



Association des Ombudsmans de la Méditerranée  
جمعية الأمبودسمان المتوسطيين  
Asociación de Ombudsmán del Mediterráneo  
Association of Mediterranean Ombudsmen



**CENTRE DE FORMATION ET D'ÉCHANGES EN MÉDIATION**

**FOURTH TRAINING SESSION FOR  
THE OMBUDSMEN COLLABORATORS  
MEMBERS OF THE ASSOCIATION OF  
MEDITERRANEAN OMBUDSMEN**

**UNDER THE THEME:**

**« The role of Ombudsman institutions  
in simplifying administrative procedures  
and access to public services »**



**Rabat, 22th and 24th of October 2013**

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# PROGRAM

*Coordinator: Ms. Fatima Kerrich, Head of the Department of Communication, Cooperation and Training, Mediator's Institution of the Kingdom of Morocco*

**Tuesday, 22<sup>nd</sup> of October**

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**Morning**

## **Opening Session**

**9:30** Welcome speech of Mr. Abdelaziz BENZAKOUR, President of the AOM and Mediator of the Kingdom of Morocco.

**9:45** Presentation of the general framework and the objectives of the training session

*10:15 Coffee break*

**Module 1: Basics of administrative procedures (Distinction in law between the substantive and procedural rules, or form).**

Expert: *Mr. Mohamed Benyahya*, Advisor of the Mediator of the Kingdom of Morocco.

**10:30:** General presentation of the theme

**11:30:** Debate

**12:00:** Summary and conclusions

**13:00:** Lunch

**Afternoon**

**Module 2: simplifying administrative procedures and access to public services: constraints and alternative strategies.**

Experts: - *Ms Dominique de Vos*, Directrice générale adj de l'Agence pour la Simplification Administrative en Belgique

- *Mr. Mohammed Nassim*, Head of Division, the Ministry of Public Sector and Modernization of the Administration- Morocco

**15:00:** General presentation of the theme

**16:00:** Coffee Break

**16:15:** Debate

**17:00:** Summary and conclusions

**Wednesday, 23<sup>rd</sup> of October**

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**Morning**

**Module 3: current situation of the competences of the ombudsmen in the field of simplifying administrative procedures and access to public services, according to their regulatory laws.**

Experts: *Mr. Albert Johnson*, Head of Division, Parliamentary Ombudsmen of Sweden  
*Mr. Klavs Kinnerup Hede*, Head of Inspection Division, Parliamentary Ombudsman of Denmark

**09:30:** General presentation of the theme  
**10:30:** Experiences display related to the theme and debate  
**11:00:** Coffee Break  
**11:15:** Experiences display related to the theme and debate (continuation)  
**12:30:** Summary and conclusions  
**13:00:** Lunch

### Afternoon

## **Module 4: Major issues drawn from complaints, related to simplifying administrative procedures and access to public services.**

Experts: Ms. **Raluca Trasca**, Legal Officer, European Ombudsman  
Mr. **Albert Johnson**, Head of Division, Parliamentary Ombudsmen of Sweden

**15:00:** General presentation of the theme  
**16:00:** Coffee Break  
**16:15:** Experiences display related to the theme and debate  
**17:00:** Summary and conclusions

## **Thursday, 24<sup>th</sup> of October**

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### Morning

## **Module 5: Proposals and recommendations suggested by Ombudsmen institutions in the field of simplifying administrative procedures and access to public services and results.**

Experts : Ms. **Raluca Trasca**, Legal Officer, European Ombudsman  
Ms. **Lucy Bonello**, Parliamentary Ombudsman, Malta

**09:30:** General presentation of the theme  
**10:30:** Exchange around the theme and debate  
**11:00:** Coffee Break  
**11:15:** Exchange around the theme and debate (Continuation)  
**12:30:** Summary and conclusions  
**13:00** Lunch

### Afternoon

## **Closing session**

**15:00:** Session evaluation and executive summary presentation  
**15:30:** Distribution of certificates  
**16:00:** Visit

**Statement by Mr. Abdelaziz Benzakour,  
Mediator of the Kingdom on the occasion  
of the opening of the Fourth AOM Training  
Session held for the Collaborators  
of the members of the Association  
of the Mediterranean Ombudsmen**





**Statement by Mr. Abdelaziz Benzakour, Mediator of the Kingdom on the occasion of the opening of the Fourth AOM Training Session held for the Collaborators of the members of the Association of the Mediterranean Ombudsmen**

Rabat on October, 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> 2013

**Ladies and Gentlemen,**

It is my great pleasure to open the works of the present training session, organized during three full days by the Center for Training and Exchange on Mediation, whose management is guaranteed by the Institution of the Mediator of the Kingdom of Morocco.

I am also happy to welcome all the participants, including experts, Mediators and Ombudsmen collaborators, members of the Association.

The theme of our session, being the fourth of its kind to be organized to the profit of the above-mentioned collaborators, shall focus on a subject of great importance, which is “the role of our institutions in simplifying administrative procedures and access to public services”. As a matter of fact, it is a subject which represents one of the most strategic missions assigned to our institutions, which hinges on the dissemination of values of transparency and moralization in the public sector, through activating the power of suggestion vested with such institutions in order to contribute to administrative reform and enhance good governance.

**Ladies and Gentlemen,**

We all are aware of the international and national contexts that contributed to the creation of such institutions. Notwithstanding the scope of the differences in the pretexts advanced by countries in the North and the South of the Mediterranean, which are undoubtedly related to the political, economic, social and cultural contexts of every region, we must point out some points of convergences that gather our Mediterranean institutions and which should be transformed into strategic aims they should strive to achieve and an essential catalyser to the public administration:

- not only through remarks detected by our institutions upon complaints processing, and issuing proposals and recommendations with the aim of simplifying a given administrative procedure, or a law whose firm implementation or incompatibility with the ever-changing realities may cause unfairness and harm to the complainants, but also via the role assigned to such bodies in order to narrow the gap between the public-service users and the apparatuses of public administration along with the different public bodies vested with the power of public authorities, of promoting communication between such parties. These strategies shall have as an objective to create and reestablish trust-centered relationship based on the spirit of good citizenship, rule of law, principles of Human

Rights, values of Justice and Equity and setting up a proximity-based policy. Such a situation implies that our institutions be equipped with the necessary procedural tools and the objective methodological materials necessary for our mission of suggestion to succeed.

**Ladies and Gentlemen,**

Based on what has been said earlier, either at the beginning of this speech, or in some of the keynotes delivered during the previous sessions, it becomes as clear as crystal, and in a continuous and innovative manner, that the missions assigned to the institutions of Ombudsmen are not easy. These institutions carry out heavy tasks where they are asked simultaneously to redress the injustices caused to the complainants, desiring to profit from the institutions' intervention, and to strengthen the principles of good governance in order to assist the administration to better manage their services, while placing the citizens at the heart of their programs and strategies.

So, such missions imply that the Ombudsmen collaborators of such institutions represent the scrupulous mind of their institutions and to be fully aware of all the different Human Rights principles and the administrative procedures in order to be able, within the framework of an effective partnership, to realize the aspirations of the citizens who are duly entitled to be provided with good services, namely in the countries of the South of the Mediterranean which are facing the constraints of the high- paced technological evolution.

Therefore, we are urged, within the framework of the current session, to grasp all the aspects related to the role assigned to the institutions of Ombudsmen in the domain of simplifying administrative procedures and access to services, exchange of experiences and services in this respect.

**Ladies and Gentlemen,**

Finally, I would like to express my deepest gratitude to all the participants, including experts, collaborators and organizing staff of this session.

I hope that the present session, similar to the previous ones, be full of seriousness and free-handedness, and constitute a timely opportunity to advance enlightened ideas and achievable good proposals.

I wish you full success and profit in your works.

Thank you for your attention.

22 October2013



# الإحصاء للعام للدورة وأهدافها



السيدة فاطمة كريشمنسقة الدورة؛

رئيسة شعبو التواصل والتعاون والتكوين، مؤسسة وميك المملكة المغربية

## الإعلان العام للدورة وأهدافها

### الدورة التكوينية الرابعة لفائدة مساعدي أعضاء جمعية الأمبودسمان المتوسطيين

الرباط- أيام 22 و23 و24 أكتوبر 2013

إنسجاما مع أهداف مركز الـكـوـيـن والتبادل في مجال الوساطة والمتجالية في دعم وتوجيه إستراتيجية عمل مؤسسات الوساطة، والرفع من قدرات ومؤهلات العاملين بها، و تطوير معارفهم النظرية والمنهجية.

وتفعيلا لدوره كآلية علمية تساهم في توفير المعلومات والمعطيات الضرورية للقيام بالمهام المنوطة بمؤسسات الأمبودسمان في الفضاء المتوسطي ؛

ينظم هذا المركز الدورة الرابعة لفائدة مساعدي أعضاء جمعية الأمبودسمان المتوسطيين

حول موضوع: "دور مؤسسات الأمبودسمان في تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية".

وتتنوع مقاصد الدورة مابين تحقيق هدف معرفي، من خلال تقاسم معلومات و معارف معينة، أو تقديم ممارسات جيدة أو استقاء أخرى أو تحقيق أهداف منهجية و أساليب عمل جيدة يتم اعتمادها في مجال الوساطة بين الإدارة والمرتفقين..

ويأتي اختيار هذا الموضوع لعدة اعتبارات:

♦ تكمن أهمية المساطر الإدارية في كونها تعتبر أدوات لتنفيذ القوانين وممارسة الصلاحيات والسلطات المخولة للجهاز الإداري ويتم من خلالها تقديم الخدمات للمواطنين؛

◆ أن موضوع الدورة يدخل في صلب صلاحيات مؤسسات الأمبودسمان من خلال

القوة الاقتراحية التي تتوفر عليها للإصلاح الإداري وتكريس الحكامة الجيدة في المرفق العمومي ؛

◆ إن إشكالية تعقيد المساطر الإدارية وصعوبة الولوج إلى الخدمات العمومية تعتبر من السمات البارزة التي تؤثر على علاقة الإدارة بمحيطها، مما ينعكس على مصداقية الإدارة لدى المرتفقين.

◆ وحسب الاستنتاجات التي تم التوصل بها في هذا الموضوع، فقد تم الوقوف على

كون صعوبة الولوج إلى الخدمات العمومية ترتبط بإشكاليات متعددة المظاهر تتجلى في:

◆ تعدد المساطر الإدارية وتشعبها؛

◆ وجود مساطر معقدة و غير واضحة لدى المرتفقين؛

◆ هيمنة بعض السلوكات والممارسات السلبية في التعامل مع قضايا المرتفقين؛

◆ غياب استقبال جيد للمرتفقين .

وتؤدي هذه المظاهر وغيرها إلى اهتزاز الثقة وانعدام الشفافية في المرفق الإداري ، و

تفشي ممارسات سلبية كالرشوة واستعمال الشطط في السلطة .

من هذه المنطلقات، ستهتم دورتنا بدراسة المحور الأساسي عبر خمسة مواضيع فرعية

وهي كالتالي:

- الحصة الأولى: تقديم الإطار المفاهيمي للمساطر الإدارية (الفرق في القانون، بين قواعد المضمون وقواعد الشكل).

- الحصة الثانية: تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية: العراقيل والاستراتيجيات البديلة.

- الحصة الثالثة: تشخيص مهام مؤسسات الأمبودسمان بخصوص تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية وفقا للمقتضيات القانونية المنظمة لها.

- الحصة الرابعة: الإشكالات الكبرى المستخلصة من التطلعات في مجال تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية.

- الحصة الخامسة: الاقتراحات والتوصيات التي تصدرها مؤسسات الأمبودسمان في مجال تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية ومآلها.

وستعتمد منهجية العمل على مداخلات تمهيدية تقدم من طرف الخبراء التالية أسمائهم:

- الأستاذ محمد بن يحيى مستشار لدى السيد وسيط المملكة؛
- السيدة دومينيك دوفو، نائبة المدير العام بوكالة تبسيط المساطر الإدارية، بلجيكا- ممثلة عن منظمة التعاون والتنمية الاقتصادية؛
- السيد محمد نسيم، رئيس قسم بوزارة الوظيفة العمومية وتحديث الإدارة بالمملكة المغربية؛
- السيد آلبرت جونسون، رئيس قسم بالأمبودسمان البرلماني للسويد؛
- السيدة رالوكا تراسكا، مسؤولة الشؤون القانونية بالأمبودسمان الأوروبي؛
- السيدة ماريا روزاريو بينيلو، مسؤولة مكلفة بالتحري بالأمبودسمان البرلماني بمالطا.
- السيد كلافر كينراب هيد، رئيس قسم التحري، مستشار قانوني بالأمبودسمان البرلماني الدانماركي.

وستتبع هذه المداخلات بتقديم مختلف تجارب المؤسسات الحاضرة بخصوص كل

موضوع على حدة، في حين ستخصص حصص أخرى لدراسة حالات تطبيقية.

## **First Session:**

**Basics of administrative procedures  
(Distinction in law between the substantive  
and procedural rules, or form).**



**Expert : *Mr. Mohamed Benyahya,***  
Advisor of the Mediator of the Kingdom of Morocco.

## **I- Introduction générale**

- Définition de la procédure et du circuit administratifs [*Ensemble d'actes et de formalités par le biais desquels se réalise une action administrative en vue de la prise d'une décision déterminée et dont le respect en conditionne la validité*];
- Distinction entre procédure administrative contentieuse et une procédure administrative non contentieuse (*rareté de la codification des procédures non contentieuses*);
- Distinction en droit entre règles de fond et règles de forme et de procédures ;
- Effets de la distinction : autorité compétente (Pouvoir législatif et pouvoir réglementaire), principe de non rétroactivité, taxes et droits... ;
- Importance des règles de procédure : règles parfois déterminantes (procès, contentieux administratif et fiscal...) ou constituant l'instrument principal de travail des fonctionnaires et agents de l'Administration ;
- Confusion règles de fond et règles de procédures (ex. délai) ;
- Unicité de procédure et complexité des éléments ;
- Multiplicité des procédures et simplicité des éléments ;
- Recours abusifs aux commissions (périodicité de la tenue de ces commissions).

## **II- Problématique générale de la complexité des procédures**

### **A- Sources du problème**

- Complexité légistique et conflits de lois dans le temps ;
- Multiplicité des acteurs et intervenants ;



- Insuffisance en matière de décentralisation, de déconcentration, de délégation et d'organisation (complexité des organigrammes, dédoublement de fonctions, chevauchement des compétences, absence ou insuffisance de la description des postes...) ;
- Non actualisation des données ;
- Déficit de citoyenneté (comportement malhonnête des usagers notamment dans les pays sous-développés : *ex. cas de la légalisation de signature et de la certification de la conformité des copies à l'original*)

### **B- Instruments juridiques utilisés**

- Textes réglementaires (Formule classique : « les conditions et modalités d'application.....sont fixées par voie réglementaire ») ;
- Recours fréquent aux circulaires et notes administratives : valeur juridique ;
- Absence de contrôle parlementaire (sauf cas de procédures pénales et civiles) ;
- Difficulté du contrôle juridictionnel (notamment administratif) ;
- Procédures légales et procédures illégales (problème d'appréciation.

### **C- Conséquences de la complexité**

- Opacité des procédures et circuits et non transparence ;
- Pléthore des documents exigés et excès quantitatif ;
- Lenteur administrative ;
- Désorientation et lassitude des usagers ;
- Déception et renonciation aux droits ;
- Anéantissement des initiatives (notamment en matière d'investissement et de recherche) ;
- Relations conflictuelles Administration/administrés
- Incitation aux abus et excès de pouvoirs ;

- Prévarication et corruption.

### **III-Actions de simplification des circuits et procédures administratifs**

#### **A- Cadre institutionnel**

- Intégration dans la « réforme » ou la « modernisation » de l'Administration ;
- Institutions ou instances chargées de la simplification : Départements ministériels, Commissions *ad hoc*, Agences publiques spécialisées... ;
- Institutions contribuant à la simplification : ombudsman, médiateur, juge administratif, recherche universitaire [Institution du Médiateur au Maroc : *délégué spécial chargé du suivi de la simplification des procédures administratives et de l'accès aux services publics*].

