards. The investigation pursued the six tasks formulated in the Introduction: to reconstruct the origin and historical evolution of the institution; to analyse its legal foundations and the international standards governing its activity, in particular the Venice Commission's Principles on the Protection and Promotion of the Ombudsman Institution (2019) and UN General Assembly Resolution A/RES/79/177 of 17 December 2024; to systematise the principal classifications proposed in the academic literature; to undertake a comparative analysis of the three main European model families - the Nordic, the Iberian and the Central and Eastern European; to evaluate, through selected judicial case studies, the effectiveness of the institution in protecting human rights; and to identify contemporary development trends and formulate recommendations for the further development of the Ukrainian model. The following conclusions summarise the principal findings.

First, the historical reconstruction conducted in subchapter 1.1 has shown that the ombudsperson is neither a recent invention nor the product of a single legal culture. Its conceptual roots reach back to the Old Norse *umbothsmadhr* and the medieval Germanic figure of a neutral royal or communal representative. Its institutional emergence unfolded in two Swedish stages - the *Justitiekansler* of 1713 and the *Justitieombudsman* of the 1809 Constitution - and was followed by three successive waves of diffusion: across Scandinavia in the first half of the twentieth century; into Western Europe, the Commonwealth and other common-law jurisdictions after the Second World War; and across Southern Europe and Central and Eastern Europe after the democratic transitions of 1974–1989. Each wave extended the institution's mandate, moving it progressively from parliamentary oversight of administration towards the explicit protection of human rights and fundamental freedoms.

Second, the analysis of the legal foundations and international standards in subchapter 1.2 has demonstrated that this historical trajectory has been consolidated into a coherent legal and normative order. At the national level, constitutional enshrinement and organic-law regulation provide the institution with the independence, stability and democratic legitimacy required to

perform its functions; at the international level, the twenty-five Venice Principles of 2019, taken together with UN General Assembly Resolution A/RES/79/177 of 17 December 2024, now constitute the consolidated benchmark against which any ombudsperson institution may be evaluated. The Principles articulate a common standard of independence (constitutional foundation, institutional rank, qualified appointment, fixed and non-renewable term of office, removal subject to a qualified majority, functional immunity), accountability (annual reporting, transparency) and effectiveness (broad investigative competence, accessibility, *ex officio* initiative, constitutional-review standing, budgetary autonomy, staffing self-determination). They permit legitimate national variation while excluding formal imitation devoid of substantive guarantees.

Third, the typological analysis in subchapter 1.3 has shown that the diversity of national arrangements is best understood through three complementary classifications. Linda Reif's distinction between classical and hybrid ombudspersons identifies the most important functional cleavage. Gabriele Kucsko-Stadlmayer's tripartite typology - basic, rule-of-law and human-rights model - translates that cleavage into a graduated scale of powers running from soft recommendation through constitutional and disciplinary standing to specialised human-rights competences. Victor Ayeni's classical/non-classical typology, with its Scandinavian, non-Scandinavian, modern and traditional sub-branches, situates the European ombudsperson within a wider comparative field. None of these classifications operates on its own; together they supply the analytical vocabulary used in the comparative chapter that follows, and the functional criterion proposed by Kucsko-Stadlmayer has proved to be the most productive analytical tool of the three.

Fourth, the comparative analysis of the three European model families undertaken in Chapter 2 has confirmed that the ombudsperson institution is a flexible framework rather than a fixed formula. The Nordic family (subchapter 2.1) is internally divided: Sweden and Finland operate as instruments of comprehensive legal control, equipped with prosecutorial and disciplinary authority over administration and judiciary alike (rule-of-law model); Denmark and Norway operate within narrower boundaries, excluding the courts and relying entirely on persuasion, recommendations and public reports (basic model). The Iberian family (subchapter 2.2), by contrast, was forged in the democratic transitions of the 1970s and is characterised by constitutional entrenchment, a primary orientation towards fundamental rights, supermajority parliamentary appointment, and - most distinctively - standing to challenge legislation before the

