

## Understanding the Ombudsman Models

This reading item is based on the Ombudsperson and Ombudsmen – in the Angle of Differences and Similarities by Zsuzsa Szakály (edited by Zsuzsa Szakály).

### INTRODUCTION AND LEARNING OUTCOMES

*The role of the ombudsman is different in Europe and in Northern America. To understand the differences, and the tasks of the European and the American model, one must see the basic idea behind the concept.*

*The Swedish and the English-French model in Europe show two different ways for the same purpose, while the typical American ombudsperson has different background.*

*The main question is that the office of the ombudsman is related to the private or the public sector, as it will determine the characteristics and the possibilities of the institute.*

### Learning outcomes

1. Understanding the models of the ombudsman
2. Understanding possible functions of the ombudsmen

**Keywords:** ombudsman, ombudsperson, Swedish model, European Ombudsman, mediation, independence, private sector, Médiateur

**Estimated time:** app. 45 minutes

### Recommended Reading

1. Robin K. Matsunaga: The Ombudsman <http://www.usOmbudsman.org/the-Ombudsman/>
2. Ian Darling: The Role of Ombudsman in Canada & the USA <https://www.tarion.com/New-Home-Buyers/Ombudsperson/Documents/The%20Role%20of%20Ombudsmen%20in%20Canada%20and%20the%20United%20States%20-%20Bello%20Horizonte%20speech.pdf>
3. <http://www.usOmbudsman.org/site-usoa/wp-content/uploads/USOA-Model-Ombudsman-Act-For-State-Governments.pdf>

Motto

*„Thus, an Ombudsman is not a lawgiver or a social reformer, nor a knight in shining armor who challenges and defeats the administrative dragon at every turn. Rather, an Ombudsman is a knowledgeable human being who carefully investigates and evaluates the merits of complaints in the focused light of what the law requires.”<sup>1</sup>*

## 1. Introduction

The first Ombudsman was appointed in **Sweden** in 1713.<sup>2</sup> Since then, this institute have been dispersing all around the world. In 2004, there were approximately 120 Ombudsman Offices in the national level all around the world.<sup>3</sup>

Nevertheless, the **European and the American<sup>4</sup> models** of using this institute are mainly different. To show the derogations, we have to take into consideration the **different law systems** of the continents. While in Europe, not counting the United Kingdom, the countries' usage is related to law created by the parliament, the United States' law is mostly law found by judges. This creates a huge difference between the systems. As an example, the method of civil procedure is very dissimilar, not just the role of the judge, but also the fact finding part.

We also have to take into consideration the **difference in the usage of litigation**. The aim of the system of the United States is to avoid the **litigation**. There could be find several different **alternative dispute resolutions** like mediation. Another one of the differences could be found in the role of an Ombudsman. In the United States, the aim of the institute is mostly connected to alternative dispute resolution and the private sector. In Europe, the Ombudsmen are related to the governmental system, and their main task is to protect the rights of the citizens. In my view, the role of an Ombudsman is very significant in both ways, not to mention the possibilities to an average citizen finding help against the “system”.