#### **B- Méthodologie de travail**

- Mise en œuvre de mesures concrètes et pragmatiques :
  - Répertorier toutes les procédures dans un casier central accessible depuis un point unique par l'ensemble des usagers;
  - Eliminer les procédures et les pièces justificatives sans assise juridique, ou celles qui ne sont pas nécessaires à l'accomplissement d'une procédure ;
  - Harmoniser les modalités et les délais des procédures, notamment à travers la réduction des phases de traitement et des services opérationnels impliqués;
  - Standardiser et certifier les formulaires administratifs et élaborer des manuels de procédures ;
  - Promouvoir les guichets-uniques ;
  - Promouvoir l'utilisation des technologies de l'information dans les procédures, à travers la généralisation des services en ligne (téléservices publics) ;
  - Mettre à niveau et adapter les textes législatifs et réglementaires ;

- Veiller à l'application effective des mesures de simplification [ex ; de la CIN au Maroc : « *Article 7 de la loi n° 35-06 : La carte nationale d'identité électronique dispense de la production de l'acte de naissance, du certificat de résidence, du certificat de vie ou du certificat de nationalité dans toutes les procédures pour lesquelles ces documents doivent être produits* »] ;
- Procéder à l'évaluation et l'adaptation continues.

#### **IV-Conclusion**

- La simplification des procédures : une action permanente et intégrée ;
- Mise en exergue de l'évolution importante des actions et des acquis ;
- Responsabilisation de tous les acteurs y compris les usagers des services publics ;
- Implication rationnelle des institutions de Médiation et d'Ombudsmans : condition : indépendance et crédibilité.

## Second Session :

### تسليم المساهمات العراقيل والاستراتيجيات البديلة



الأستاذ محمد نسيم،  
رئيس قسم بوزارة الوظيفة العمومية وتحديث الإدارة بالمملكة المغربية

## المنطلقات

### التعريفات:

**المسطرة الإدارية:** هي مجموع الإجراءات والعمليات التي تقوم بها الإدارة لتقديم خدمة عمومية، بشكل تلقائي أو بناء على طلب من الغير، وفق شروط محددة من قبل ولها نقطة بداية ونهاية،

**المسطرة العمومية (القطاعية):** هي مجموع الإجراءات التي ترجع صلاحية تنفيذها إلى جهة إدارية واحدة،

**المسطرة الأفقية (ما بين قطاعية):** هي مجموع الإجراءات التي ترجع صلاحية تنفيذها إلى عدة جهات إدارية،

**المسار أو المسطرة المركبة:** هي مجموعة من المساطر الإدارية تتكامل فيما بينها من أجل تقديم خدمة عمومية.

### الإشكالية العامة لمنظومة المساطر الإدارية

تتأثر المساطر الإدارية سلباً أو إيجاباً بـ:

- ❖ النصوص القانونية والتنظيمية،
- ❖ الهياكل الإدارية وتوزيع الاختصاصات داخلها،
- ❖ مستوى تأهيل الموارد البشرية،
- ❖ تنظيم العمل،
- ❖ السلوك ونوع التواصل داخل الهرم الإداري،
- ❖ مستوى اعتماد التكنولوجيات الحديثة في التدبير الإداري.

- ❖ تكوين أطر إدارية متخصصة في تقنيات تدوين وتبسيط المساطر وإعداد الدلائل،
- ❖ القيام بدراسات ميدانية وتجارب نموذجية.

التكوين

إحداث إطار مؤسساتي للإشراف  
على تبسيط المساطر الإدارية

لجان قطاعية

لجنة مركزية

## تشخيص منظومة المساطر

- ❖ تدوين محدود للمساطر الإدارية،
- ❖ ضعف شفافية الإجراءات الواجب اتباعها للحصول على الخدمات،
- ❖ عدم التجانس واختلاف شروط الاستفادة من الخدمة العمومية،
- ❖ كثرة الوثائق المطلوبة حسب كل خدمة،
- ❖ طول آجال إنجاز الخدمة العمومية،
- ❖ غياب التنسيق ما بين الإدارات المتدخلة في الخدمة العمومية،
- ❖ غياب قنوات للحد من تجاوزات الإدارة،
- ❖ ضعف استعمال تكنولوجيا الإعلام والتواصل في إنجاز وتقديم الخدمة العامة.

### الانعكاسات

#### الاقتصاد

- تعطيل المشاريع الاقتصادية،
- ضعف الجاذبية الاقتصادية،
- هروب الاستثمارات،
- نشوء ممارسات سلبية.

#### الإدارة

- ارتفاع كلفة الخدمات العمومية،
- ضعف جودة الخدمة العامة،
- بيروقراطية غير منتجة،
- سمعة متدنية.

#### المرتفق

- كلفة زمنية،
- كلفة مادية،
- ضعف الثقة في الإدارة،
- انتقادات حادة للإدارة.

## المنهجية المعتمدة

تقوم المنهجية المعتمدة في إنجاز ورش التبسيط على ثلاثة جوانب:

- ❖ جرد المساطر الإدارية وتدوينها وفق نموذج محدد ،
- ❖ دراسة المساطر الإدارية وتبسيطها من طرف اللجنة المكلفة بتبسيط المساطر الإدارية، اعتمادا على مراجعة الجوانب التالية:

✓ التأكد من وجود سند قانوني للمسطرة؛

✓ الوثائق المطلوبة؛

✓ الآجال والرسوم ؛

✓ المتدخلين في المسطرة



❖ الإخبار بالمساطر الإدارية والتعريف بها.

### الحصيلة المنجزة

- ❖ جرد وتدوين ( 700 ) مسطرة إدارية، ودراستها وملاءمتها مع النصوص القانونية المحدثة لها،
- ❖ تبسيط بعض المساطر ذات العلاقة بالوثائق الشخصية للمواطنين، من قبيل اعتماد البطاقة الوطنية للتعريف الإلكترونية، التي أصبحت تغني عن عدد من الوثائق كشهادة الإقامة، رسم الولادة، شهادة الحياة ، وشهادة الجنسية،
- ❖ اعتماد بعض الإجراءات التبسيطية همت مجال مطابقة النسخ لأصولها، بتمكين المصالح الإدارية التي تطلب بعض الوثائق المطابقة للأصل بالقيام بإجراء المطابقة...
- ❖ إحداث بوابة الخدمات العمومية [www.service-public.ma](http://www.service-public.ma) لتمكين المرتفقين من التعرف
- ❖ على الإجراءات المرتبطة بعدد من الخدمات العمومية.
- ❖ إحداث مركز الاتصال والتوجيه الإداري للرد عن استفسارات المرتفقين، حول المساطر
- ❖ والإجراءات الإدارية. عبر الرقم الهاتفي 080.200.37.37 من داخل أرض الوطن، وعبر الرقم الهاتفي 212.37.67.99.06 من خارج أرض الوطن.

### الإكراهات

- ❖ غياب رؤيا استراتيجية للتبسيط،
- ❖ عدم إلتزام المصالح الإدارية بإجراءات التبسيط،
- ❖ غياب الكفاءات اللازمة لتدبير برامج التبسيط،
- ❖ عدم تجانس برامج التبسيط،
- ❖ عدم إشراك الإدارة المحلية في عملية التبسيط،
- ❖ غياب آليات لقياس الإنجاز.

### نحو مقاربة جديدة لتبسيط المساطر الإدارية

- ❖ أهداف استراتيجية:
- ❖ دعم جودة الخدمات العمومية،
- ❖ تحسين علاقة الإدارة بالمتعاملين معها،
- ❖ دعم الشفافية في الولوج إلى الخدمات العمومية.

## أهداف الاستراتيجية

تقليل العبئ الإداري على المرتفق	تحديث الإدارة	تحسين مناخ الأعمال
<ul style="list-style-type: none"> <li>- تقليل عدد الوثائق المطلوبة،</li> <li>- تقليل عدد المتدخلين في المسطرة،</li> <li>- تقليل آجال تقديم الخدمة.</li> </ul>	<ul style="list-style-type: none"> <li>- تحسين صورة الإدارة،</li> <li>- دعم جودة الخدمة العامة،</li> <li>- تقليل كلفة الإدارة.</li> </ul>	<ul style="list-style-type: none"> <li>- تحسين جاذبية المغرب الاقتصادية،</li> <li>- توفير بيئة إدارية ملائمة للمنافسة الاقتصادية،</li> <li>- تقليل فرص الرشوة.</li> </ul>

## الإطار المرجعي

### مقتضيات الدستور:

الباب الثاني عشر: الحكامة الجيدة

### الفصل 154 :

“...تخضع المرافق العمومية لمعايير الجودة والشفافية والمحاسبة والمسؤولية وتخضع في تسييرها للمبادئ والقيم الديمقراطية التي أقرها الدستور”.

### - الفصل 155:

- يمارس أعوان المرافق العمومية وظائفهم وفق مبادئ احترام القانون والحياد والشفافية والنزاهة والمصلحة العامة.

### البرنامج الحكومي:

- “إعادة الثقة للعلاقة بين الإدارة والمواطن:
- مواصلة تبسيط المساطر وتسيير الولوج إلى الخدمات الإدارية العمومية مع تركيز الجهود على المساطر الإدارية الأكثر تداولاً وذات الاهتمام الواسع والوقع المباشر على الحياة اليومية للمواطن والمقولة”.

## المقاربة الجديدة

### إعادة هندسة المساطر الإدارية

- ❖ إعطاء الأولوية لانتظارات المواطنين والمقولة؛
- ❖ الاهتمام بالمساطر الأكثر تداولاً من طرف المواطنين والمقولة؛
- ❖ اعتماد منهجية تشاركية ما بين الإدارات العمومية؛

- ❖ إضفاء الطابع الإلزامي لاعتماد المساطر الإدارية المبسطة؛
- ❖ اعتماد التكنولوجيا الحديثة في التدبير اللامادي للمساطر وتقديم الخدمات العمومية؛
- ❖ التعريف والتواصل حول المساطر المبسطة من خلال المواقع الإلكترونية للإدارات وموقع الخدمات العمومية [www.service-public.ma](http://www.service-public.ma)، ومركز الإرشاد والتوجيه الإداري.
- ❖ اعتماد برامج سنوية لتبسيط المساطر الإدارية

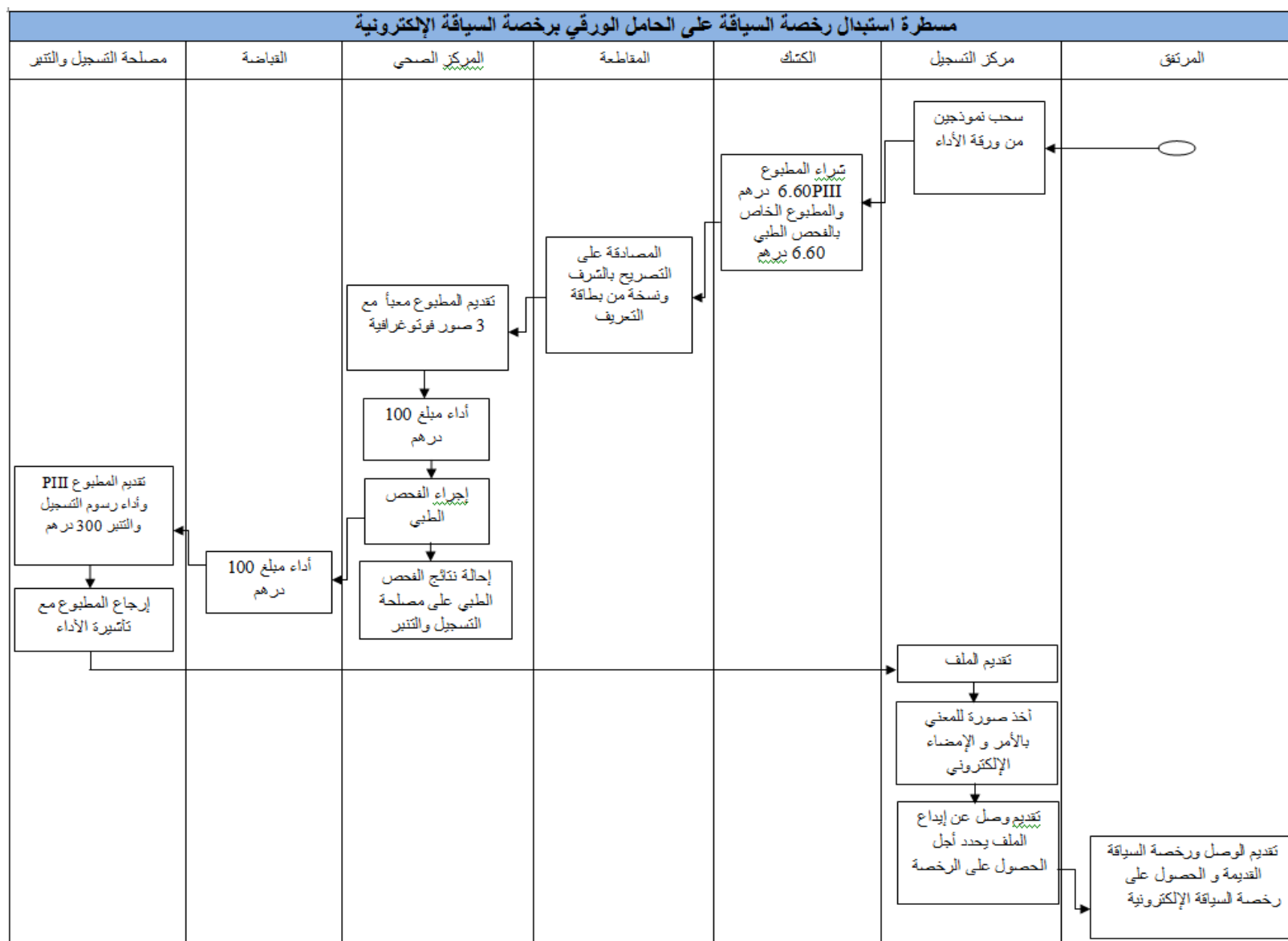
### برامج متعددة السنوات لتبسيط المساطر الإدارية

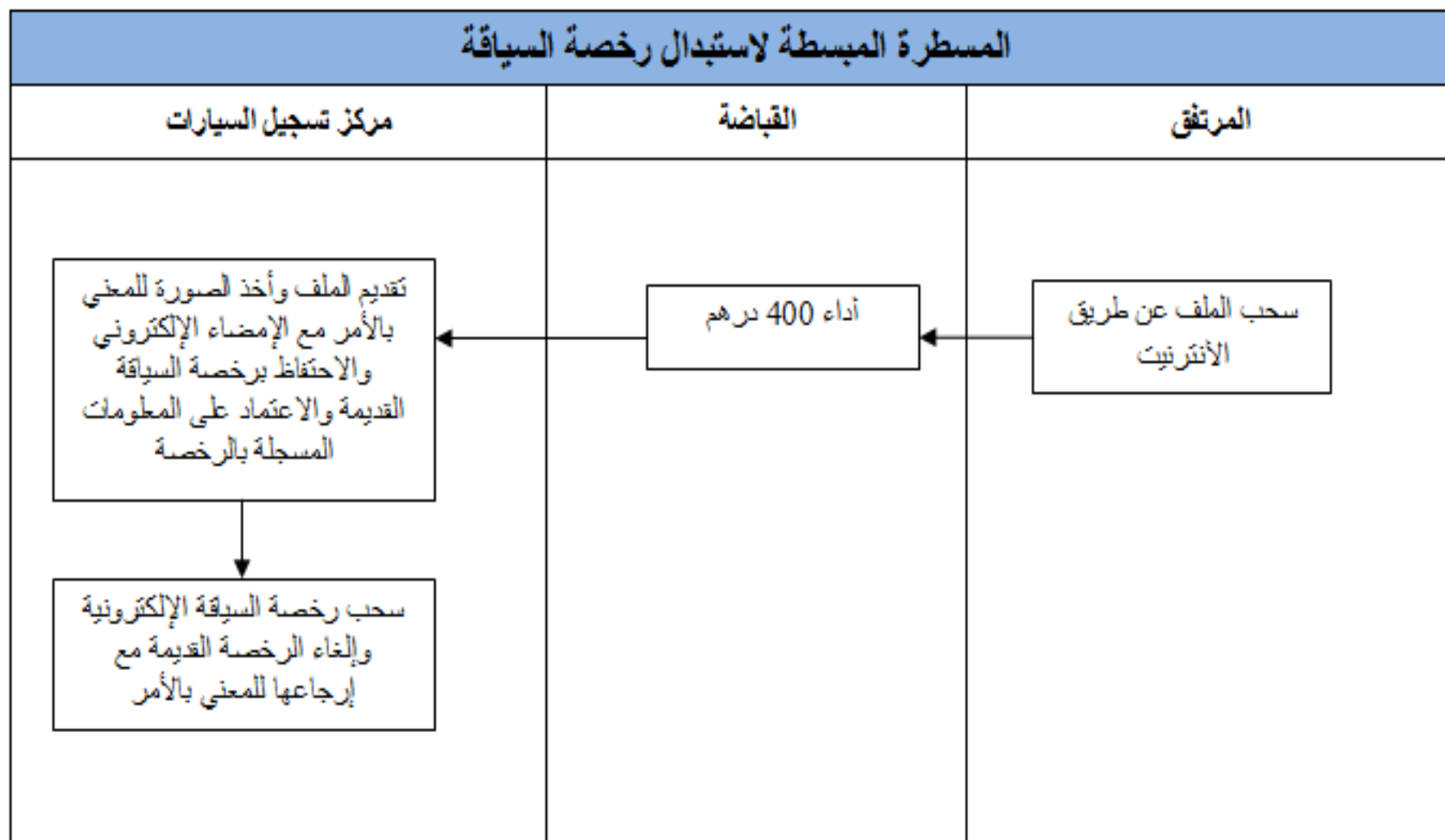
#### برنامج سنة 2013:

