The office of the Swedish Parliamentary Ombudsman, Stockholm

200 years of the institution of the Ombudsman – how it all began...

The Office of the Parliamentary Ombudsmen was established in Sweden in 1809 in connection with the adoption of the Instrument of Government that came into effect after the deposition in that year of King Gustaf Adolf IV. With the autocratic rule of his father, King Gustaf III, fresh in mind, the legislators introduced into the new constitution a system that would allow the Riksdag (the Swedish Parliament) some control over the exercise of executive power. The Standing Committee on the Constitution was therefore charged with the task of supervising the actions of ministers and with ensuring the election of a special Parliamentary Ombudsman to monitor the compliance of public authorities with the law.

The Riksdag Act of 1810 contained provisions concerning the Auditors elected by the Riksdag to scrutinise the doings of the civil service, the Bank of Sweden and the National Debt Office. The regulations in Chapter 12 of the Instrument of Government of 1974 later incorporated these three supervisory Riksdag agencies (i.e. the Parliamentary Ombudsmen, the Standing Committee on the Constitution and the Parliamentary Auditors) into the current system of parliamentary government.

The idea of creating some organ answerable to the Riksdag that could monitor the way in which the authorities complied with the law was not a new one in 1809. In fact, in 1713 the absolute monarch Charles XII had created the office of His Majesty's Supreme Ombudsman.

At that time King Charles XII was in Turkey and had been abroad for almost 13 years. In his absence his administration in Sweden had fallen into disarray. He therefore established the Supreme Ombudsman to be his pre-eminent representative in Sweden. The task entrusted to him was to ensure that judges and public officials in general acted in accordance with the laws in force and discharged their duties satisfactorily in other respects.

If the Ombudsman found that this was not the case, he was empowered to initiate legal proceedings against them for dereliction of their duties. In 1719 the Supreme Ombudsman was given the title 'Justitiekanslern' (Chancellor of Justice). This office still exists, and today the Chancellor of Justice acts as the government's Ombudsman.

After the death of Charles XII in 1718, Sweden enjoyed decades of what was more or less parliamentary rule (the Period of Liberty). In 1766 the Riksdag for the first time actually elected the Chancellor of Justice. In the 1772 Instrument of Government, however, the right to appoint the Chancellor of Justice again became a royal prerogative. After a period of renewed autocratic rule under Gustaf III and his son, Gustaf Adolf IV, the latter was deposed in 1809.

According to the 1809 Instrument of Government, power was to be divided between the King and the Riksdag. The King was to appoint the Chancellor of Justice (in other words he was the royal Ombudsman) and the Riksdag was to appoint its own Parliamentary Ombudsman. The main purpose of the establishment of this new post as Ombudsman (Parliamentary Ombudsman) was to safeguard the rights of citizens by establishing a supervisory agency that was completely independent of the executive.

A medallion of the first Swedish Parliamentary Ombudsman, Lars Augustin Mannerheim

However, it seemed quite natural to model this new office on that of the Chancellor of Justice. Like the Chancellor of Justice, therefore, the Ombudsman was to be a prosecutor whose task was to supervise the application of the laws by judges and civil servants. In the words of the 1809 Instrument of Government, the Riksdag was to appoint a man 'known for his knowledge of the law and exemplary probity' as Parliamentary Ombudsman. In other words, his duties were to focus on protection of the rights of citizens. For instance, the Parliamentary Ombudsman was to encourage uniform application of the law and indicate legislative obscurities. His work was to take the form of inspections and inquiries into complaints. Complaints played a relatively insignificant role to begin with. During the first century of the existence of the Office, the total number of complaints amounted to around 8,000.

Initially, the role of a Parliamentary Ombudsman could be characterised as that of a prosecutor. Cases set in motion by the Ombudsman were either shelved with no action being taken or resulted in prosecution. Eventually, however, routines evolved which meant that prosecution was waived for minor transgressions and an admonition was issued instead. This development was

acknowledged by the Riksdag in 1915 by its inclusion of a specific right to waive prosecution in the instructions for the Parliamentary Ombudsman. Until the adoption of the 1975 instructions, these provisions on an Ombudsman's right to waive prosecution in cases involving transgressions that were not of major consequence provided the only formal basis for the expression of criticism. In the cases where an official could not be charged with any punishable error and therefore there were no grounds for a decision to waive prosecution, the expression of criticism or advice on the part of the Ombudsman was based only the usages that had evolved over the years. These practices were appraised and approved by the Riksdag in 1964.