constitutional court, which transforms the Spanish and the Portugal Ombudsmen into defenders of the constitution against the legislature itself, with extensive influence on Latin American and post-communist constitutional design. The Central and Eastern European family (subchapter 2.3), shaped by post-1989 democratisation and Europeanisation, produced a hybrid model in which rule-of-law supervision, human-rights protection and constitutional standing are fused; the Polish, Hungarian, Ukrainian and Czech institutions converge on parliamentary appointment, qualified majorities, broad investigative and ex officio competences, constitutional-review standing and statutory mandates, while diverging on the locus of nomination, eligibility criteria and the scope of the mandate, with the French Ombudsman representing the most consolidated multi-mandate variant. Placed within Kucsko-Stadlmayer's typology, the comparison confirms that the Central and Eastern European institutions occupy primarily the human-rights model.

Fifth, the case-study analysis in subchapter 3.1 has evaluated, on the basis of judicial practice, the institution's actual effectiveness in protecting human rights. *Leander v. Sweden* (1987) and *Segerstedt-Wiberg v. Sweden* (2006) confirmed that the ombudsperson can legitimately form part of a composite system of remedies satisfying Article 13 ECHR, while at the same time exposing the structural limit of this role: in the absence of real informational access, the institution's contribution becomes formal rather than effective. The Polish constitutional crisis of 2015–2024 demonstrated the strategic value of the ombudsperson under conditions of democratic backsliding, with Adam Bodnar exercising all four functional roles - investigative, constitutional watchdog, judicial participation and public advocacy - and the ECtHR's *Xero Flor v. Poland* (2021) ultimately vindicating his position; at the same time, the Tribunal's rulings in K 20/20 and K 6/21 illustrated the vulnerability of the institution to politically motivated retaliation. The Spanish *STC 76/2019* judgment showed how, under a functioning constitutional order, standing to challenge legislation can be used to protect fundamental rights - there, the right to data protection within the electoral process - that no individual citizen could effectively defend. Finally, the amicus-curiae and third-party-intervention practice before the ECtHR confirmed that the institution occupies a distinctive intermediate position: non-judicial yet legally relevant, non-binding yet authoritative, supplementary to but not substitutable for judicial remedies.

Sixth, the analysis of contemporary trends in subchapter 3.2 has identified the framework against which the further development of the institution must be assessed. The international normative environment has shifted from a patchwork of national arrangements to a consolidated order built on the Venice Principles and the three successive UN General Assembly Resolutions on the role

of ombudsperson and mediator institutions, the most recent of which (A/RES/79/177 of 17 December 2024) recognises their contribution to Sustainable Development Goal 16. The Venice Commission's interpretive practice has redefined institutional independence as a comprehensive concept embracing constitutional anchoring, leadership autonomy, full staffing self-determination and a parliamentary budgetary process insulated from executive influence. The institution's mandate has undergone a qualitative transformation: *ex officio* powers are now the norm; National Preventive Mechanism functions under OPCAT, equality-body functions under European anti-discrimination law and external whistleblower-reporting functions under the 2019 EU Directive are increasingly concentrated within the office of the ombudsperson. The digital transition and the rise of algorithmic and AI-based decision-making constitute the new frontier, requiring ombudspersons both to defend the rights of those excluded by exclusively digital public services and to engage with the regulation of high-risk AI systems, while simultaneously transforming their own internal operations. Parallel to these developments, the institution is moving towards proactive outreach and informal alternative dispute resolution.

In sum, the thesis has demonstrated that the ombudsperson institution in Europe is best understood as a single conceptual idea realised through a plurality of institutional designs - Nordic, Iberian and Central and Eastern European - each shaped by its own historical context but converging today around the common normative benchmark established by the Venice Principles and the UN General Assembly Resolutions. The institution has undergone a qualitative transformation from a parliamentary check on administration into a multifunctional guarantor of human rights, the rule of law and good governance, and its further development in Ukraine and elsewhere depends on the ability of national legal systems to translate this transformed mandate into substantive guarantees of independence, effectiveness and accessibility. The defended statements formulated in the Introduction are accordingly confirmed: the ombudsperson institution constitutes an indispensable component of the contemporary European architecture of fundamental-rights protection; its effectiveness depends on the substantive - not merely formal - implementation of constitutional and international standards of independence; and its qualitative transformation through the assumption of National Preventive Mechanism, equality-body, whistleblower-protection and digital-governance functions, within the framework of the Venice Principles and UN Resolution A/RES/79/177, defines the trajectory along which the institution will continue to develop in the coming decade.