- ❖ تبسيط 100 مسطرة، منها 30 تهم المقالة و 70 تخص المواطنين،
- ❖ دعم كفاءات الموارد البشرية فيما يخص تقنيات تدوين وتبسيط المساطر الإدارية:
- ❖ تكوين 100 مكون من مختلف القطاعات الإدارية الأكثر تعاملًا مع المواطنين

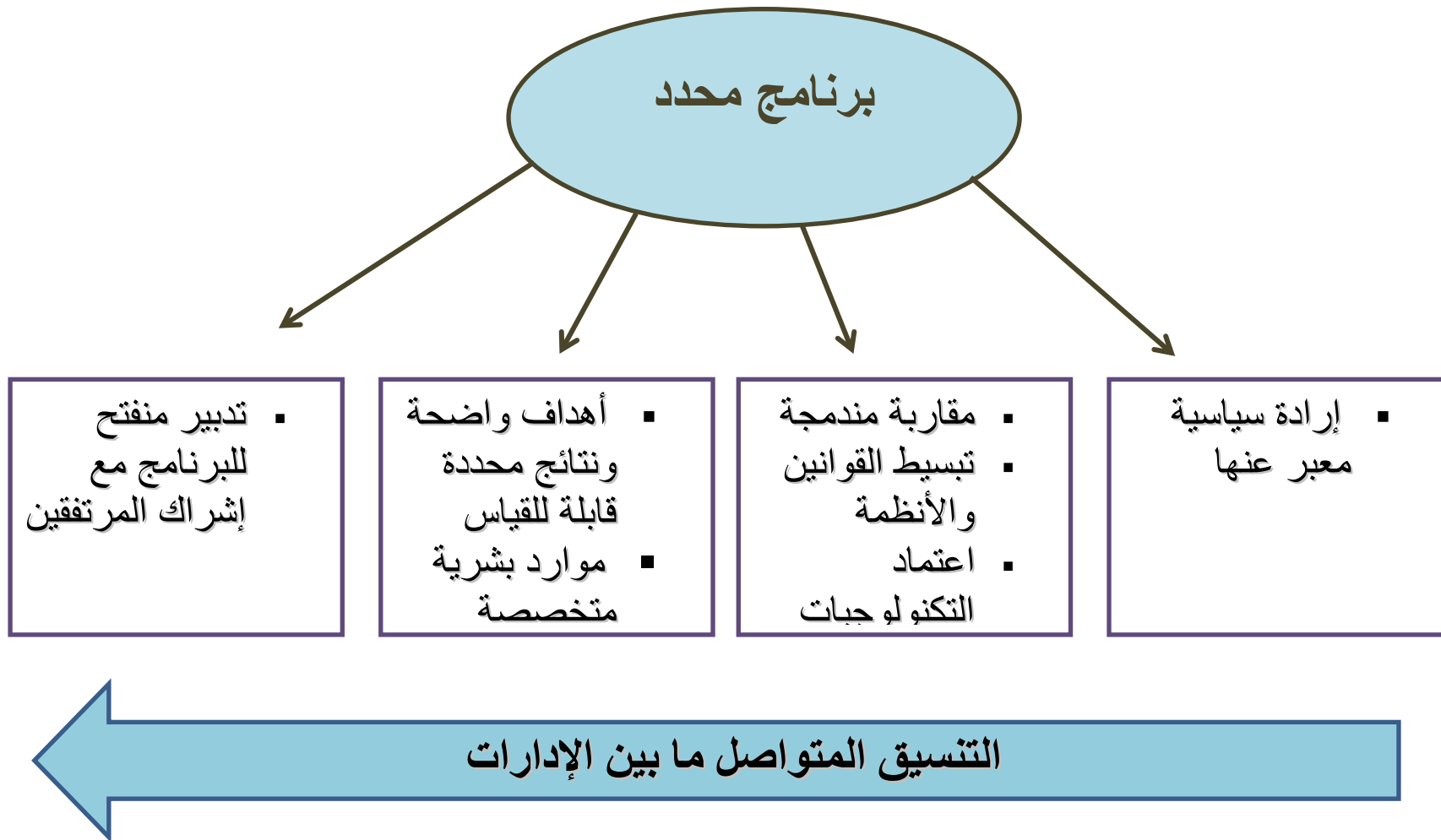
#### إحداث إطار مؤسساتي للإشراف على تبسيط المساطر الإدارية:

- ❖ ماسسة اللجنة الوطنية واللجان القطاعية لتبسيط المساطر الإدارية،
- ❖ تحديد اختصاصات اللجنة المركزية لتبسيط المساطر واللجان القطاعية،
- ❖ اعتماد مقارنة تقوم على تدوين وتبسيط المساطر ووضعها ضمن نماذج إدارية موحدة على الصعيد الوطني ومصادق عليها، تعتبر الصيغة الرسمية لكل مسطرة،
- ❖ إلزام الإدارات بإعداد برامج سنوية لتبسيط المساطر الإدارية،
- ❖ إلزامية الإشهار والتعريف بمختلف المساطر المعتمدة ووضعها على الخط.



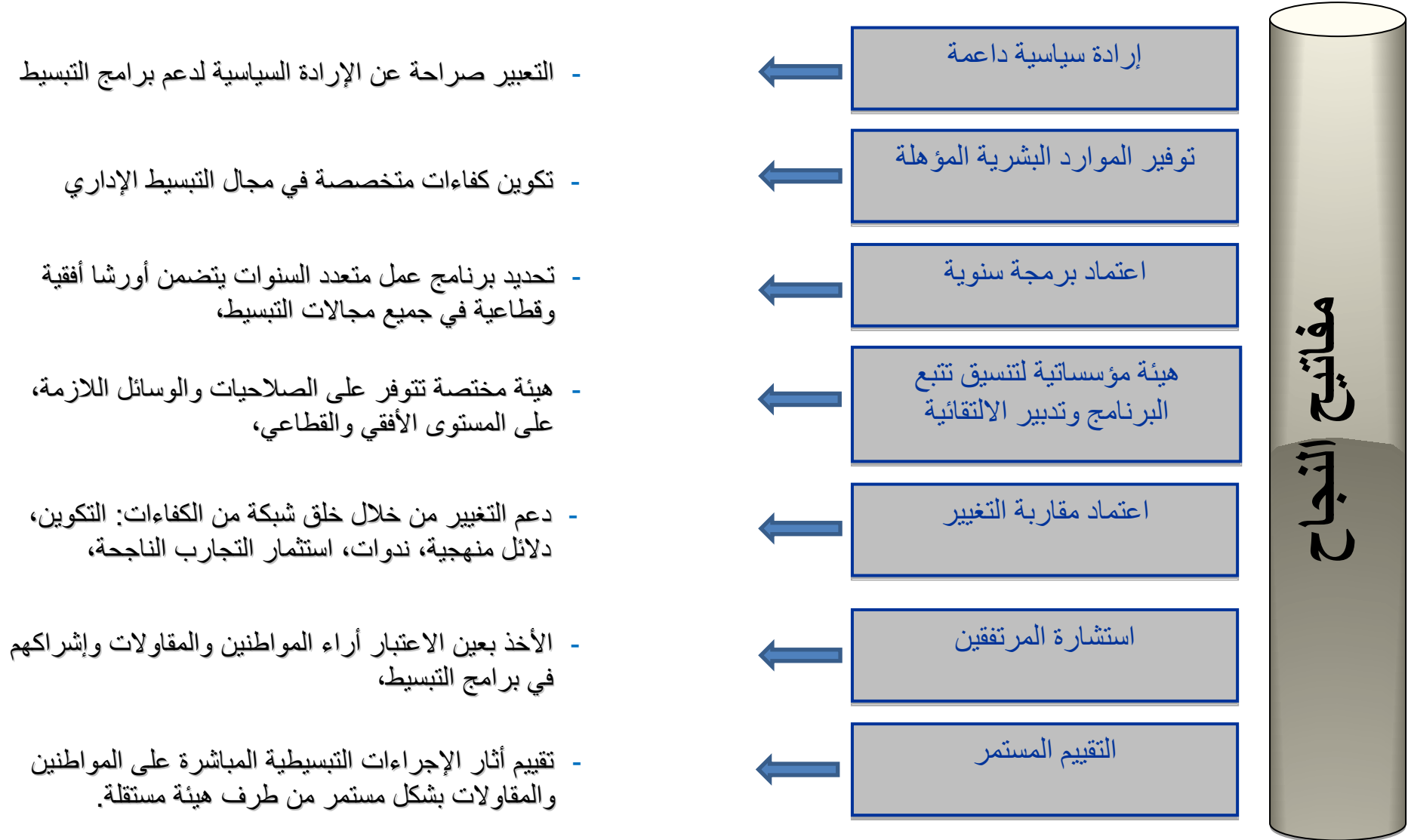


## شروط نجاح استراتيجية التبسيط





## مفاتيح نجاح برامج التبسيط



## رؤية شمولية لإعادة هندسة تبسيط المساطر الإدارية

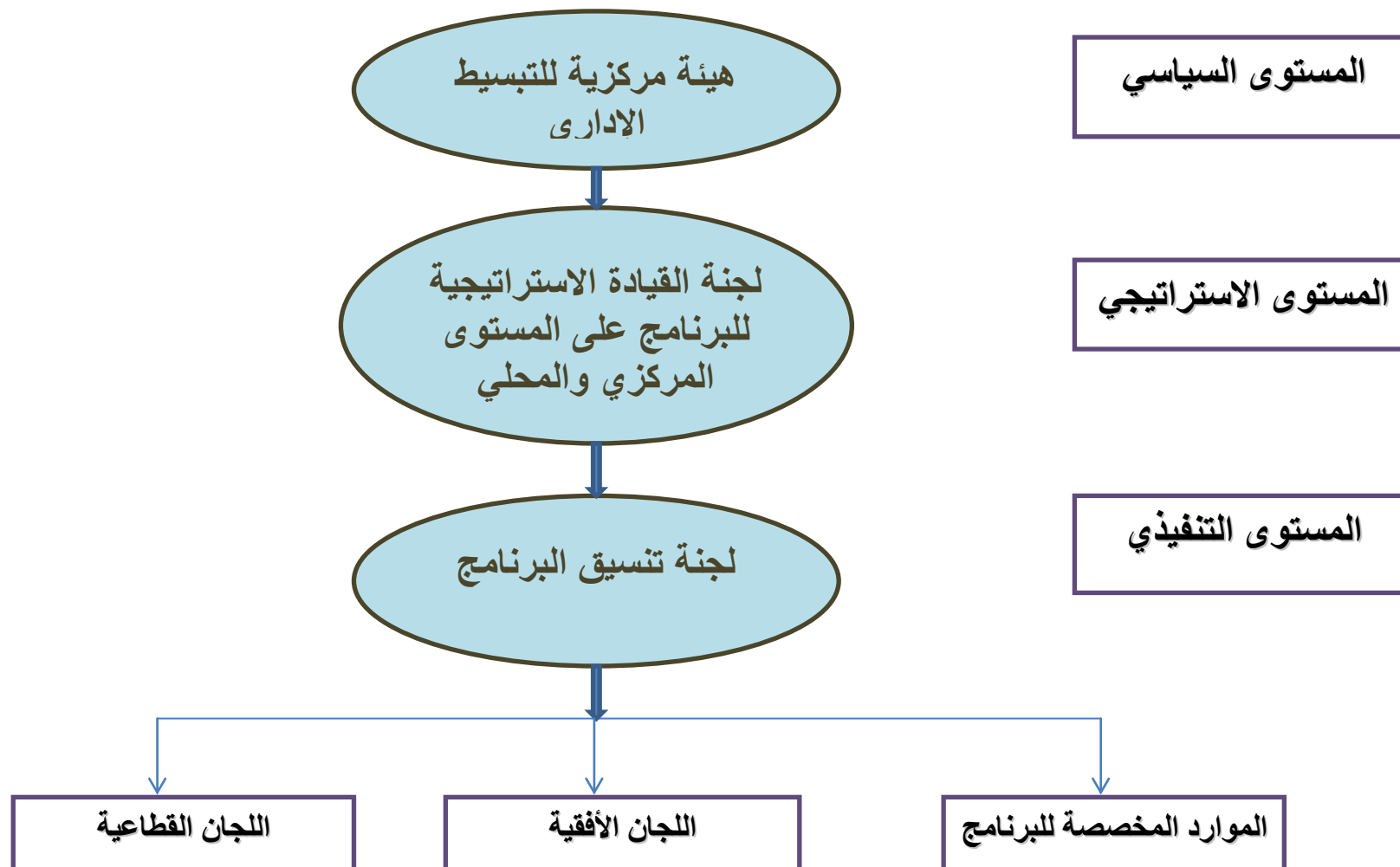
للتغلب على التعقيد الإداري لا بد من اعتماد رؤية شمولية واضحة الأهداف

### مداخل التبسيط

- استحضار هاجس التبسيط أثناء إعداد النصوص القانونية المنظمة أو المحدثه للمساطر الإدارية وإيلاء عناية خاصة لمستوى العبء الإداري المترتب عنها بالنسبة للمواطن والمقولة،
- تبسيط وتقليص الإجراءات التنفيذية للمسطرة،
- تبسيط وتقليص الوثائق والمطبوعات الإدارية،
- اعتماد منهجية موحدة للتبسيط،
- دعم التكنولوجيات الحديثة في تنفيذ الإجراءات المسطرية وتقديم الخدمات العمومية،
- استثمار التجارب الناجحة،
- دعم شفافية المساطر الإدارية وإشهارها والتواصل مع المواطنين والمقاولات حول حصيلة برامج التبسيط.

