



## The Portuguese Ombudsman: from the inception to the present and towards the future. Overview of its mission and responsibilities\*

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Summary: 1. Introduction. 2. A brief outline of the Portuguese Ombudsman's foundation. 3. Multiple roles of the Portuguese Ombudsman: classical dimension; National Human Rights Institution; National Preventive Mechanism against torture. 4. Conclusion.

### 1. Introduction

The progress of humanity is in close connection with the civilizational acquisitions that allowed the recognition to every and to each one of us the same dignity as a person regardless of differences in race, gender, social status, personal beliefs or choices. These civilizational acquisitions – that, in the broad sense of the word, we call Human Rights – were only possible due to the intellect and the moral and physical courage of many men and many women that, throughout history, aspired to build a fairer and equal society.

Their legacy inspired the general recognition of fundamental rights and freedoms for all citizens and, at the same time, motivated the foundation of an institutional framework with the specific mission to uphold and to promote those fundamental rights and freedoms.

The Ombudsman institution is the bearer of this heritage and its actions are ethically bound to ensure the effective vivification of democracy, freedom and justice.

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\* This conference was delivered in the inaugural session of the Portuguese Ombudsman's official visit to the Ombudsman of Turkey, held under the *Twinning Project Support to Establishment of Ombudsman Institution in Turkey*, which took place in Ankara, from February 8<sup>th</sup> – 11<sup>th</sup>. The text had the collaboration of Ricardo Carvalho, adviser in the Cabinet of the Portuguese Ombudsman.



## *2. A brief outline of the Portuguese Ombudsman's foundation*

It is possible to identify Portuguese Ombudsman's inception in the midst of the democratic revolution that, in 1974 overthrew the dictatorial regime that did not recognized universal rights and freedoms.

Created in 1975 the Portuguese Ombudsman epitomizes the particular circumstances experienced in a time of history where a new paradigm of relationship between the State and its citizens, based on democracy, was established. For this reason it is possible to assert that the Portuguese Ombudsman is a post-revolutionary and pre-constitutional institution. As I mentioned the recognition of individual rights and the creation of conditions for them to be experienced by all the people require, among other things, that the foundations on which the State builds itself are founded on democracy. This condition, which was only achieved with the democratic revolution, marked decisively the outline of the Portuguese Ombudsman in the Law and in the Constitution.

The consecration of the Portuguese Ombudsman as a constitutional State body in the first part of the Constitution, which establishes the general principles of fundamental rights, guarantees and freedoms, provides increased protection and adds another dimension to the mission that is trusted to him: the promotion and defence of human rights. This signifies that the Portuguese Ombudsman is regarded as a fundamental right of the people and, therefore, benefiting from the general system of fundamental rights and the special regime of its protection.

In essence, the Constitution and the law establish the Ombudsman as completely independent – I underline independent – and impartial State body founded under a democratic parliamentary legitimacy.

The Ombudsman is therefore a constitutional body that upholds rights, fundamental freedoms and Human Rights.



*3. Multiple roles of the Portuguese Ombudsman: classical dimension; National Human Rights Institution; National Preventive Mechanism against torture*

The evolution of the Portuguese Ombudsman's institution throughout history has been one of its most substantial features. In fact, since its creation in 1975 the Portuguese State has trusted the Ombudsman with important responsibilities, deepening its Statute, its powers and its actions. Currently, this institution assumes three core commitments that define its intervention framework: the classical dimension; the National Human Rights Institution; the National Preventive Mechanism against torture.

As we had the opportunity to observe the Portuguese Ombudsman's field of intervention extends beyond the classical activities aimed at the verification of actions or omissions by the public administration and the eventual restoration of justice or legality. In fact, from a functional point of view, the field of intervention of the Portuguese Ombudsman comprises the whole materially administrative activity: all entities exercising public powers, regardless of their nature. Under the protection of rights, freedoms and guarantees, the regulatory regime provides that the Portuguese Ombudsman can intervene in private relations that involve a special relationship of domain.

The classical intervention of the Ombudsman is generally based on the submission of a complaint by a citizen. However, the law provides that the Ombudsman may act on its own initiative in relation to facts that come to his attention. These activities represent a substantial part of the Portuguese Ombudsman's work, illustrated by the large number of new procedures opened every year – between 7500 and 8000. It is also important to note that the Portuguese Ombudsman may plea before the Constitutional Court regarding the valuation of constitutionality or legality of laws, and, perform, with or without previous notice, inspections and visits to any sector of the public administration - central, regional and local - including all public services civil or military, or any entity that falls within the scope of its mandate.



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In addition to its traditional activity, the Portuguese Ombudsman has also, since 1999, the quality of National Human Rights Institution accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights with the *A* status, in full compliance with the Paris Principles.

The international community recognizes the National Human Rights Institutions accredited with *A* status a key role in the effectiveness of national systems for the promotion and protection of human rights, recognizing them as essential partners to the international organizations. This importance is especially evident in the United Nations, where, increasingly, it has been recognized a specific set of rights to participation, particularly in the Human Rights Council, by submission of information, presence in meetings and autonomous oral presentations.

From a thematic point of view, the activities of the Ombudsman as a National Human Rights institution are particularly intense in certain areas, such as in the matter of the penitentiary system and the rights of prisoners, the rights of foreigners and migrants and also the rights children, the elderly and people with disabilities.

The third role developed by the Portuguese Ombudsman is directly related with the approval and ratification by the Portuguese State of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which came into force, due to the in February 14<sup>th</sup>, 2013. Due to the Portuguese Ombudsman's independent nature, the Portuguese State decided to appoint this State body as the National Preventive Mechanism, with the special responsibility of creating an effective system of prevention of torture and other cruel treatments or punishments. It is important to emphasize this idea of independence as it was the primary reason that allowed the Portuguese State to be able to appoint the Portuguese Om-



budsman as the National Preventive Mechanism, and, in this sense, to be able to comply with its international commitments.

To fulfil this obligation the Portuguese Ombudsman, in its capacity as National Preventive Mechanism, established an autonomous support structure, in order to preform regular visits to places where people are deprived of their liberty. This structure is composed by an advisory council, a steering committee and a visitors' team, that, under the direction and authority of the Portuguese Ombudsman, created a comprehensive work method that made possible to accomplish the goals enshrined in the Optional Protocol against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### *4. Conclusion*

In 2015 the Ombudsman celebrated 40 years at the service of democracy, the rule of law and the fundamental rights of citizens. Throughout its history a long path has been taken in order to solidify this institution in the Portuguese community. This involved the actions, the courage, hard work and specially a true sense of service of many men and many women towards the realization of common good. In this sense the Portuguese Ombudsman is honoured to share this heritage with his fellow colleagues all over the world, and, in this particular case, with the Ombudsman of Turkey.

Our histories may vary from place to place, our language may be different and our culture may be diverse, but we all have one mission, we all have one oath: to promote and to protect the human rights of our citizens.