

## **Ombudsman of France**

The French Ombudsman is named Mediator of the Republic. According to the terms of the law of January 3, 1973 that has created this institution; the Mediator of the Republic is an "independent authority" in charge to improve, by its actions, relations between citizens and administration. The mediator intervenes within disputes that oppose parties by suggesting to both of them solutions of friendly settlement of their disputes. The French Ombudsman is a member of Club of mediators of public service.

The French Ombudsman is a special independent administrative authority, qualified by the law of independent authority, Law of January 3, 1973.

Inspired by the Swedish Ombudsman and the English Parliamentary Commissioner, his role is to denounce the failings and shortcomings of the administration. He is appointed by the Council of Ministers for a non-renewable 6-year term.

This non-renewable aspect is a condition of his independence, which is also characterized by his removal from the hierarchical authorities: he does not receive any order and can only be relieved from his duties in case of duly noted inabilities.

He cannot be directly solicited by individuals but only through a Member of Parliament (a congressman or senator according to the choice of the citizen). In facts, the ombudsman can be solicited directly; in which case he forwards the complaint to a Member of Parliament, so that the official procedure can be followed.

If the Ombudsman is directly solicited because of a case of emergency or particular importance, the official referral is retrospectively regularized.

His jurisdiction is wide spread and includes the activities of state and local authorities, public institutions and organisms entrusted with a public service mission.

Since the text of 1973, 5 laws have extended the responsibilities of the Ombudsman:

- The law of December 24, 1976: strengthens the links with Parliament, specifies the relations with jurisdictions, expands the bases of his action in equity and allows him to propose legislative reforms;
- The law of January 13, 1989: strengthens the Ombudsman's independence;
- The law on the February 6, 1992: specifies that legal entities can solicit the Ombudsman;
- The law of April 12, 2000: specifies that the Ombudsman is allowed to initiate a procedure reform, finalizes the existence of the delegates and defines their roles and specifies the modalities of the annual report of the ombudsman's activities to Parliament;
- The ordinance of March 25, 2004: stipulates that the delegates of the ombudsman must perform as volunteers.

### **Delegates of the Ombudsman of the French Republic**

His delegates (currently about 300) are appointed for a renewable period of one year. They perform permanencies in prefectures or town halls, places of Justice and Law, places of public services or even social centres. They must spend at least two half-days per week for the mission they have been entrusted on the field of their professional skills (legal, administrative, writing, relational quality, knowledge of different forms of mediation...).

Unlike the Ombudsman, the delegate is a direct contact. In case of failure of his intervention, he directs the citizen to a Member of Parliament who will bring the complaint to the attention of the Ombudsman.

### **Grouping of Public Service Mediators**

The Ombudsman joined the following public service mediators who have independent position towards institutions, according to official texts, in 2002:

- Deposit and Consignment Office (Caisse des dépôts et consignations);
- Electricity of France (EDF);
- National Education (Education Nationale);
- French Federation of Insurance Companies (Fédération Française des Sociétés d'Assurance)
- Mediator of the National Channel 2 (France 2);
- Mediator of the National Channel 3 (France 3);

- Mediator of the French Gas Company (Gaz de France);
- Mediator of the French Post Service (Poste);
- Mediator of the Universal Postal Service;
- Mediator of MINEFI - Ministry of Economy, Finance and Industry;
- Mediator of the RATP (Public transportation network of the city of Paris);
- SNCF (National railway company of France);
- City of Paris.

### **Powers and Responsibilities**

The Ombudsman's strength is to be freed from any proceedings to protest the illegality or inefficiency of the public administration. He has no power to sanction; he is only allowed to recommend an appropriate solution a specific case. He has instructional rights. He is also allowed, although he never did, to appeal to the public prosecutor. Finally, with his collected information, he can propose complete reforms.

He has no power to interfere with the legal Courts, in the sense that he is unable to intervene during legal proceedings or to question the decisions pronounced by a Court.

However, if he does not reach a solution agreed with the Administration, he has the following special powers:

- A disciplinary power of substitution: he is allowed to initiate a disciplinary proceeding against an officer clearly faulty if his hierarchical authority refuses to sanction him.
- A power of injunction: he is allowed, "in case of the non-implementation of a court order", to require the Administration to comply with it within a specified deadline. If this injunction is not respected, the non-implementation of the court decision can be subject to a special report issued in the Official Publication.
- A power of investigation: The ministers and all public authorities must facilitate the task of the Ombudsman and their contribution can be valuable within complex and sensitive cases. The Ombudsman, for example, can request the Court of Auditors in order to initiate investigations and provide a technical expertise.

- A power of reform: The Ombudsman can request the amendment of a law or regulation by a reform proposal, beyond the individual cases submitted to him, in order to improve the functioning of the Administration or to prevent unfair situations to recur.

All these powers guarantee the independence and effectiveness of the Ombudsman's action.

### **Statutes of his Actions**

A doctrinal debate happened between Braibant and Gaudemet regarding the real nature of the Ombudsman and the statutes of his actions but the State Council has settled the debate. For Braibant, the Ombudsman shall necessarily be related to the executive power since he is neither a legislative nor a judicial body and is therefore an independent administrative authority. For Gaudemet, the Ombudsman should not enter into the tripartite classification of the powers separation firstly because of his foreign origin but mainly because his function has been created precisely to control the Administration differently. Therefore, framing his function through the statutes of an Administrative authority would submit him to the heavy and procedural administrative law that would render his action ineffective.

The State Council has settled the case with the "Retail text": The Ombudsman is an independent administrative authority. His acts cannot be judged by an administrative tribunal on the contrary of his organizational acts like the appointment of provincial mediators.

### **Evolution of the Function**

In October 2007, the Committee Balladur has delivered its report requested by the President Nicolas Sarkozy related with the reform of institutions. Regarding the Ombudsman, it is suggested that his mode of operations and responsibilities will be closely like the ones of the Defender of the people. He might take the name of the "Defender of the Rights". In this case, his powers would be widened in comparison with those of the current Ombudsman. His appointment would be subject to the parliamentary vote.