تبسيط المساطر  
الإدارية

## مشروع تصور لهيئات حكمة تدبير برنامج التبسيط الإداري



## **Second Session :**

# *Simplification administrative & accès au service public, stratégies*



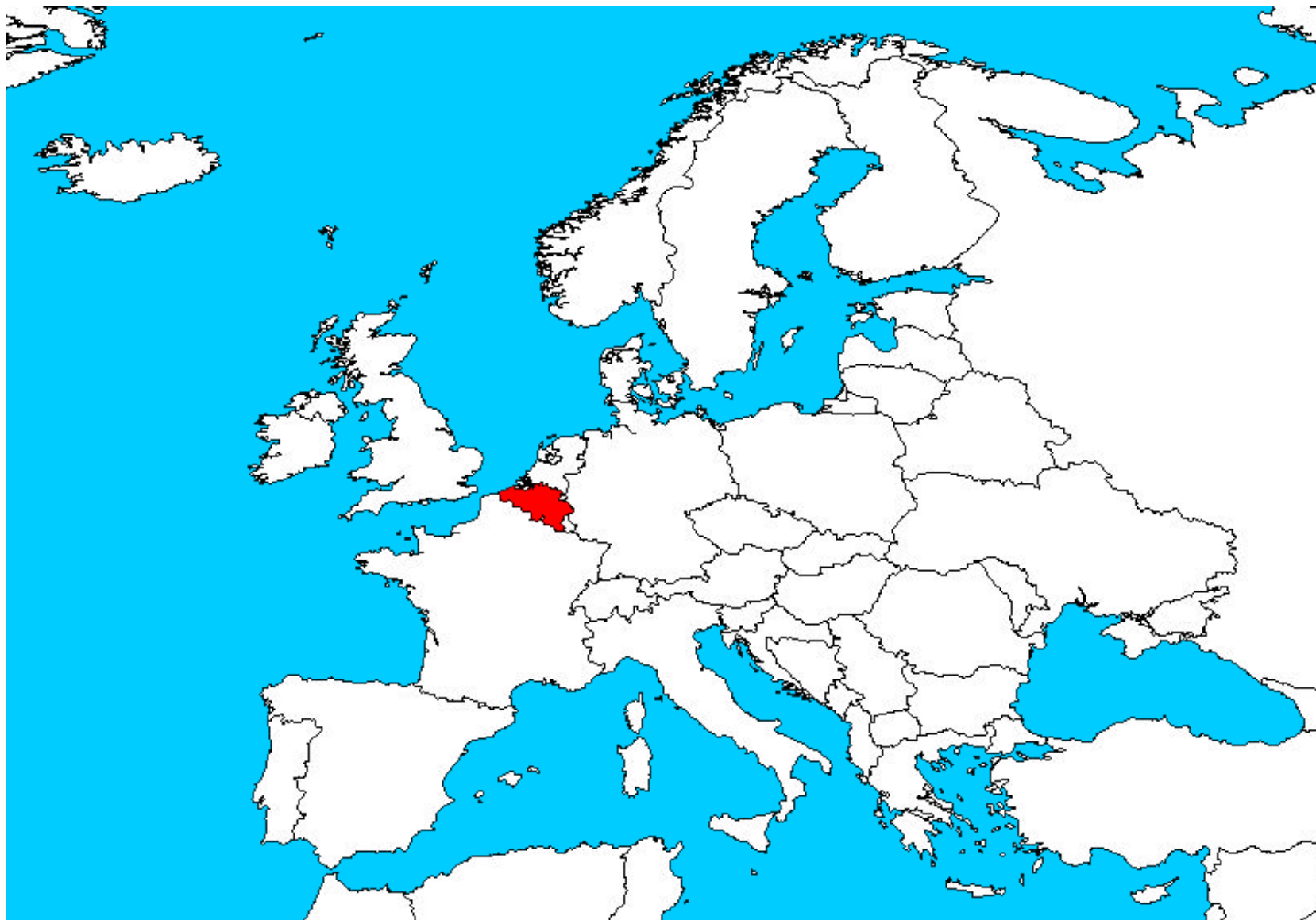
**Expert : Ms Dominique De Vos**

*Directrice générale adjointe*

# La Belgique en chiffres

- ✓ Population : 10.140 millions
- ✓ Superficie : 30.500 km<sup>2</sup>
- ✓ **Gouvernement fédéral +**
  - 3 régions et 3 communautés**
  - 1 Parlement fédéral +**
  - 5 parlements régionaux et communautaires**
- ✓ 10 provinces
- ✓ 589 communes
- ✓ 589 CPAS
- ✓ 196 zones de police, ....

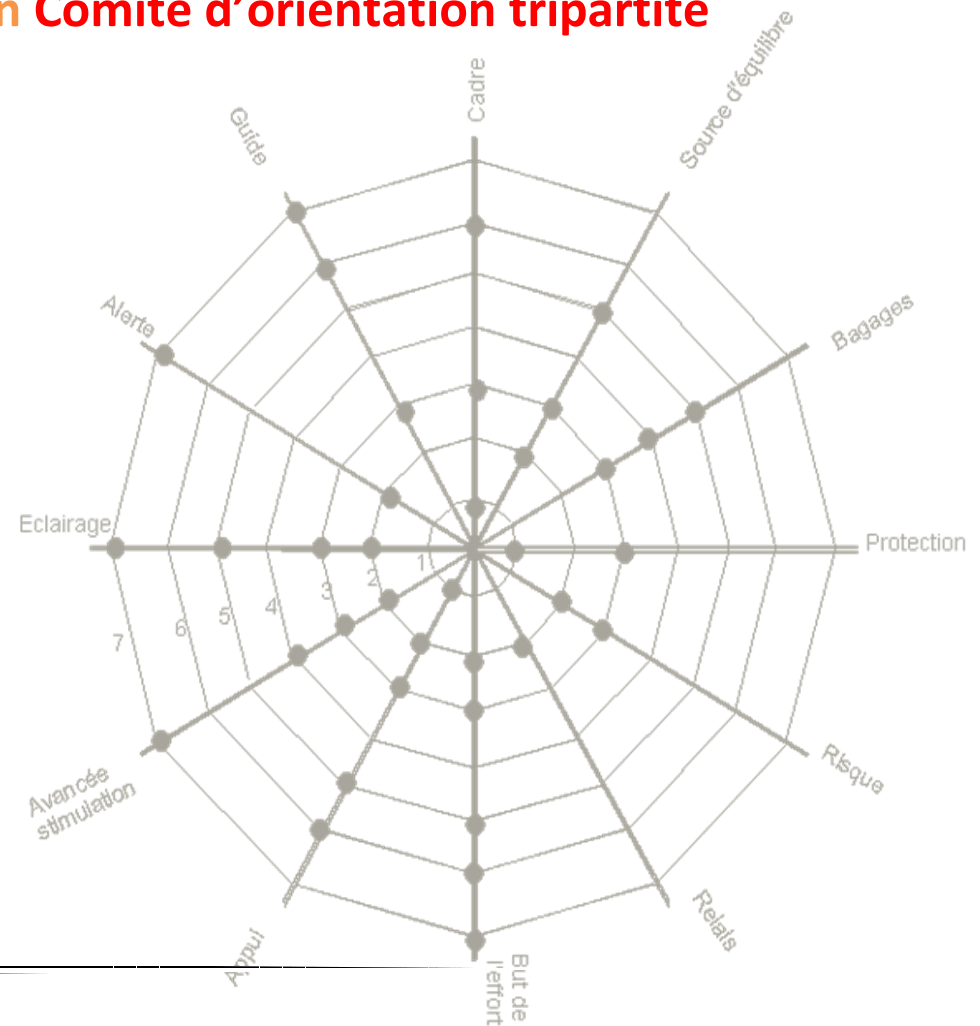




# Structure tentaculaire ...

- ✓ **Premier Ministre fédéral** + ministre **Budget**
- ✓ Agence Simplification Administrative **avec un Comité d'orientation tripartite**
- ✓ **Réseau** interdépartemental officiel
- ✓ Multiples **réseaux** fonctionnels, par projets
- ✓ Convention de **collaboration**

**Fédéral/Régions/Communautés/localités**



# Compétences de l'ASA

- Simplification administrative <1999
  - Initiatives partagées avec société civile
  - Partenaire E-Gov (fedICT)
- Amélioration de la réglementation <2014
  - Collaboration avec Parlement



## ...Missions globales de l'ASA...

- ✓ **Recommandations** d'actions
- ✓ **Stimulation** d'initiatives → Faire faire
- ✓ **Coordination** de services publics et partenaires privés
- ✓ **Plans/rapports** au Gouvernement, au Parlement, aux stakeholders
- ✓ **Evaluation** de la charge administrative des lois, procédures

= Consultant public avec obligation de résultat

## ...Contributions intégrées de l'ASA ...

- Projectmanagement
- Coordinations administrative & politique
- Planification, évaluation
- Rédaction de réglementations
- Elaboration de méthodes, outils standards, enquête, ...
- Pédagogie
- Communication



# Simplification Administrative ?

- ≠ Business Process Re-engineering (réorganisation)
- ≠ Dérégulation ou gestion réglementaire
- ≠ Communication en langage simple
- ≠ E-government

## MAIS

- ▶ contribuer à la réalisation des objectifs politiques en exigeant un minimum de charges administratives pour les citoyens et les entreprises

## ...Activités diversifiées de l'ASA

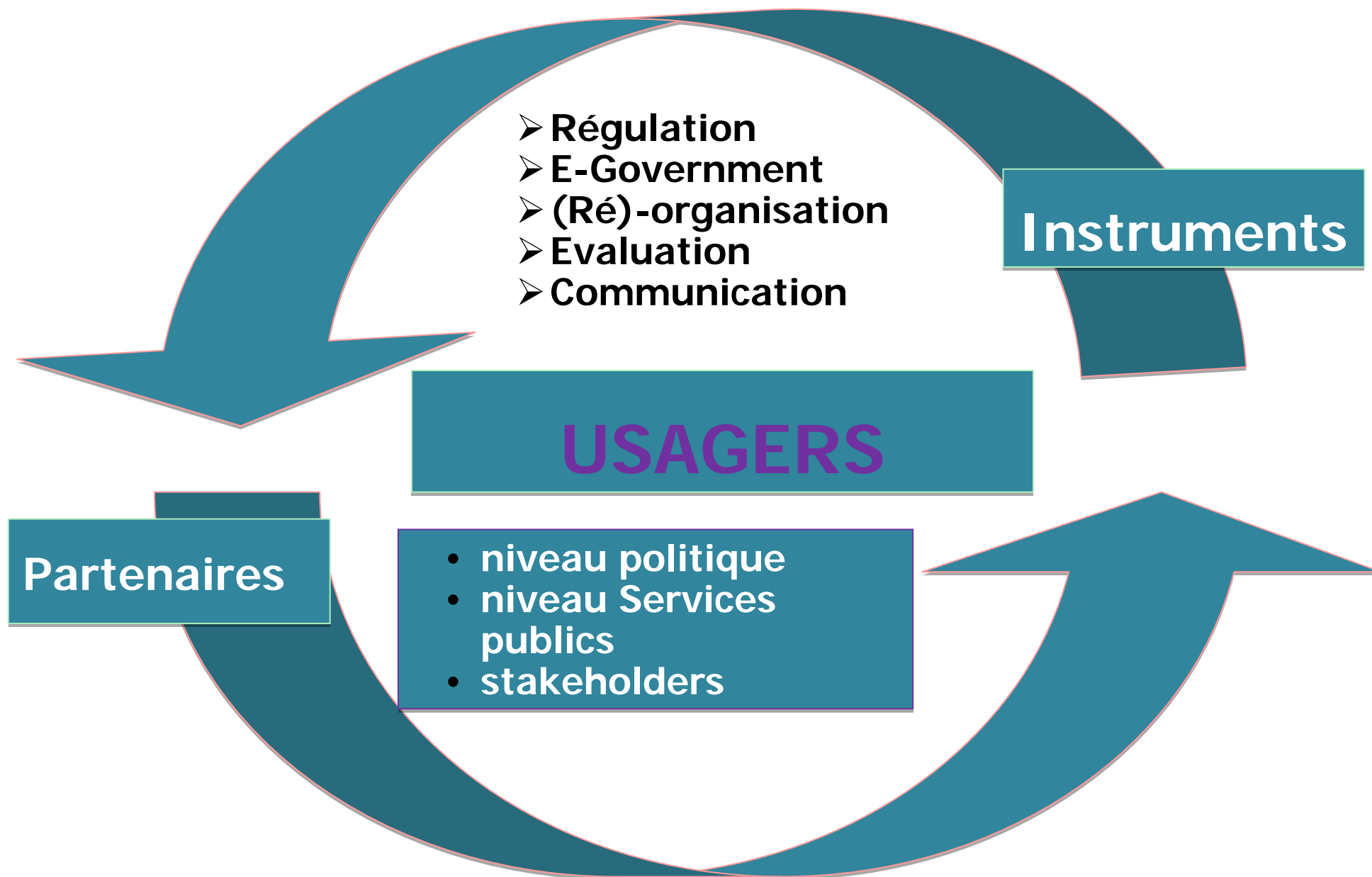
### ➤ **Equilibre** entre :

- projets concrets
- réformes pluriannuelles
- Projets **sélectionnés** par :
  - les entreprises
  - le Comité d'orientation
  - les messages des citoyens via Kafka.be
  - Recommandations des médiateurs
  - .....



# Médiateurs parlementaires (1995)

- Autorité indépendante # juge administratif
- Missions
  - Analyse les réclamations des particuliers >< exécutif
  - Propose des solutions consensuelles
  - Investigue sur le fonctionnement des SP
- Moyens
  - Persuasion / conciliation
  - Recommandation
  - Publicité (rapport annuel-études)
- Critères d'évaluation
  - Équité,
  - Contrôle de la légalité,
  - Bon fonctionnement administratif



## **1. Réglementation: simple et adaptée**

### ➤ **Principes :**

1. Abroger, si possible
2. Chercher des alternatives // aux procédures
3. Simplifier
4. Codifier

### ➤ **Evaluation :**

1. **Ex ante** : test Kafka = RIA simplifié axé sur S.A.

→ Réforme vers une AIR intégrée (01-01-2014)

2. **Ex post** : méthodologie de simplification

➔ un investissement à long terme ...

## **2. (Ré)-organisation**

- ✓ BPR : business process reengineering
- ✓ Approche orientée usagers, multidisciplinaire
- ✓ consultants comme intermédiaires
- ✓ Choix :
  - guichet unique central (physique et électronique)
  - accès multiples (éviter la fracture numérique)
  - intervention pro-active

## **3. E-government et simplification**

### ➤ **Principes :**

- Maximiser la simplification administrative
- Organiser, puis digitaliser
- “Only ask once” (récolte unique des données)
- Surveillance



➤ **Éléments clés :**

- Identification unique (clés d'accès)
- Base de données authentiques (RN, BCE, BCSS, Véhicules, ...)
- Réutilisation des données pour les besoins propres aux administrations
- Protection des données personnelles

## **FIL CONDUCTEUR**

- ✓ **Collecte unique de données**
- ✓ **Garantir la qualité des données**
- ✓ **Réutilisation par voie électronique**
- ✓ **Donner accès aux citoyens/entreprises**

### **Collecte unique de données**

#### **“Créer des registres avec mission de simplifier”**

- ✓ **Identification unique** des entreprises, des citoyens, des objets (numéro, données de base, ...)
- ✓ Services gestionnaires sont les sources authentiques
- ✓ **Obligation des ‘services client’ de réutiliser** les données des registres **pour leurs finalités propres** (statistiques, perception des taxes, autorisation, ...)
- ✓ **Obligation de corriger** les données **dans** le registre central (qualité)
- ✓ **Sécuriser les échanges électroniques** (no Big Brother)

### **Flux électroniques**

- ✓ Procédure création de sociétés (BCE // E- Dépôt)
- ✓ Déclaration de travailleurs (dimona→Limosa)
- ✓ Déclaration sociale multifonctionnelle (DMFA)
- ✓ Attestations sociales et fiscales
- ✓ Déclaration d'impôt (Tax on web)

- ✓ Facturation électronique
- ✓ Formalités centralisées auprès de guichets “uniques”, procédures sectorielles
- ✓ Marchés publics (Télémarc)
- ✓ Cadastre : vente de biens immobiliés
- ✓ Immatriculation des véhicules
- ✓ Statistiques

#### Flux électroniques : **avantages pour les utilisateurs**

- ✓ Fiabilité des données
- ✓ Consultations multiples des BD
- ✓ Rapidité des consultations
- ✓ Allègement de la gestion de documents papier
- ✓ Opportunités d'économies budgétaires