RECOMMENDATIONS

Based on the comparative findings summarised above, the recommendations for the Ukrainian Parliament CHR may be formulated as follows. The Verkhovna Rada CHR already enjoys constitutional foundation under Article 101 of the Constitution of Ukraine and a developed statutory framework under the Law of 23 December 1997, and operates broadly within the Central and Eastern European hybrid type identified in Chapter 2. However, the Ukrainian model would benefit, first, from full alignment of operational independence with the Venice Principles - in particular through a parliamentary budgetary procedure that prevents executive influence, an explicit statutory guarantee of staffing autonomy and a functional immunity expressly extended to deputies and decision-making personnel; second, from enhanced institutional cooperation with the ENNHRI, the Council of Europe, and the European Network of Ombudsmen, reinforcing the international dimension of the Commissioner's work in light of Ukraine's EU accession process, and third, from the protection and consolidation of the constitutional standing already exercised by the Commissioner before the Constitutional Court of Ukraine, which - as the comparative analysis of Chapter 2 demonstrates - constitutes the single most consequential structural feature for effective human rights defence and the institutional bridge between the Iberian and Central and Eastern European traditions that represents one of the most valuable characteristics of the Ukrainian design.

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ABSTRACT

This thesis examines the effectiveness of the ombudsperson institution as a mechanism of human rights protection in Europe. Through a comparative-legal analysis of Nordic, Iberian, and Central and Eastern European models - assessed against the Venice Commission's Principles on the Protection and Promotion of the Ombudsman Institution (2019) and UN General Assembly Resolution A/RES/79/177 (2024) - and through case studies. The research demonstrates that the non-binding character of ombudsperson recommendations constitutes a functional advantage in conditions of rule-of-law erosion, that constitutional-review standing is the single most consequential institutional design variable for effective rights protection, and that the contemporary expansion of the ombudsperson's mandate marks a qualitative transformation of the institution from a complaint-handling body into a multi-functional National Human Rights Institution.

The findings are directly relevant to Ukraine's ongoing institutional reform process in the context of post-war reconstruction and European Union accession.

Keywords: ombudsperson; human rights; public administration; institutional independence; maladministration

SUMMARY

This master's thesis examines the role and effectiveness of the ombudsperson institution as a mechanism of human rights protection in Europe, with a comparative focus on Nordic, Iberian, and Central and Eastern European models. The study is divided into three chapters: (1) the theoretical, historical, and typological foundations of the ombudsperson institution, from the Swedish Justitieombudsman of 1809 through its post-1945 diffusion and its mass adoption in Central and Eastern Europe after 1989, including an analysis of the Venice Commission's Principles on the Protection and Promotion of the Ombudsman Institution (2019) as the consolidated international benchmark; (2) a comparative-legal analysis of the principal national models - Nordic (Sweden, Finland, Denmark, Norway), Iberian (Portugal, Spain), and Central and Eastern European (Poland, Hungary, the Czech Republic, Ukraine), with comparative reference to France - evaluated in terms of their legal architecture and rights-protective design features; and (3) an assessment of institutional effectiveness through case studies, alongside an analysis of contemporary trends reshaping the institution. Using a comparative-legal method combined with historical, formal-legal, and systemic analysis, the research identifies that constitutional-review standing - the power to challenge legislation before a constitutional court independently of any individual complaint, as exemplified by the Spanish Defensor del Pueblo under Article 162 of the 1978 Constitution - is the single most consequential institutional design variable for effective rights protection, and that the contemporary expansion of the ombudsperson mandate through the incorporation of National Preventive Mechanism functions, equality-body competences, and whistleblower protection marks a qualitative transformation of the institution from a complaint-handling body into a multi-functional NHRI. The thesis concludes with recommendations for Ukraine.