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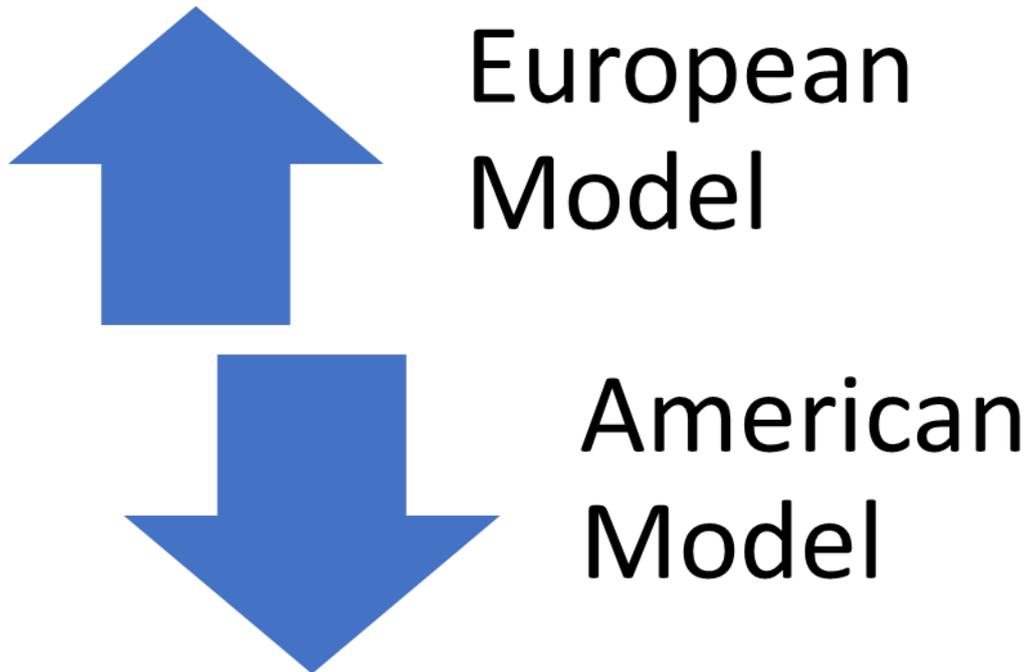
<sup>1</sup> Robin K. Matsunaga: The Ombudsman <http://www.usOmbudsman.org/the-Ombudsman/> (2014. 06. 10.)

<sup>2</sup> András, Varga Zs.: Ombudsmanok Magyarországon, Rejtjel Kiadó, Budapest, 2004. 13.

<sup>3</sup> Eleni Tsoutsias: Ombudsman Ontario and Mandate Modernization: What are the Chances? <http://www.cpsa-acsp.ca/papers-2007/Tsoutsias.pdf> (2014. 06. 10.)

<sup>4</sup> I concentrate on the system of the United States and Canada.

## Models of the Ombudsman



### 2. The European Model

#### 1. *The Models*

As I have mentioned, the first Ombudsman was appointed in Sweden. However, according to some authors, there were **proto-Ombudsmen** like the censors in the Ancient Rome or the council of elders in the villages of Transylvania.<sup>5</sup> The institute dispersed in the **North-European countries** firstly: Finland in 1919, Denmark in 1955. After the Second World War, several **Western European countries** took over the Swedish practice. In the 1960's, it spread in the Commonwealth countries. After 1989, many **Eastern European countries** followed this way.

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<sup>5</sup> Változások a Magyar alkotmányjogban – Tanulmányok az Alaptörvényről, szerk: Balogh Elemér, Cserny Ákos, Patyi András, Téglási András, Hallgatói Közjogi Dolgozatok I., Budapest, Nemzeti Közsolgálati és Tankönyv Kiadó, 2012. 143-144.

Firstly, the main aim of the Ombudsman was to **protect the citizen from the administration of the state**. However, it has been changing during the time; the protection of the human rights is becoming more and more essential.<sup>6</sup>

However, we have to distinguish **two main models of the Ombudsman in Europe**: the Swedish, the “English and French”.<sup>7</sup> Both models have a great impression on the countries which took over them. All the same, there are countries where one can find only one Ombudsman, with competence limited to one section of the state.

Models of Ombudsman in Europe	
Swedish	English-French

## 2. The Swedish Model

The “ancient” Swedish model was put into the constitution of Sweden in 1809. The role of the Ombudsman was connected to **investigation**. In the first times, the Ombudsman started more examinations **by himself than from petitions**. This progress turned over during some decades. There are four Ombudsmen appointed by the Swedish Parliament.<sup>8</sup> All of them have **nationwide competence**. The other Scandinavian countries took from this practice. The first was Finland. **Finland** is unique, because the possibility of investigating in the courts is reachable only in there and in Sweden.<sup>9</sup>

## 3. The English-French Model

The English-French model is different from the Swedish because of the **more limited possibilities of the Ombudsman**. The process could be initiated only by the representatives of the Parliament. The Ombudsman cannot investigate in cases connected to other countries and in cases related to the courts. There is so great quantity of them so they established an association, the **British and Irish Ombudsman Association**.<sup>10</sup> The most important Ombudsmen are **appointed by the Crown**. The several different functions created several

<sup>6</sup> András, Varga Zs.: Ombudsman, ügyész, magánjogi felelősség – Aktív közigazgatási kontroll Magyarországon, Jogtudományi Mongráfiák 3., Pázmány Press, Budapest, 2012. 116.