## **4. Evaluation ex post**

### **Mesures**

#### ➤ Enquête biennale (Bureau Fédéral du Plan)

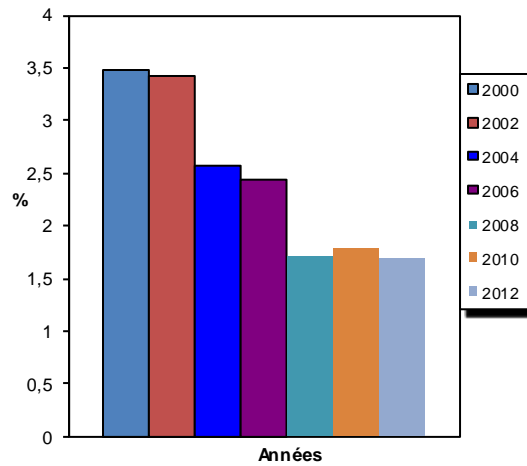
- ✓ niveau macro-économique
- ✓ Sondage qualitatif

#### Modèle Kafka

= **Standard Cost Model** EU, mais:

- ✓ Pas d'extrapolation
- ✓ Calcul potentiel /Effectif
- ✓ Mesure nette de toute la réglementation publiée
- ✓ Pas de ‘mesure zéro’
- ✓ Service à la carte

**Charges administratives en % du PIB**



#### Approche qualitative de l'enquête

➤ **Critères qualitatifs** (survey on AB) :

- Efficacité des services publics
- Qualités réglementaires
- Prioritisation des projets
- **Qualité des services publics :**

→ Les enquêtes révèlent une augmentation de la satisfaction des usagers

- **Qualité de la réglementation :** interprétation difficile

[dominique.devos@premier.fed.be](mailto:dominique.devos@premier.fed.be)

[www.simplification.be](http://www.simplification.be)

[www.kafka.be](http://www.kafka.be)

**TABLEAU 18 - Qualité de la réglementation selon le domaine réglementaire - en % des entreprises (entièrement) d'accord avec la proposition - Comparaison**

	Emploi					Fiscalité					Environnement				
	2000	2002	2004	2006	2008	2000	2002	2004	2006	2008	2000	2002	2004	2006	2008
Portée à votre connaissance préalablement à l'adoption	43	49	49	41	42	47	41	54	49	42	53	39	54	44	41
Facile à comprendre	26	23	25	30	32	18	25	26	30	30	32	25	23	37	33
Objectifs clairs	30	33	33	40	43	34	37	36	42	35	50	38	37	52	50
Suffisamment adaptée à toute situation	14	22	18	30	27	14	16	28	27	26	16	12	14	35	34
Portée à votre connaissance en temps utile	38	43	43	51	55	47	49	49	55	53	47	41	50	56	57
Cohérente l'une par rapport à l'autre	23	28	27	28	29	19	19	22	26	25	30	27	30	39	43
Accompagnée d'une info adéquate et suffisante	23	26	30	35	32	24	33	32	38	34	29	35	28	41	40

**TABLEAU 19 - Qualité des contacts avec l'administration selon le domaine réglementaire - en % des entreprises (entièrement) d'accord avec la proposition - Comparaison**

	Emploi					Fiscalité					Environnement				
	2000	2002	2004	2006	2008	2000	2002	2004	2006	2008	2000	2002	2004	2006	2008
Facile de savoir à quel service s'adresser	32	35	36	44	40	46	51	43	52	49	46	42	45	50	57
Facile de contacter le service compétent	31	38	37	37	36	47	39	39	43	39	52	48	43	58	61
Les réponses sont précises	51	43	52	52	55	36	47	57	56	56	45	41	45	57	61
Les décisions sont clairement motivées	37	41	42	48	48	35	41	44	48	49	43	39	39	52	56
La réponse est donnée dans le délai prévu	54	55	59	67	55	49	56	68	69	68	52	50	57	67	72
La réponse est identique quel que soit le contact	33	36	28	48	45	29	31	33	44	44	39	31	38	51	54
L'information fournie répond aux besoins	55	50	56	72	65	51	58	62	66	68	57	50	55	64	69

**TABLEAU 22 - Qualité des contacts avec l'administration selon le domaine réglementaire - en % des indépendants (entièrement) d'accord avec la proposition - Comparaison**

	Fiscalité					Environnement				
	2000	2002	2004	2006	2008	2000	2002	2004	2006	2008
Facile de savoir à quel service s'adresser	46	47	47	49	53	44	42	39	44	46
Facile d'entrer en contact avec le service compétent	46	48	45	42	51	41	41	37	47	42
Les réponses sont précises	46	51	52	55	59	47	40	37	51	55
Les décisions sont clairement motivées	39	43	48	43	52	40	35	31	43	50
La réponse est donnée dans le délai prévu	52	58	64	58	65	49	55	54	66	57
La réponse est identique quelle que soit la personne	37	45	47	45	58	48	45	42	52	44
L'information fournie répond aux besoins	53	57	56	63	63	51	42	50	59	62

**TABLEAU 21 - Qualité de la réglementation selon le domaine réglementaire - en % des indépendants  
(entièrement) d'accord avec la proposition - Comparaison**

	Fiscalité					Environnement				
	2000	2002	2004	2006	2008	2000	2002	2004	2006	2008
Portée à votre connaissance préalablement à l'adoption	39	41	40	35	45	51	39	48	49	42
Facile à comprendre	22	27	25	27	30	33	28	31	32	36
Objectifs clairs	28	39	34	35	39	44	39	40	39	50
Suffisamment adaptée à toutes les situations	23	31	33	23	30	24	20	27	24	28
Portée à votre connaissance en temps utile	57	49	45	52	60	54	42	40	45	52
Cohérente l'une par rapport à l'autre	29	33	34	30	35	32	27	34	30	33
Accompagnée information adéquate et suffisante	34	36	35	35	40	40	33	33	39	38

## 5. Communication

- Divulguer les objectifs, les résultats
- Communiquer les nouvelles procédures (utiliser des checklists, pas de long texte)
- Utiliser un langage adapté aux publics cibles
- Présenter une information globale/intégrée  
(site portail)
- Communiquer au niveau d'un programme (brandname = KAFKA)

## Menaces

- ✓ S.A. abstraite (objectif de réduction macro- économique, projets non concrets)
- ✓ Académisme & bureaucratie
- ✓ Peur du changement (rupture de l'équilibre droits/obligations; changements légaux)
- ✓ Absorption dans les programmes de e-Gov
- ✓ Leadership confus dans les projets horizontaux
- ✓ Corporatisme des partenaires
- ✓ Débat sur la protection de la vie privée

## Ingrédients nécessaires

- ✓ Environnement institutionnel favorable
- ✓ Missions globales ET centralisées
- ✓ Synergie entre les autorités, les administrations,

## les réseaux

- ✓ Implication des stakeholders
- ✓ Planification



- ✓ Budget
- ✓ Outils technologiques de communication
- ✓ Contact permanent avec les publics (citoyens et les entreprises)
- ✓ Culture de l'évaluation
- ✓ "Marque de fabrique" ...

### **Third Session:**

**CURRENT SITUATION OF THE COMPETENCES  
OF THE OMBUDSMEN IN THE FIELD OF SIMPLIFYING  
ADMINISTRATIVE PROCEDURES AND ACCESS TO PUBLIC  
SERVICES, ACCORDING TO THEIR REGULATORY LAWS.**



**Expert : Mr. Albert Johnson,**  
Head of Division, Parliamentary Ombudsmen of Sweden

## Parliamentary Ombudsmen

- Established through the 1809 constitution ...
  - ... and has existed for more than two centuries
  - Part of the Riksdag's supervisory powers
  - Now: four independent ombudsmen
- The ombudsmen
- Appointed by the Riksdag
  - ... and answer directly to the Riksdag
  - Autonomous, no ombudsman can influence any other ombudsman's cases
  - Each ombudsman is responsible for a number of public authorities and cases are allocated accordingly

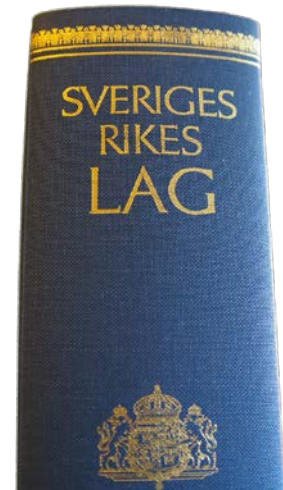


“Public power shall be exercised under the law” (Chapter 1: 1 Instrument of Government )

- The Ombudsmen check whether government agencies and their officials comply with laws and statutes and discharge their duties and also that individuals are treated correctly
- Judicial appraisal of how cases are managed – no opinion on the facts in a case

## Duties

- Supervise the application in public service of laws and other statutes (Chapter 13:6 Instrument of Government)
- Monitor the constitutional stipulation on objectivity and impartiality
- Ensure that the freedoms and rights of citizens are not encroached by official actions
- Safeguard the legal rights of individuals ...
- ... which is also what courts of law and regular supervisory agencies do



## Extra-ordinary agency

- Autonomous
- Not subject to directives
- Not obliged to investigate complaints – complainants are not party to the enquiry
- Do not take part in decision-making by public authorities
- Not a court of appeal
- Cannot change judgments or rulings
- Does not, on principle, make statements about the application of the law or appraisal of evidence in a court of law
- Cannot give orders to public authorities
- Not a mediator

## Other agencies

- National Audit Office
  - Under the Parliament
  - Use of public means
  - Efficiency
  - Reports
- Statskontoret

- Under the Government
- Recommendations for efficient work
- Reports
- The authorities themselves
  - High demands on efficiency
  - Cutbacks

#### Measures

- Advisory opinions
  - Criticism, proposed measures
  - Great media interest
- Request disciplinary sanctions
  - admonitions, salary deductions, etc.
- Judicial enquiries, prosecution
  - Suspected offences (mainly Chapter 20 of the Penal Code), malfeasance, breach of official secrecy, unauthorised access to data
  - Provisions of the Procedural Code
  - 4–5 judicial enquiries each year
  - One or two prosecutions each year
- Remedy legislative shortcomings
  - Application to the Riksdag or Government for legislative amendments or other measures

#### **Access to public services**

##### *Act on Public Administration:*

**Art. 4** Each agency shall provide information, guidance, advice and other such assistance to individuals in matters concerning the authority's field of work.

Assistance shall be provided to the extent that is appropriate to the nature of the query, the individual's need for assistance and the authority's field of work.

Questions from individuals should be answered as soon as possible.

If any individual inadvertently is turning to the wrong authority, that authority should help him to the right authority.

*Act on Public Administration:*

**Art. 5** The authorities shall receive visits and phone calls from individuals. If there are certain times for this, the public shall be informed of them appropriately.

The authorities must also ensure that it is possible for individuals to contact them by fax and electronic mail and the response may be made in the same way.

An agency shall be open for at least two hours every non-holiday Monday through Friday to receive and sign official documents and to receive requests to access official documents held by the authority. This does not apply if such a day is simultaneously Midsummers Eve, Christmas Eve or New Year's Eve.

### **Transparency**

- The Swedish Principle of openness: an official document is available to all, unless there, in a specific case, is a law that forbids it
- May still create difficulties for some authorities

### **Third Session:**

**CURRENT SITUATION OF THE COMPETENCES OF THE OMBUDSMEN IN THE FIELD OF SIMPLIFYING ADMINISTRATIVE PROCEDURES AND ACCESS TO PUBLIC SERVICES, ACCORDING TO THEIR REGULATORY LAWS.**



### **Experts :**

**Mr. Klavs Kinnerup Hede**

*Head of Inspection Division, Parliamentary Ombudsman of Denmark*

## **The Role of Ombudsman Institutions in Simplifying Administrative Procedures and Access to Public Services**

*“Current situation of the competences of the ombudsmen in the field of simplifying administrative procedures and access to public services, according to their regulatory laws.”*

### **The Danish situation**

1. The Danish Ombudsman – the role and general approach
2. Current trends in public administration in Denmark
3. The competences according to the Danish Ombudsman Act

### **The Danish Ombudsman – the role**

- Principle mission – to ensure that the individual does not have his or her rights infringed or is exposed to unfair treatment by public authorities
- No binding powers – “the power of persuasion”
- Influence based on respect by the public authorities – requires a certain approach

### **The Danish Ombudsman – the general approach**

- Approach characterized by
  - Recognition of overall high level professionalism and competences in the Danish public administration
  - Focusing on the “right issues” – making a difference – where and how can the ombudsman make a significant contribution?
  - Constructive comments and criticism
- The dual role of the “evil spirit” and the “good fairy” in relation to the public administration



## **Current Trends in Danish Public Administration**

Economic crisis - cuts in both central and local authorities, and a demand for:

- prioritization of core functions and services
- more efficient and simplified administration – case processing
  - Standardization
  - Centralization – “case processing-factories”
  - Fewer complaint handling bodies

Effects on the practice of administrative law - challenges

The Competences According to the Danish Ombudsman Act

Question: What are the competences of the ombudsman in relation to e.g. the call for simplifying administrative procedures?

“The competences in the field of simplifying administrative procedures and access to public services” – issues related to case processing and organization hereof

Section 21

- Assess whether authorities act in contravention of existing legislation, or

otherwise commit errors or derelictions in the discharge of their duties (Good Administrative Practice

## **Existing legislation**

- Stipulating the rights of the citizens to core services provided by the public administration
- Stipulating the rights related to case processing (Public Administration Act)
- Does not regulate the organizational issues concerning the case processing. However, existing legislation can be relevant when trying to simplify case procedures

## **Good Administrative Practice**

- Ethic-based - reflects the common understanding of what is decent, polite and reasonable in inter-human behavior, with the addition of ordinary common sense and some sense of order.
- A matter of transferring ordinary good behavior to the administration's case processing and behavior towards citizens.
- Partly relevant for issues concerning simplifying the case processing
  - Openness - accessibility
  - Efficiency, good routines, orderliness
  - Only general guidelines – no specific solutions

## **Conclusion:**

- The competences of the Danish ombudsman in the field of simplifying administrative procedures and access to public services, are very limited according to the Danish Ombudsman Act.
- The approach of the ombudsman is thus cautious, but also critical and constructive
- The role of the ombudsman is mostly “the evil spirit” that cautiously points at problems stemming from the aspirations of the public authorities to simplify their administrative procedures. However, potentially also a constructive adviser, the “good fairy”

## **Fourth Session:**

### **MAJOR ISSUES DRAWN FROM COMPLAINTS, RELATED TO SIMPLIFYING ADMINISTRATIVE PROCEDURES AND ACCESS TO PUBLIC SERVICES**



**Expert : Mr. Albert Johnson,**  
Head of Division, Parliamentary Ombudsmen of Sweden

- The Social Insurance Agency
- Maintenance support to a child
- (instead of Child support)
- Reimbursement from the non-paying parent
- Notifications had to be served
- The ombudsman initiated a change in the legislation

### **Public access on specific workdays**

- Amendment to Art. 5 of the Act on Public Administration
- Tradition that officials may take a day off on certain days close to public holidays
- Complaints to the ombudsmen that some authorities closed entirely on these days
- Ombudsmen's own practice: open for two hours for public access, especially the right to access public documents
- Many authorities were obliged to give an explanation
- The ombudsman made critical remarks and sent a copy of the report (NOT a formal proposal!) to the Government...
- ...that initiated a legislation process

## Fourth Session:

### **MAJOR ISSUES DRAWN FROM COMPLAINTS, RELATED TO SIMPLIFYING ADMINISTRATIVE PROCEDURES AND ACCESS TO PUBLIC SERVICES**



Experts: *Ms. Raluca Trasca, Legal Officer,  
European Ombudsman*

## **Major issues drawn from complaints, related to simplifying administrative procedures and access to public services**

Good afternoon, Ladies and Gentlemen!

I would first like to thank the Moroccan Ombudsman for the kind invitation to speak with you today.

I have been asked to give two presentations in the framework of the present seminar.

This afternoon, I will talk to you about major issues drawn from complaints, related to simplifying administrative procedures and access to public services. I'll focus my intervention on how the European Ombudsman contributed to simplifying administrative procedures and access to public services within the EU institutions.

Tomorrow, I will provide you with logical continuation of my today's presentation: an overview of the follow-up given to the European Ombudsman's proposals and recommendations in the field of simplifying administrative procedures and access to public services.

In my intervention today, after a general introduction focusing on the European Ombudsman's mandate and the right to complain to the Ombudsman, I will explore this subject from three perspectives:

*First:* lessons learnt from complaints as regards transparency issues

*Second:* major issues drawn from complaints in the context of the Commission's role in making sure that Member States implement Union law correctly, that is to say, the so-called "infringement procedure".