The decision in 1975 to abolish the special right to waive prosecution was linked to the simultaneous reform of official accountability, which involved among other things major curtailment of the legal responsibility of public officials for their actions. In this context it was considered that there was no longer any need for the Parliamentary Ombudsmen to have the right to waive prosecution. In addition the 1975 instructions also included a special regulation empowering the Ombudsmen to make critical or advisory comments and these have been transferred to the instructions that now apply.

In 1957 the institution of the Parliamentary Ombudsmen was also given the power to monitor local government authorities.

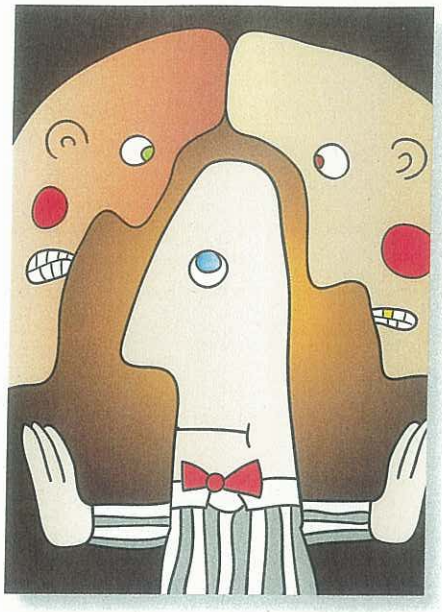
The development of the role of the Ombudsman institution described here has resulted in a gradual shift in the thrust of these activities from a punitive to an advisory and consultative function. The task of forestalling error and general endeavours to ensure the correct application of the law have taken precedence over the role of prosecutor.

The starting point of the work of the Parliamentary Ombudsmen today is based – as it was nearly two centuries ago – on the desire of individuals that any treatment they receive from the authorities should be lawful and correct in every other respect. The institution of the Parliamentary Ombudsmen today is a vital element in the constitutional protection of the fundamental rights and freedoms of each individual.

Source: The website of the Swedish Parliamentary Ombudsman, **www.jo.se**.

Working together can make a difference

By Gregory Hunt, Assistant Director of CEDR



When joining the Centre for Effective Dispute Resolution (CEDR) in June 2008, I was pleased and surprised to learn that the organisation's Chief Executive, Dr. Karl Mackie, had for many years supported the work of BIOA through his own Individual Associate membership. This pleased me as for some time I have considered that there are great opportunities for ombudsmen bodies to work with dispute resolution consultancies like CEDR, to mutual benefit and for the greater good of service users.

About CEDR

CEDR, a non-profit organisation and registered charity, is supported by multinational businesses, leading professional bodies and public sector organisations. It is independent of particular professions or industry sectors, and any surplus income is applied to promotion of the field and improvement in practice. CEDR is proud of its reputation as Europe's leading body in the field of mediation, both as trainers and providers of dispute resolution services. Since 1990, CEDR has been involved in thousands of disputes and trained more than two thousand mediators.

There is however much more to CEDR than this and many areas where CEDR and BIOA members can work together. Some examples are shown below.

Redress

Though known more for commercial dispute resolution, CEDR operates a number of mediation services for local and national government and for other public sector organisations. In January 2009, following competitive tendering, CEDR was appointed by the Department for Children, Schools and Families to provide the Ofsted Adjudication Service, with Dr. Mackie appointed as Senior Adjudicator. This demonstrates CEDR's ability to operate in new markets where adjudicative rather than facilitative remedies are required.

Training

In the first nine months of this financial year, CEDR trained more than 1,200 delegates in a range of courses and seminars complementary to the ombudsmen market. Three hundred of these have become fully accredited mediators; seven hundred have been trained internationally, with courses as far afield as Bosnia, Botswana, China, South Africa and Ukraine.

CEDR works with clients to provide them with the processes, tools and accredited skills necessary to build world class negotiation and conflict management capabilities. Many of these conflict management training packages fit easily in to the needs of ombudsmen bodies.

For example, CEDR has team training programmes which specialise in advanced negotiations and difficult conversations, mediation in organisations and training on how to make difficult decisions.

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