<sup>7</sup> András, Varga Zs.: Ombudsmanok Magyarországon, Rejtjel Kiadó, Budapest, 2004. 16.

<sup>8</sup> <http://www.jo.se/en/> (2014. 06. 10.)

<sup>9</sup> András, Varga Zs.: Ombudsmanok Magyarországon, Rejtjel Kiadó, Budapest, 2004. 17-21.

<sup>10</sup> <http://www.Ombudsmanassociation.org/> (2014. 06. 10.)

different types of the Ombudsmen, for example, the health Ombudsmen, the Ombudsmen appointed by the local government etc. They do not have to be lawyers. Usually they try to create a compromise between the two sides.

The French institution was established to protect the citizens from the strengthening power of the state. The **Médiateur** is appointed by the government.<sup>11</sup> The main task of the French Ombudsman is to solve the conflicts between the citizens and the administration, protecting the proper relations between the two sides. The institute has some limitations compared to the Swedish model.<sup>12</sup>

#### 4. *The European Ombudsman*

Every country of the European Union has some kind of Ombudsman.<sup>13</sup> In this angle, we have to mention the European Ombudsman, whose role is to protect the citizens from the maladministration of the European Union.<sup>14</sup> The first European Ombudsman was elected in 1995. Since then, the actual European Ombudsman cooperates with the Ombudsmen of the member states.<sup>15</sup> The Council of Europe defined the main characteristics of an Ombudsman. He/she has to be independent, elected by the parliament, need to have right to investigate, albeit without right to decide in the case.<sup>16</sup>

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<sup>11</sup> <http://www.defenseurdesdroits.fr/> (2014. 06. 10.)

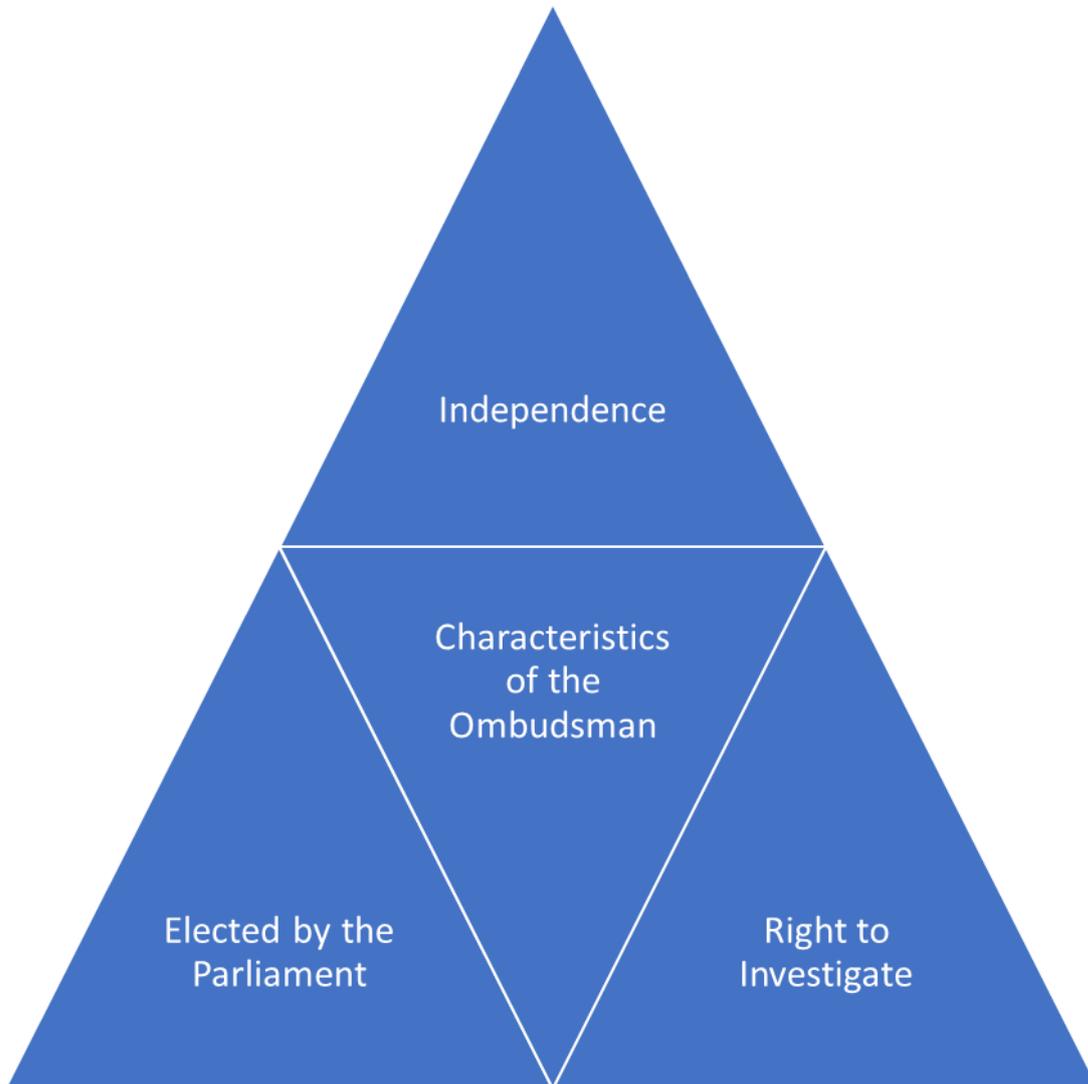
<sup>12</sup> András, Varga Zs.: Ombudsmanok Magyarországon, Rejtjel Kiadó, Budapest, 2004. 21-25.