*Third,* learnt from complaints relating ethical issues

### **I Introduction**

At the outset, I will outline the role of the European Ombudsman. The office of European Ombudsman was created in 1993, as part of the citizenship of the Union.

The idea was to help bridge the gap between citizens and the Union's institutions. The European Parliament elected the first Ombudsman in 1995.

The Ombudsman has power to carry out inquiries into maladministration in the activities of the Union's institutions, bodies, offices and agencies, with the exception of the Court of Justice, when acting in its judicial role. He can act either on his own initiative or in response to complaints and is completely independent in the exercise of his duties.

Every citizen of the Union has the right to complain to the Ombudsman. Residents, companies and associations may also complain.

The concept of maladministration is particularly broad and includes all forms of inadequate or deficient administration. Specifically, there is maladministration when a body fails to act in accordance with the law, fails to comply with the principles of good administration or infringes fundamental rights.

If a complaint is justified, the Ombudsman seeks a friendly solution, whenever possible. This may involve a suitable remedy, such as changing a decision, offering an apology, or providing compensation. The Ombudsman cannot compel an institution to put maladministration right, but if an institution fails to comply with his recommendations, he can criticise it publicly. If the issue is serious enough, he may submit a special report to the European Parliament. The three aspects I have mentioned are not entirely separate from one another and the entry into force of the Lisbon Treaty has increased the degree of overlap, by giving the Charter of Fundamental Rights the same legal value as the Treaties.

As well as providing an independent and impartial service to complainants, the Ombudsman also works proactively to improve the quality of administration and to encourage full respect for citizens' rights.

## **II. The Ombudsman and transparency in the EU**

Few of the complaints that the Ombudsman receives concern violations of "traditional" human rights, such as protection of life, prohibition of torture, or freedom of religion. This is so mainly because the EU institutions do not exercise

the classic coercive powers of the national State. There are no Union prisons, for example.

In addition to containing civil and political rights, the Charter of fundamental rights also includes “second generation” social and economic rights. However, the proportion of complaints submitted to the European Ombudsman which concerns such rights is lower than that for most national ombudsmen. Once again, the reason for this is that EU institutions do not provide general public services such as education, health and welfare. Such issues tend to arise for us only in staff cases.

Articles 41 and 42 of the Charter guarantee the right to good administration and the right of public access to documents held by the EU institutions. These provisions, which contain illustrative examples of “third generation” rights, are at the core of the Ombudsman's activity.

Promoting transparency is directly linked to good administration and good governance because, without transparency, citizens cannot hold the EU institutions to account. How can citizens be empowered in relation to governing institutions if they cannot know what those institutions are doing and why they are doing it?

At first, the EU did not have rules on public access to documents. In late 1993, the Council of the EU and the European Commission adopted rules providing for public access to be given upon request to documents held by them, unless one or more specified exceptions applied.

Two own-initiative inquiries by the Ombudsman in 1996 and 1999 resulted in almost all the EU institutions adopting rules on public access to documents.

Moreover, on the basis of his experience dealing with complaints alleging lack of transparency, the Ombudsman participated actively in the debate leading to the adoption of Regulation 1049/2001, which is the Regulation requiring the European Parliament, the Council and the Commission to grant, on request, public access to documents in their possession.

The adoption of Regulation 1049/2001, the regulation requiring public access to documents, was a milestone in the development of transparency at the EU level.



Only a few years earlier, the EU institutions operated on the basis that confidentiality was the rule and that giving access to information and documents was a discretionary exception to that rule. Regulation 1049/2001 enshrines the opposite principle: openness is the basic rule and secrecy is the exception.

It should be noted that, as a result of the Regulation, the public's ability to monitor the exercise of power by the Union's institutions has perceptibly increased. The Regulation empowers citizens in relation to the flow of information: they can take the initiative to obtain information, in its original context, that has not yet been put into the public domain.

Moreover, the quality of the institutions' systems for managing and retrieving information and documents has improved, thereby enabling them to operate more efficiently and effectively, as well as more transparently

Over a decade later, the Lisbon Treaty provides for a legal right of public access to documents of all the Union institutions, bodies, offices and agencies.

Year after year, lack of transparency, or refusal of access to documents, have been the biggest reasons for complaining to the Ombudsman. The main issues raised in such complaints are:

a) excessive delay in dealing with request for access to documents. Under Regulation 1049, if an initial application is refused in whole or in part, or if the institution fails to answer, you can make a confirmatory application. If that is refused, or there is no answer, you can turn to the Court, or to the Ombudsman. One of the keys to good administration of this system is to minimise the number of cases where a document is released only after a confirmatory application. In order to do this, it is necessary to ensure that there are enough properly trained people to handle initial applications promptly and accurately. The other key to good administration is to avoid the need even for initial applications. That can be done by proactively putting into the public domain the documents and information that citizens want.

b) excessively expansive interpretations of the exceptions to public access; and

Let me provide you with a concrete example in this respect

In 2006, the Commission held consultations with key stakeholders concerning a proposal to reduce CO2 emissions from passenger cars. In this context, former Commission Vice-President Verheugen received several letters from car manufacturers, including three from Porsche AG. In March 2007, an NGO requested access to these letters. The Commission originally refused access, arguing that disclosure of the letters would undermine the protection of the company's commercial interests.

The Ombudsman's inspection of the documents established that these letters and/or their annexes, did not relate exclusively to the protected commercial interests. Therefore, the Ombudsman recommended giving access to the letters. The Commission asked for six extensions to the three-month deadline before finally accepting the recommendation. Although it informed the Ombudsman that it had decided to write to Porsche about its intention to disclose the documents, it has not yet done so. The Ombudsman has, therefore, sent a Special Report to the European Parliament, drawing its attention to the Commission's infringement of its duty under the Treaty to cooperate with him sincerely and in good faith. Subsequently, the Commission agreed to partially disclose the letters in question.

c) failures to have a public register of documents to facilitate the exercise of the right of access.

Applicants who are denied access to a document under Regulation 1049/2001 may either go to the EU General Court to seek the annulment of the decision refusing access, or turn to the European Ombudsman.

The right to a judicial remedy is, of course, a fundamental guarantee of the rule of law. The obvious advantage of going to court is that the outcome is a legally binding decision. As regards public access to documents, this means that the General Court can annul a decision refusing access, thereby obliging the institution holding the documents to review the request and make a new decision.

The Ombudsman's role is complementary to that of the courts: it provides an alternative remedy that applicants may use, if they consider it appropriate in their case. During 2012, the Ombudsman handled 84 cases which concerned transparency issues (requests for information and access to documents).

One main advantage of the non-judicial remedy that the Ombudsman represents is that she inquires into whether or not there has been maladministration. European institutions must respect the rule of law, so, if they act unlawfully, that is maladministration. However, principles of good administration require more of the institutions than merely avoiding unlawful behaviour.

Regulation 1049/2001 is primarily about dealing with requests for public access to documents. It is therefore, essentially, reactive rather than proactive in nature.

In this respect, in 2010 the Ombudsman received a complaint from an Irish citizen whose son had committed suicide after taking an anti-acne medicine. The boy's father asked the European Medicines Agency for access to adverse reaction reports linked to this medicine. EMA initially refused access, but finally accepted the Ombudsman's recommendation to release the reports.

In a related case, Danish researchers asked EMA for access to clinical study reports and trial protocols for two anti-obesity drugs. Again, EMA initially refused access, arguing that disclosure would undermine the drug producers' commercial interests. Eventually, however, EMA followed the Ombudsman's recommendation and released the documents.

In his draft recommendations, the Ombudsman pointed out to the Agency that, alongside its legal obligation to respond properly to requests for public access under Regulation 1049/2001, it should also, as a matter of good administration, be proactive in making, information available to the public, for example on its website.

Subsequently, the Medicines Agency announced a new transparency policy, aimed at giving the public much broader access to documents in its possession, including key documents relating to the evaluation of medicinal products.

The principle of transparency implies that every EU institution should proactively identify what information the public needs and then disseminate that information in a manner that the public can easily understand.

When the EU institutions are working in areas which are technically complex, such as the safety of medicines, it is especially important to present information in a language that can be easily understood by the public. The proactive efforts of the EU institutions to provide information will normally, therefore, involve the preparation and publication of new material, as well as the provision of access to existing documents.

In deciding what, when and how to publish proactively, the institutions necessarily have to exercise judgment based on their knowledge of the specific characteristics of their field of work.

It is worth noting that the Ombudsman's dialogue with the European Medicines Agency, which focused on good administration rather than simply complying with the legal rules, is not something which courts can do.

This example illustrates well how the Ombudsman's focus on maladministration, rather than on questions of strict legality, brings added value for citizens, when compared to the system of judicial remedies.

The implementation of the Lisbon Treaty and a legally binding Charter of Fundamental Rights marked a further step forward in terms of increasing transparency in the Union.

## **II. The Ombudsman and infringement complaints**

After lack of transparency, the next most important subject of complaints submitted to the Ombudsman concerns how the Commission carries out its role in ensuring the Member States comply with EU law.

The European Commission is empowered by the Treaties to ensure that Member States apply EU law fully (that is to say, the founding Treaties and all the secondary legislation). EU citizens enjoy legally enforceable rights under EU law (e.g. freedom of movement within the EU territory). The Commission supervises

how the Member States implement their obligations under EU law. If a Member States fails to fulfil its obligations under EU law, the Commission has the power to bring that Member States before the European Court of Justice and, eventually, to request the Court to impose fines on Member States in case of non-compliance.

Citizens have a strong interest in ensuring that the Commission carries out this role of "Guardian of the Treaties" correctly, given that failures by Member States to comply with EU law very often result in citizens' rights under EU law not being respected. Therefore, complaints alleging maladministration by the Commission in this role are a significant part of the Ombudsman's workload.

Let me elaborate.

The complainant is a Swedish national who, together with his Bolivian wife, resides in the United Kingdom. The complainant and his wife travelled to Spain, where his wife was refused entry and held in a cell overnight to be deported the next day. According to the complainant, the Spanish authorities stated that his wife was not holding a valid Schengen visa and that she did not have sufficient financial resources with her to allow her to enter the country. The complainant emphasised that his wife had a valid residence card as a family member, which had been issued by the United Kingdom. He added that they also had with them a certified copy of a valid marriage certificate. They were told that a valid Schengen visa for the wife could only be issued in Bolivia. In the reply provided to the Ombudsman the Commission confirmed that the complainant's wife should have been exempted from visa requirements, since she held a residence card issued by the UK authorities. The Commission also acknowledged that the Spanish authorities had wrongly transposed in the national law the requirements of the Directive concerning the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (namely, Spain only accepted residence cards issued by Member States taking part in the Schengen agreement, despite the fact that the Directive refers to residence cards issued by all Member States).

If a citizen is unhappy about how the Commission has exercised its supervisory role as "Guardian of the Treaties", he or she cannot bring the issue to the EU courts. As lawyers say, she or he has no "standing" before the court. In effect, the Commission has immunity from the judicial review of its actions in dealing with infringement complaints. This is why the Ombudsman's role in supervising the Commission is especially important in this area.

The case-law makes clear that the Commission has the right, but not the obligation, to proceed with infringement cases against Member States. Thus, even if the Commission were to take the view that a Member State is not in compliance with EU law, it is not obliged to take the case any further. For example, it is not obliged to bring a Member State before the Court, even if it takes the view that the Member State is not in compliance with EU law.

In this context, it is not surprising that the Commission reacted to the first inquiries by the Ombudsman by insisting on its discretion in such cases and by pointing out that complainants do not possess any specific procedural rights.

However, the Commission has come a long way since those early days. It has come to recognise that, even though it has no legal obligation toward citizens to account for its actions, it is good administration to take due account of the interests of citizens who make complaints to it about infringements of EU law by Member States. It therefore has agreed to register complaints it receives from citizens and to keep these complainants informed of the treatment of the case.

As regards undue delays in dealing with complaints, the Commission agreed that, within a maximum period of one year from the date on which a complaint is registered, there must be a decision either to close the file, or to send a letter of formal notice to the Member State.

The Commission has also indicated its willingness to inform the complainant of its intention to close a file and to inform a complainant as to the reasons why it intends to close the file. This means that complainants could respond to the Commission's point of view before it commits itself to a final conclusion.

The Ombudsman also encouraged the Commission to indicate to complainants, if it decides to close a case, what remedies may be available to them at the national level. These may include making recourse to the national courts, or to the national or regional ombudsmen.

While the Ombudsman's role as "supervisor of the Commission" does not limit the Commission's discretion, as regards managing infringement proceedings against Member States, his actions have empowered citizens by encouraging the Commission to account to citizens for how it exercises its discretion in this area.

#### **IV. The Ombudsman and ethics**

In the public sector, including the EU public administration, ethics seeks to address the fundamental issues relating to the core values which should guide the judgment of public servants on how to perform their tasks in their daily operations.

Nothing erodes faster than trust when citizens suspect unethical conduct in public administrations. However, the Ombudsman's role is not to fight fraud, corruption and other illegal conduct within the EU institutions. There is a special body which has that task as one of its functions; the European Anti-Fraud Agency, OLAF.

The Ombudsman is only marginally involved in such matters, because she can receive complaints from so-called "whistleblowers" who gave information to OLAF and who are dissatisfied with OLAF's response.

The Ombudsman's task is very different from that of OLAF's. Illegal conduct is rare among EU civil servants and that the mechanisms that are in place to prevent and detect such conduct are generally effective. The Ombudsman's role is rather encouraging and helping the EU administration to build on the basic foundations of lawfulness and honesty.

That implies that the Ombudsman has to do more than merely check that the administration is following the rules. Of course, it is important not to break the rules, but the Ombudsman constantly held that the EU administration can and should aspire to something better than merely saying "we followed the rules". Whenever possible, when dealing with complaints, the Ombudsman tries to



propose interpretations and solutions that are not imposed by legal provisions alone, but also take into account ethical standards.

Let me provide you with a concrete example, which will hopefully be useful for present purposes:

Avoiding conflicts of interest is an issue that concerns both law and ethics. There are countless rules defining conflict-of-interest issues in the public administration, and also in the private sector. They range from legal provisions to recommendations and guidelines. In 2008, an NGO, Friends of the Earth Europe, complained to the Ombudsman that two high-ranking European Commission officials had accepted VIP tickets from a sportswear supplier for the opening game of the Rugby World Cup in Paris in 2007. The complainants alleged that this could have resulted in a conflict of interest, since both officials dealt with anti-dumping cases in which the sportswear supplier could be interested.

In its opinion, the European Commission pointed out that it had already developed a set of rules and principles regarding ethics. The two officials had asked for permission to accept the tickets, and this had been granted in accordance with the existing rules.

Drawing inspiration from OECD recommendations on the matter, the Ombudsman took the view that, in order to maintain public trust and confidence in its activities and to protect staff from unjustified suspicion, the Commission should do its utmost to avoid not only actual conflicts of interest but also apparent conflicts of interest.

The Commission acknowledged that it would have been better not to have allowed the officials to accept the tickets and informed the Ombudsman that it was updating its internal rules relating to the acceptance of gifts. In this case, it is clear that the Commission did not infringe any legal provision and was under no legal obligation to review its rules. Nevertheless, it accepted the Ombudsman's proposal with a view to improving ethical standards.



Citizens also expect public servants to serve the public interest, to manage public resources properly on a daily basis, and to make individual decisions fairly. Fair and reliable public services and predictable decision-making inspire public trust. The integrity, transparency, and accountability of public administrations are prerequisites for, and underpin, public trust, as a keystone of good governance.

Trust depends on a belief in the integrity of officials, who are expected to conduct themselves in a manner that will bear the closest public scrutiny and will inspire confidence in their interlocutors.

The Ombudsman's role, therefore, is to assist the EU institutions in maintaining that essential trust. This can be achieved in various ways. The obvious one is by monitoring the institutions' conduct in particular cases brought to the Ombudsman by complainants.

In the last years, the Ombudsman received an increasing number of complaints concerning ethical issues. They range from the question of what gifts EU officials should accept to the issue of "revolving doors" whereby Commissioners or EU officials move to the private sector - or vice versa - thereby running the risk of creating conflicts of interest.