<sup>13</sup> <http://www.Ombudsman.europa.eu/en/atyourservice/nationalOmbudsmen.faces#nl> (2014. 06. 10.)

<sup>14</sup> <http://www.Ombudsman.europa.eu/home.faces> (2014. 06. 10.)

<sup>15</sup> Változások a Magyar alkotmányjogban – Tanulmányok az Alaptörvényről, szerk: Balogh Elemér, Cserny Ákos, Patyi András, Téglási András, Hallgatói Közjogi Dolgozatok I., Budapest, Nemzeti Közsolgálati és Tankönyv Kiadó, 2012. 145.

<sup>16</sup> András, Varga Zs.: Ombudsman, ügyész, magánjogi felelősség – Aktív közigazgatási kontroll Magyarországon, Jogtudományi Mongráfiák 3., Pázmány Press, Budapest, 2012. 115-132.



## Characteristics of the Ombudsman in Europe

### 3. The American Model

#### 5. Introduction

If an American hears the Ombudsmen word he/she has very diverse imagination than a European, because of the **different position** of the two institutes. While the European Ombudsmen are appointed by the state, the American Ombudspersons<sup>17</sup> are generally not independent and they are related to the **private sector**, not the public sector.

The picture is **very mixed** in the United States and Canada because of the several different types of officers and mediators who are called Ombudsmen. However, "The key difference

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<sup>17</sup> The American uses the Ombudsman, the Ombudsperson and the Ombuds terms paralelly.

between an Ombudsman and an executive complaint officer is the degree of independence and neutrality that the official possesses.”<sup>18</sup>

## 6. *The United States*

In the United States, the role of a classical Ombudsman is slightly different from the European, because of the most Ombudsmen are employed by companies, not the state. Their role is to mediate between the costumers and the company, to avoid lawsuits.<sup>19</sup> Many of them “act more as advocates rather than impartial investigators.”<sup>20</sup> As an example, the Ombudsman of the University of California tries to mediate as appropriate and make referrals.<sup>21</sup> He is employed by the university to solve the possible disputes arising.

We could find only five state Ombudsman offices in the United States: Alaska, Arizona, Hawaii, Iowa, and Nebraska.<sup>22</sup> All the same, there are efforts to change this stage. The United States Ombudsman Association prepared the Model Ombudsman Act for State Governments, trying to help finding the basic conditions of an Ombudsman.<sup>23</sup> The organization also made a summary about the Governmental Ombudsman Standards. The Standards sum up the main points in four categories: independence, impartiality, confidentiality and credible review process.<sup>24</sup> The standards serve as reference points to the states which considering the introduction of the institute to their system.

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<sup>18</sup>Robin K. Matsunaga: The Ombudsman <http://www.usOmbudsman.org/the-Ombudsman/> (2014. 06. 10.)

<sup>19</sup>Krisztina Rúzs Molnár: Overview of Alternative Dispute Resolution in the United States, University of Szeged, 2014. 35-36.

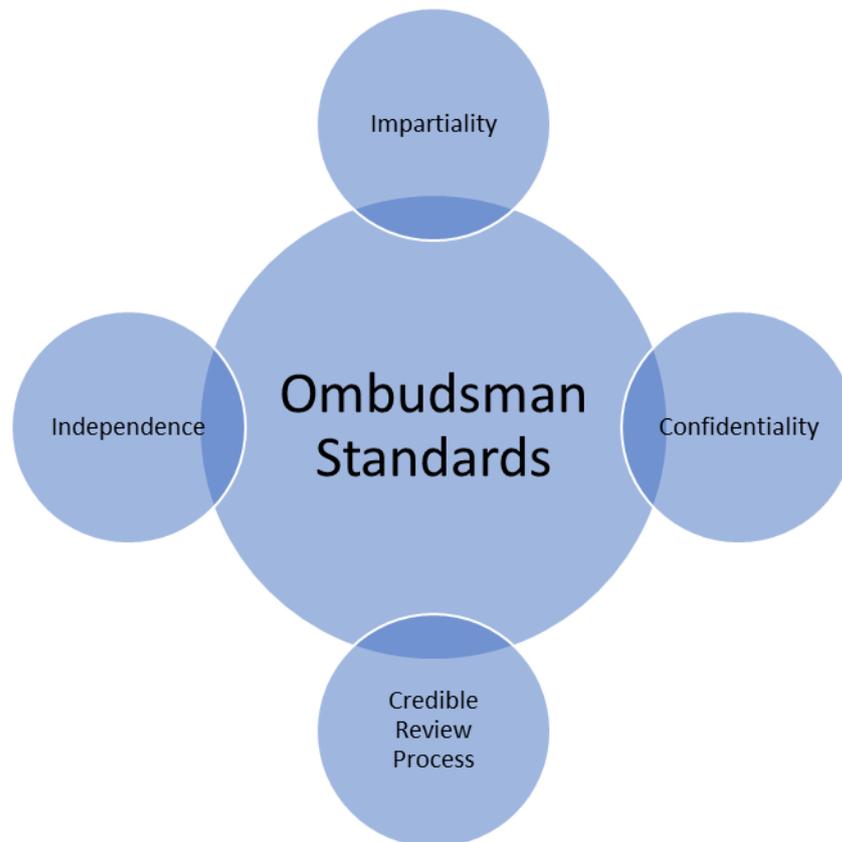
<sup>20</sup>Robin K. Matsunaga: The Ombudsman <http://www.usOmbudsman.org/the-Ombudsman/> (2014. 06. 10.)

<sup>21</sup> <http://Ombuds.ucsf.edu/does-doesNot.html> (2014. 06. 10.)

<sup>22</sup>Robin K. Matsunaga: The Ombudsman <http://www.usOmbudsman.org/the-Ombudsman/> (2014. 06. 10.)

<sup>23</sup><http://www.usOmbudsman.org/site-usoa/wp-content/uploads/USOA-Model-Ombudsman-Act-For-State-Governments.pdf> (2014. 06. 10.)

<sup>24</sup> <http://www.usombudsman.org/site-usoa/wp-content/uploads/USOA-STANDARDS1.pdf> (2014. 06. 10.)