Among the most prominent cases was a complaint from an NGO concerning the membership of the European Central Bank's President in the Group of 30. The Group is composed of high-level representatives from central banks, international public financial bodies, private banks, and investment companies, as well as politicians and academics.

The NGO launching the complaint alleged that the independence, reputation, and integrity of the ECB were undermined by Mario Draghi's membership of the Group. The complainant qualified the Group as a lobbying vehicle for promoting private financial interests and called on the ECB to require Mr Draghi to leave the Group.

After analysing the Group's membership, funding, and aims the Ombudsman found the President's membership to be compatible with his role. However, he suggested

that, in the interests of transparency, the ECB's website should publicise the President's membership of the Group.

In consequence, transparency, coupled with principles and rules for ethical behaviour, are crucial in tackling these questions.

### **Conclusions**

Through complaints-handling, the Ombudsman had the opportunity to recommend courses of action that abide by the requirements of transparency in the activity of EU institutions. Greater access to information and documents and more open decision-making procedures contributes to enhance the Union's legitimacy in the eyes of its citizens. Citizens' complaints have led the Ombudsman to become involved in seeking both to improve the procedure for enforcement of EU law by the Commission and the ethical dimension of the EU public service.

## **Fifth Session:**

PROPOSALS AND RECOMMENDATIONS SUGGESTED BY  
OMBUDSMEN INSTITUTIONS IN THE FIELD OF SIMPLIFYING  
ADMINISTRATIVE PROCEDURES AND ACCESS TO PUBLIC  
SERVICES AND RESULTS.



*Experts : Ms. **Raluca Trasca**, Legal Officer,  
European Ombudsman*

## **Proposals and recommendations suggested by Ombudsmen institutions in the field of simplifying administrative procedures and access to public services and results**

Good morning, Ladies and Gentlemen!

This morning, I have been asked to speak about proposals and recommendations suggested by Ombudsmen institutions in the field of simplifying administrative procedures and access to public services and results.

My presentation will be mirroring the one that I made yesterday about major issues drawn from complaints, related to simplifying administrative procedures and access to public services. I will therefore focus on the European Ombudsman's experience, exploring the subject from the same three perspectives:

*First*, the Ombudsman's role in promoting proactive transparency;

*Second*, the Ombudsman's role in empowering citizens in the context of infringement procedures

*Third*, the Ombudsman's role in promoting ethical behaviour by EU public servants

### **I. Proactive transparency**

Good administration of the right of public access not only requires the institutions to react correctly to applications, but also to be proactive in making information and documents easily available to the public.

A proactive engagement with citizens and civil society should not be seen as a burden, which diverts an institution from its core business, but as an integral part of the core business of every EU institution. All of this represents major progress if we compare it to the times when transparency did not play a big role at the EU level.

Linking proactive transparency to the principles of good administration can provide guidance as to what steps should be taken in order to improve the public's right to access.

One of the Ombudsman's proposals is that each institution should have one or more information officers, charged with putting the right of public access into effect. They should ensure that applications are dealt with rapidly and that negative answers are properly grounded and convincingly explained. Information officers should also ensure that the institution has a proactive policy to put documents and information into the public domain. A related task would be to play an educative role, explaining not only the legal rules, but also their rationale and the benefits of working openly.

Another proposal put forward by the Ombudsman is the clear, pro-access drafting of the documents. It would be good administration for all documents to be drafted with a view to ensuring that citizens, organisations and businesses can have the widest possible access to them. If the document must contain confidential information, then the document should, as far as possible, be drafted so as to facilitate partial disclosure. That can be done by putting the confidential material in a separate section of the document, preceded by a non-confidential explanation of why the material is exempt from disclosure and, wherever possible, a non-confidential summary. If documents were drafted in this way, less time would be needed to deal with applications, fewer confirmatory applications would be needed and the institutions would be better able to respect the deadlines in the Regulation. In this context, the language used is also an important element: it should be plain and comprehensible. It must be recognised that efforts are already being made by the EU institutions. For instance, acknowledging that its policy papers tend to be quite technical and full of terminology that is not part of everyday language, the Commission is already communicating proactively through citizen's summaries of legislation explaining the issues in straightforward, non-technical language.

Obviously, if a document is already in the public domain it is unnecessary for the citizen and the institution to go through the administrative process of making and dealing with an application for access. The most effective and efficient method of access is, therefore, to make it unnecessary even to make an application, by

providing a useful, online register of documents and ensuring that the registered document is readily available through a link. An institution that regularly receives and accepts a large numbers of requests for access should examine seriously whether it could not learn to anticipate future requests and make documents available without being asked.

The EU institutions already make a vast number of documents accessible on-line. Further steps could be taken by making available the documents that people actually want and organising their availability in such a way that they can be found easily.

This means that the institutions need to ensure that information is collected, ordered, and stored in formats which make it discoverable and easy to release in real time. A user-friendly register of documents would be searchable and structured in such a way that it helps the user to understand the functioning of the institution. That means that the register should be based upon an analysis of the workflow in the institution and should be adapted quickly to take account of new and changing activities. Documents should be added to it promptly and updated on a regular basis.

## **II. The Ombudsman's role in ensuring citizens participation in infringement procedures**

Natural and legal persons have a strong interest in the effective application and enforcement of EU law. That interest partly accounts for the development of a customary practice whereby citizens send complaints directly to the Commission. The Commission encouraged this practice in 1989 by publishing a standard complaint form, which it updated ten years later.

The practice of complaint to the Commission has not been formally recognised either in the Treaty, or by Community legislation. Furthermore, whilst the EU courts allow individuals to bring actions against decisions of the Commission rejecting complaints in certain competition matters, the case law as regards infringement cases gives the Commission immunity from judicial proceedings and

denies complainants procedural rights enjoyed by complainants in competition proceedings.

The Commission relies on the above case law to support its view that the infringement procedure involves negotiation and compromise between itself and the Member State with a view to reaching a settlement and that secrecy is essential to promote an open and frank dialogue and mutual confidence between the parties. Against this background, it is not surprising that disappointed complainants began to turn to the Ombudsman.

The reaction of the Commission to the first inquiries by the Ombudsman was to insist on its discretion in such cases and to point out that complainants in infringement procedures do not possess any specific procedural rights, in contrast to specific sectors like competition or antidumping.

The Commission also argued that it had proceeded in accordance with the principles of good administrative behaviour by registering the complaints and keeping the complainants informed of the treatment of the case. Subsequently, the procedural position of complainants became the main focus of the Ombudsman's activities in relation to infringement complaints.

In January 2001, the Ombudsman proposed that the Commission should adopt a procedural code for the treatment of complainants, consistent with the right to good administration in Article 41 of the Charter of Fundamental Rights. The following year, the Commission responded by publishing its *Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law*.

The Communication recognises the customary practice of complaints to the Commission as guardian of the Treaty. This Communication was updated in 2012. According to the above communication, complainants do not have to demonstrate a formal interest in bringing proceedings; neither do they have to prove that they are principally and directly concerned by the infringement complained of. It goes on to offer a series of important guarantees as regards the handling of complaints.

The basic rule is that all complaints will be recorded in the central register of complaints kept by the Secretariat General. Complainants will be contacted after each Commission decision (formal notice, reasoned opinion, referral to the Court or closure of the case) and will be informed in writing of the steps taken in response to their complaint.

The Commission will, as a general rule, decide within one year either to issue a letter of formal notice or to close the case. Where a Commission department intends to propose that no further action be taken on a complaint, it will give the complainant prior notice in a letter setting out the grounds on which it is proposing that the case be closed and inviting the complainant to submit any comments within a period of four weeks.

The procedural safeguards contained in the Commission's Communication are entirely consistent with the Commission's discretionary power in the infringement procedure. One of the principles set out in the Communication itself is that '[t]he Commission may decide whether or not further action should be taken on a complaint.'

The main achievement of the Ombudsman's work in this field to date has been to persuade the Commission to commit itself to the procedural guarantees in its 2002 Communication on relations with the complainant and to respect those guarantees in practice.

These commitments do not narrow the Commission's discretion, but they do make a significant contribution to ensuring that the Commission is accountable for how it chooses to exercise that discretion.

### **III. Promoting ethical behaviour by EU public servants**

Through complaints-handling, the Ombudsman had the opportunity to recommend courses of action that comply with the principles of good administration and are inspired by the highest standards of ethical conduct. This *modus operandi* is the reactive function of the Ombudsman, that is, responding to complaints.



Nevertheless, the Ombudsman's contribution is broader than merely resolving individual cases. Ensuring good governance, in other words, the proactive function of the Ombudsman which entails proposing changes in the functioning of the administration, is, equally valuable. One of the most important courses of action of the Ombudsman consists in making ethical rules more visible.

Identifying and codifying the principles that should guide the professional conduct of civil servants in their relations with the public is necessary for two reasons: firstly, doing so enables officials to be fully aware of the rules they should abide by and apply when coming into contact with the public and points them towards the best administrative standards; secondly, it helps citizens understand exactly what they can expect from the administration.

These two considerations underpin the European Code of Good Administrative Behaviour, drafted by the first Ombudsman, and adopted by the European Parliament in 2001. The Code is an example of how legally binding rules can co-exist with ethical principles, as well as of how the Ombudsman can promote high standards of behaviour in the EU civil service through a non-legally binding text.

The Code contains a number of substantive and procedural principles of administrative law, such as the principles of lawfulness and proportionality, the prohibition of discrimination, the rights of defence and the duty to state grounds for decisions. At the same time, it contains requirements, such as courtesy, that are not legally enforceable.

The Code has had significant impact on the administrative culture of the EU civil service.

The experience with the Code has led the Ombudsman to the view that European citizens expect people working at all levels of the EU to behave in accordance with high ethical standards. Therefore, in 2011, he contacted the national ombudsmen within the European Network of Ombudsmen with an eye to obtaining information on national statements of ethical principles in public life. For the draft *Public*

*service principles*, he took account of best practices in the Member States and invited citizens, interest groups, and other organisations to submit comments.

In total, the Ombudsman received 54 contributions from individual citizens, organisations, associations, staff representatives, EU institutions, and other agencies and bodies. This input contributed to the document of “*Public Service Principles*” which identifies, in a succinct and easily understandable form, the ethical principles which EU civil servants should apply in handling EU matters and in their relations with citizens and users. The document identifies five Principles: commitment to the EU and its citizens, integrity, objectivity, respect for others, and transparency.

### *1. Commitment to the EU and its citizens*

Civil servants should be conscious that the EU institutions exist in order to serve the interests of the EU and of its citizens. They should be mindful of their position of public trust and set a good example to others.

### *2. Integrity*

Civil servants should conduct themselves in a manner that would bear the closest public scrutiny. They should not place themselves under any financial or other obligation that might influence them in the performance of their functions, including by the receipt of gifts.

Civil servants should take steps to avoid conflicts of interest and also the appearance of such conflicts. They should take swift action to resolve any conflict that arises. This obligation continues after leaving office.

In recent years, the Ombudsman received an increasing number of complaints about alleged conflicts of interest, a development which underlines the point that the public eye is getting more vigilant when it comes to ethical behaviour in this respect.

My approach to defining conflicts of interest draws on the work of the OECD. The fundamental idea is that the term refers to situations in which the private interests

and affiliations of a public official create, or appear to create, conflict with the proper performance of his or her official duties.

“Private interests” are not limited to financial interests, or direct personal benefit to the official. A conflict of interest may involve otherwise legitimate private-capacity activity, personal affiliations and associations, and family interests, if those interests could reasonably be considered likely to influence improperly the official’s performance of their duties.

The EU institutions cannot simply ask individuals to declare that they are not in a conflict situation. They can and should expect individuals to make full declarations of interest, but the institution itself needs to decide whether there is a conflict and if so how to deal with it.

Moreover, the institutions need to avoid giving even the appearance of a conflict of interest. It is not enough to say that there is no evidence of any actual impact on decision-making.

The Ombudsman's office is also dealing with an increasing number of what are commonly called 'revolving door' cases. This term is used to describe a move by public sector staff to closely linked jobs in the private sector, or vice versa and, ultimately concerns conflicts of interest.

Ex: The Ombudsman called on the European Food Safety Authority (EFSA) in Parma to strengthen its rules and procedures in order to avoid potential conflicts of interest in 'revolving door' cases. This followed a complaint from a German NGO, alleging that EFSA had failed to address a conflict of interest arising from the move of an EFSA Head of Unit to a biotechnology company.

### *3. Objectivity*

Civil servants should be impartial, open-minded, guided by evidence, and willing to hear different viewpoints. They should be ready to acknowledge and correct mistakes.

In procedures involving comparative evaluations, civil servants should base recommendations and decisions only on merit and any other factors expressly

prescribed by law. Civil servants should not discriminate or allow the fact that they like, or dislike, a particular person to influence their professional conduct.

#### *4. Respect for others*

Civil servants should act respectfully to each other and to citizens and express themselves clearly, using plain language.

#### *5. Transparency*

Civil servants should be willing to explain their activities and to give reasons for their actions. They should keep proper records and welcome public scrutiny of their conduct, including their compliance with these public service principles.

In a Special Eurobarometer, which the Ombudsman conducted together with the European Parliament, 42% of the persons questioned said that they were not satisfied with the level of transparency in the EU administration.

Furthermore, by far the most common allegation examined by the Ombudsman is lack of transparency in the EU administration. This allegation forms the basis for around one third of all inquiries every year and includes refusal of information or access to documents.

The above ethical principles have been brought together from various sources with the aim of presenting them in an easily intelligible form and with the intention of complementing existing instruments that contain general rules and principles governing the behaviour of civil servants. This statement of ethical principles complements these other instruments because, unlike them, it is neither legally binding, nor drafted with the idea that it could be made legally binding in the future. It is intended to help civil servants focus on the spirit in which the law and other applicable rules should be understood and applied, as well as serve as the starting point for reflection when a situation appears not to be covered by the law or other applicable rules.

In parallel, by clearly setting out the fundamental principles and values, which the behaviour of EU civil servants should reflect, the statement aims to promote citizens' trust in the European civil service and the institutions it serves.

## **Conclusions**

The European Ombudsman significantly contributed to simplifying administrative procedures by promoting proactive transparency within the EU institutions. In addition, the work undertaken in codifying the principles of good administration and ethical principles and making them more visible helps bridge the gap between citizens and the Union's institutions. Finally, the Ombudsman's work in the field of infringement complaints led in persuading the Commission to commit itself to procedural guarantees in relations with the complainants and to respect those guarantees in practice.

In the current economic context, it is important that the EU institutions gain and maintain the trust of citizens. Compared with national institutions, the EU institutions are faced with an added difficulty when seeking to gain and maintain the trust of citizens. EU institutions seem, for many citizens, to be distant and complex. That means they must work doubly hard to gain and maintain trust.

## **Fifth Session:**

PROPOSALS AND RECOMMENDATIONS SUGGESTED BY  
OMBUDSMEN INSTITUTIONS IN THE FIELD OF  
SIMPLIFYING ADMINISTRATIVE PROCEDURES AND  
ACCESS TO PUBLIC SERVICES AND RESULTS.



***Experts:** Ms. **Lucy Bonello**, Parliamentary  
Ombudsman, Malta*

The Institution of the Ombudsman which had its beginnings in Sweden and which, by time, has been adopted throughout the world, has its primary role to safeguard the citizens. As the Ombudsman is the guardian of correct behaviour his function is to make sure that the administration in Government entities is according to law and in the case of deficiencies he has to see that defects in the administration are either rectified or eliminated by several methods of enforcement.

In Malta, the Parliamentary Ombudsman, as many others in different parts of the world, enjoys an amount of independence while forming part of the system of administrative law as the watchdog over the authorities and entities by scrutinizing the performance of the latter and putting pressure to rectify the injustice or the defective administration practice. In this way, the Ombudsman reassures the citizens that, in the case of their being unjustly treated, the investigation that his Office carries out will offer a good solution to their complaint by having their claim withheld or by proving their suspicions groundless.

In 2004 the then Maltese Ombudsman had published a guide to standards of best practice for good public administration which document was updated in March 2009 by the present Ombudsman by “The Guidelines for Good Governance”. In the latter the Ombudsman elaborated on:

- a) “The national commitment to promote best practice in public administration”; and
- b) “The right to good administration: basic principles and their practical application”.