### *Canada*

In Canada, the first public Ombudsman was elected in 1967, in Alberta. The frame is **very mixed**: “Canadian Ombudsmen can be found working in classical legislative roles, in the broader public sector, in the private sector, and in colleges and universities.”<sup>25</sup>

One can find many **legislative Ombudsmen**, e.g. the provincial Ombudsmen, the Ombudsman for the city of Toronto etc.

The Ombudsmen of the **public sector** has been **growing the most rapidly**. There are Ombudsmen like the tax payer Ombudsman, Ombudsman for the Canadian Forces, Ombudsmen for hospitals and injured workers. The **Ombudsmen of the private sector** are related most commonly to Banks, Insurance companies, and the service sector.<sup>26</sup>

The Commissioner of Official Languages, the Military Ombudsman, the Veterans Ombudsman, the Canada Post Ombudsman, the Privacy Commissioner and the Correctional

<sup>25</sup> Ian Darling: The Role of Ombudsman in Canada & the USA 2. <https://www.tarion.com/New-Home-Buyers/Ombudsperson/Documents/The%20Role%20of%20Ombudsmen%20in%20Canada%20and%20the%20United%20States%20-%20Bello%20Horizonte%20speech.pdf> (2014. 06. 10.)

<sup>26</sup> Ian Darling: The Role of Ombudsman in Canada & the USA <https://www.tarion.com/New-Home-Buyers/Ombudsperson/Documents/The%20Role%20of%20Ombudsmen%20in%20Canada%20and%20the%20United%20States%20-%20Bello%20Horizonte%20speech.pdf> (2014. 06. 10.)

Investigator are all special kinds of the original Ombudsman, related to **the special needs of Canada.**<sup>27</sup>

As an example, the Ombudsman of Ontario was appointed in 1975; it was one of the first North-American jurisdictions to introduce an Ombudsman as **part of the governmental system**. The Ombudsman Act has not been amended since then.

Nowadays the main aim of the current Ombudsman, André Martin is about to change the Ombudsman Act to **get more competence** in the investigations. He has been in position since 2005, and as I see, he rummaged the sleeping system of Canada with vitality and great aims to reach a system which helps the people more effectively. He describes his work as a **watchdog's**: he has to bark if there is some abuse of rights loudly enough to be heard all around the country.<sup>28</sup>

#### 4. Conclusion

As we can see, the several different types of Ombudsmen have not just variances, but also similarities. Their aim is always to **help the people**. It has no significance that a specific Ombudsman works in the private sector or the public sector, if he/she has the proper standards to be **independent, impartial and creditable**. Nevertheless, the role of an Ombudsman is never easy, because if an Ombudsman is effective enough, he/she "can arguably be described as one of the **sharpest thorns in the government's side**".<sup>29</sup>

To sum up, the role of an Ombudsman is different from country to country, not just between Europe and America, but also between the European countries. Not forget to mention the differences in even one state of the United States, where one can find variances if public and private Ombudsmen of several kinds.

#### *Questions for Self-Check*

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<sup>27</sup> Stewart Hyson: Specialty Ombudsman Offices: The New Breed of Structural Heretics, Paper prepared for presentation at the Annual Meeting of the Canadian Political Science Association, Carleton University, Ottawa, 27 May 2009.

<sup>28</sup> <http://www.ombudsman.on.ca/Resources/Articles-by-the-Ombudsman/2009/Letting-the-Watchdog-Off-the-Leash.aspx> (2014. 06. 10.)

<sup>29</sup> Eleni Tsoutsias: Ombudsman Ontario and Mandate Modernization: What are the Chances? <http://www.cpsa-acsp.ca/papers-2007/Tsoutsias.pdf> (2014. 06. 10.)

Where was the first ombudsman appointed?

What are the European models of ombudsman?

What are the typical characteristics of the European ombudsmen?

What are the typical characteristics of the American ombudsmen?

What do you know about the European Ombudsman?

What is the picture of Canada's ombudsman system?

### **Home Assignment**

*Choose a state where you can find at least 3 ombudsmen and examine their roles and functions in detail.*

*Compare the results with at least 3 of your class members. Are there any similarities? What are the differences?*

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