This opens the way to an efficient administrative procedure which ensures regularity and consistency in the handling of individual cases by which the rights of citizens are safeguarded.

In the course of the investigation carried out by the Office of the Parliamentary Ombudsman of Malta there has been a number of cases in which the proposals and

the recommendations suggested by the Ombudsman has led to simplifying administrative procedures and access to public service and results.

### **Simplifying administrative procedures**

In this section I shall quote a number of cases because of which the administrative procedure has been either altered or simplified. The cases are the following:

1. The case against the Directorate for Educational Services in connection with matters relating to the school transport provided by the same Directorate.
2. A number of cases wherein the complainants lodged their complaint against Enemalta Corporation because of power surges.
3. The case against the Department of Social Services owing to the refusal to renew the Invalidity Pension allowance.
4. Cases against Transport Malta because of damages caused to vehicles owing to either bad roads or to failure to indicate that road repairs are being carried out.
5. Cases in connection with “Promotion Exercises” of the “Rank and File” in the Army of Malta.
6. Cases wherein the Officers in the Army of Malta lodged their complaint regarding where and how to make their complaints.

#### **1. The Case against the Directorate for Educational Services in connection with matters relating to the School Transport provided by the same Directorate:**

Complainants, who were parents of children whose age varied from 3 to 8 years and who attended a Primary School in one of the villages in Malta, complained that the Head of the School had informed them that the main gate would no longer be open before school hours which was at 8.30am.

According to a directive by the Union the main gate of the school would not have been opened before school hours. This meant that no supervision was going to be available in spite of the fact that the school transport which was provided by the Directorate for Educational Services took children to school earlier than 8.30am, and no teacher was willing to shoulder responsibility of the supervision.



Nothing could be done by the Directorate about the transport since according to the contract the driver could pick up the children one hour before school commences. However, some parents had volunteered to supervise the children but, since the number was not enough, the headmaster refused.

The Ombudsman remarked that the situation was unthinkable and could not be tolerated any further because it was heading to a tragedy. Besides, this was a problem that involved all Government schools in Malta and Gozo. The Ministry of Education insisted that children become the responsibility of the authorities only once they enter the school grounds. Prior to that, the parents are responsible for them. However, the Ombudsman sustained that once the children boarded the buses provided by the Educational Authorities, responsibility is shifted from the parents to the authorities.

The Ombudsman added that the decision of the Head of Schools to refuse to open the gates before the start of school and to close them immediately after closing time is unreasonable and contrary to the rules of good administration.

Therefore, the Ombudsman recommended that all obstacles had to be overcome and solutions to be found by all concerned before it was too late owing to all the dangerous perils that the children were being exposed to in the road. Finally, the Ombudsman added that this Opinion was of general public interest and acted in this respect.

## **2. A number of cases wherein the complainants lodged their complaint against Enemalta Corporation because of Electric Power Surges:**

A number of complainants from different parts of Malta had lodged their complaint for compensation from Enemalta for damages suffered as a direct result of power surges throughout which seriously damaged either the electrical installation of some or household electrical appliances and electronic equipment of others. In one particular instance when power was restored following the second power blackout the surge was so over-powered that it melted half of the circuit cable of a particular complaint's residence welding it to the piping system.

The repairs of damages involved considerable expense and varied from one complainant to the other and, where the Enemalta Corporation was requested to pay compensation for the said damages, it refused to accept liability stating that the power cuts on the dates in question were totally beyond their control and quoted a particular section of Enemalta Act in support of their disclaimer. The Ombudsman requested the Corporation to determine its policy in the light of the stand that the European Union takes for consumer protection in this particular area and to measures taken by competent authorities in other countries. Considering that the merits of such claim against Enemalta are often of a technical nature, the Ombudsman proposed the setting up of an independent board to examine cases where damages were incurred by power surges.

The attention of the Ombudsman was focused on Article 3 Paragraph 13 of EU Directive 2009/72/EC concerning common rules for the internal market in electricity which states that “*Member States shall ensure that an independent mechanism such as an Energy Ombudsman or a Consumer Body is in place for an efficient treatment of complaints and out of court dispute settlements*”. On the other hand, Enemalta Corporation maintained that the independent mechanism required by the Directive could be satisfied through mandatory arbitration. The Ombudsman considered mandatory arbitration as “*costly, time-consuming, confrontational and adversarial*” and, its being a judicial process, it cannot be considered a process before an independent body to attempt to reach an out of court settlement.

The Ombudsman deemed that “*Corporations providing a service should be accountable for their actions*” and “*... should be prepared to reimburse customers for damages suffered through negligent actions, or inaction, undue delay or outright inefficiency*”. According to the Ombudsman “*it is about time that public authorities and corporations in Malta recognise this new culture that has thankfully taken root in the European Union and that is finding its way in the public administration and sanctioned by the case law of our“ (maltese) ”Courts*”.

Finally, it had been recommended that complaints, arising from any sector provided by Enemalta Corporation and received by the Parliamentary Ombudsman, should, in the first place, be referred to the Malta Resources Authority for investigation and determination. However, Enemalta stated that the Corporation has an internal disciplinary Board which is independent and whose decision is final and is implemented and consequently proposed to establish an Enemalta Advisory Panel composed of a lawyer as Chairman, an engineer and an accountant.

Following a number of corrective suggestions by the Office of the Ombudsman it was then settled how Enemalta Corporation was to set up the Panel in question. The object of the is Panel was to see to the pending cases and all other complaints that would follow in connection with the settlement of claims by consumers on the level of service provided by the Corporation both regarding billing and also in regards to claims for damages resulting from faulty service. The Ombudsman had recommended that all the complaints in question and all other future ones in connection with the above should be referred to this system.

### **3. Cases against the Department of Social Services because of the refusal to review the Invalidity Pension.**

A number of pensioners whose renewal of their Invalidity Pension had been refused made complaints to the Office of the Ombudsman to have their pension renewed once more. These pensioners were originally examined by a medical board and given a period of time, normally three years, at the end of which they had to submit their claim for renewal.

The Department of Social Services was in the process of fine tuning the methods and reasons for application for an Invalidity Pension. Therefore the Department was reforming the system which enlisted a number of illnesses and ailments by which pensioners could qualify for the Invalidity Pension.

This resulted in a number of pensioners whose malady or incapacity was deleted from the list for qualification for the Invalidity Pension and who, consequently, were struck off and who found themselves with no income whatsoever since they were no longer receiving their Invalidity Pension. It must be noted that most of these pensioners were in their fifties and some had been receiving this kind of pension for a number of years and would definitely have found difficulty to find employment.

This caused a large reaction and many lodged their complaint with the Ombudsman because the immediate effect of the action of the Social Services Department created a wave of injustice and inhumanity. After several meetings with the authorities of the Social Security Department, the Ombudsman recommended that the Department should set up a Medical Panel to re-examine the persons who had been on the Invalidity Pension and to check whether such persons would still qualify according to their physical state rather than according to a list where the names of diseases were either included or struck off.

#### **4. Cases against Transport Malta and Local Councils because of damages caused to vehicles owing either to bad roads or to the failure to indicate that road repairs are being carried out.**

A series of complaints were being lodged with the Ombudsman for remuneration for damages caused in vehicles:

- a) owing to potholes or
- b) to roads in a state of disrepair or
- c) because the contractor engaged by Transport Malta or the Local Councils would have failed to indicate by means of a light or some sign that works were in progress.

Both Transport Malta which is the entity that deals with all transport in Malta and the Local Councils were refusing all responsibility for damages caused.

Therefore, for some years the Ombudsman worked hard to convince Government entities to take a citizen oriented attitude in such matters. In time the Office of the Ombudsman succeeded in convincing and assisting a number of entities including Transport Malta to set up a formal system whereby complaints and damages received would be considered formally.

This does not mean that all claims are acceded to but genuine cases would be settled out of court and the Government entity would be shouldering the responsibility.

Transport Malta accepted to set up the system whereby all complaints received are vetted. Once the claim is supported by the necessary documentation it is investigated according to the parameters laid out by the entity.

However, in the case of the Local Council discussions are still ongoing with the Department of Local Councils.

#### **5. Cases in connection with Promotion Exercises in the rank and file pertaining to the Armed Forces of Malta.**

As regards the Armed Forces of Malta the Ombudsman has jurisdiction as regards promotions and pensions. Therefore, one may say that when a promotion exercise takes place the Office of the Ombudsman receives a great amount of complaints. In the case of the pensions the number of complaints is greatly reduced.

During the first half of 2001 two separate exercises were carried out in connection with the promotion of soldiers (as distinct from Officers) who belong to the Armed Forces of Malta. This exercise covered:

- a) accelerated promotions to numbers of the Air and Maritime Squadrons who possess specific qualifications;
- b) wide-ranging promotions in the various units of the Armed Forces of Malta.

It had been standard practice in the Armed Forces previous to the establishment of the Ombudsman to make promotions at irregular interval and “*en masse*”. One such exercise took place in 1996 immediately prior to the setting up of the Office of the Ombudsman. The Ombudsman wrote to the Commander AFM and made

two important recommendations to serve as guidelines in the award of future promotions:

c) promotions should be made at regular intervals (preferably quarterly) until the full approved complement of the Force is reached and thereafter, as and when vacancies arise, and

d) for the purpose of promotion the three regiments and Headquarters should not be considered as closed units and all soldiers of the same rank should be considered and given the opportunity to fill interchangeable (as against role specific) posts even outside the unit where they happen to be attached. This recommendation had already been made by another body - the Commission for the Investigation of Injustices - which had given way to the Office of the Ombudsman- on 3 January 1993.

It soon followed that the recommendation regarding the award of promotions at regular intervals had been approved, but problems arose in each promotion exercise that followed regarding the implementation of the recommendations to fill interchangeable posts even outside the unit where they happen to be attached.

On December 6, 2000 the Commander AFM informed the Prime Minister that promotions in the AFM were to be guided by means of a set of new procedures and criteria. The purpose of this was to give less weight to seniority and to allow greater opportunities for career progression to persons with specialised qualifications. On this basis, minimum education and trade qualifications were set for eligibility for promotion for the different ranks.

#### **6. Cases wherein the Officers in the Armed Forces of Malta lodged their complaint regarding where and how to make their complaints.**

A Senior Officer in the Armed Forces felt aggrieved by a promotion exercise that had been carried out. He had complained that:

a) after the redistribution of responsibility, promotion and appointments of six others to the rank of Colonel his status suffered a loss *vis-a-vis* others within the AFM, and as a consequence;

b) he was suffering the loss of emoluments pertaining to his post to which he claims to be entitled.

When the complainant had lodged his complaint with the Ombudsman the Commander Armed Forces of Malta wrote to the Ombudsman submitting that the complainant, as an Officer, was required to exhaust the remedies available to him under article 160(2) of the Armed Forces of Malta Act and, therefore, refer the matter to his Excellency the President of the Republic.

Before the merits of this particular case were considered a number of preliminary issues were disposed of since they could have a negative impact on the conclusions of the facts and findings.

Owing to the fact that, as indicated above, the complainant, similar to other AFM Officers, should have directed his complaint to the President of the Republic, the investigation into this complaint and others made by AFM Officers on various grievances had to be stalled for some time until the issue raised by the AFM contesting the jurisdiction of the Office of the Ombudsman to process and determine complaints by Officers was finally determined.

The Ombudsman, however, maintained that, as stated in the Ombudsman Act. Officers of the Armed Forces had the right to have recourse to the Ombudsman if they felt aggrieved by the decisions of their superiors in the specific areas. In fact, the said Act provides that the Ombudsman has jurisdiction over the Armed Forces of Malta “ .... *in respect only of appointments, promotion, pay and pension rights of Officers and men of the Force*”.

The Army Authorities were of the opinion that such recourse was only available to Officers as long as “*all available means of redress have been exhausted*” but the Ombudsman contested this opinion. He maintained that if the Officers would submit their petitions to the President of the Republic they would then be deprived

of their right of recourse to the Ombudsman as per Ombudsman Act. He stressed that it would be undesirable for the Office to question the decision of the President on such petitions. A series of meetings between the Ombudsman and the Army Authorities ensued, after which a solution was finally found that did not require any legislative enactment.

The Commander Armed Forces issued a General Order in 11 November 2011 decreeing that Officers who felt aggrieved by the Commander's decision on matters concerning appointments, promotions, pay and pension rights may refer their complaint for investigation by the Ombudsman in terms of the Ombudsman Act whereas in respect of any other type of complaint they may address this complaint directly to the President of Malta in terms of the Army Act (Act XXVII OF 1970). All Officers who decide to refer their complaint directly to the President of Malta would be renouncing their right to have recourse to the Ombudsman.

### **Access to Public Services and Results**

The Ombudsman has the power to investigate a case on his own initiative apart from receiving complaints and investigating them. Two such cases are the following:

An application to open a pharmacy in a town or village; and

1. Regarding services offered by the Government to the elderly and to persons who suffer from chronic diseases and who live in the community.

### **1. A case in connection with the application for the opening of a Pharmacy in a community where there is an Administrative Community instead of a Local Council.**

The Ombudsman had received a complaint from a person who wanted to open a pharmacy in a village where there were no pharmacies and whose application was refused by the Licensing Authority.



The tiny village in question had an Administrative Committee appointed as per the Local Councils Acts and in this regard the tiny village was considered to be viable for all intents and purposes. However, the Licensing Authority had refused to recognize the said village as independent for the purpose of the Licence of a pharmacy since, according to the Authority, the village did not have a Local Council and the Administrative Committee was not enough for the consideration of a License for a Pharmacy. According to the Regulations for the Licences of Pharmacies of 2007 an independent town and/or village had to have a pharmacy set up.

Having examined the merits of the case, the Ombudsman concluded that the Licensing Authority's interpretation was incorrect since it failed to give due consideration to the importance of the welfare in the community which the Regulations in question tend to evoke. Consequently, in his Final Opinion the Ombudsman recommends that the Licensing Authority for the opening of Pharmacies gives a more valid, balanced and administratively correct interpretation to the said Regulations.

Since the Ombudsman's recommendation based on the particular above-mentioned would have had a wider impact on the society in general to reach beyond the complaint in question the Ombudsman deemed fit to communicate his report on the matter to the Honourable Minister for Health, the Elderly and for Community Care as well as to the Attorney General.

## **2. Another case which the Ombudsman has investigated and published in the public interest regards care services and assistance provided by the Department for the Elderly and Community Care to the Elderly**

A complaint had been lodged in connection with care services and assistance provided by the Department for the Elderly and Community Care to the Elderly. The complainant, while alleging that the service provided failed to cover the needs of her husband, asked for compensation for damages incurred on her bannister by a

nurse assisting the complainant's husband. This first part of the complaint was found not to be justified and was refused.

The second part of the complaint was that the complainant was not being given due financial assistance to be able to look after her husband at home. Even this part was refused because the complainant was receiving remuneration according to the Government Scheme for this purpose.

However this complaint gave rise to the issue whether aged persons, still living in their own home, should be provided with financial assistance since they are paying out of their own pocket for medical assistance like physiotherapy or occupational therapy when what is provided by the Government scheme is not enough.

The Ombudsman considers also whether compensation should be given to members of the family and carers who are helping to maintain such persons to live in the community.

The Ombudsman has given due consideration to the continuous demand that is ever increasing for additional beds in public institutions for the Elderly. It is important that specific and transparent guidelines are observed to make sure that the beds are occupied by the most needy patients. This should be carried out in the best interest of good administration.

On the other hand the authorities should give importance to the care and assistance to the elderly in their home. It must be noted that the expense in such cases is much inferior to that being spent for the elderly in Government homes.

Finally the Ombudsman suggests that there should be co-operation between the public and the private sectors.

The Ombudsman concludes his Report by recommending that the Health Authorities take note of his suggestions which should be carried out not only in the interest of the patients and the elderly but also in the best interest of the Administration in the health sector in Malta.

## **Two cases investigated by the Commissioner for Health on his Own Initiative**

The Ombudsman has included under his wing two Commissioners namely The Commissioner for Health and the Commissioner for Environment and Planning apart from the University Ombudsman who by next year will become known as Commissioner for Education.

Following his appointment in August 2012 the Commissioner for Health felt a great concern about shortcomings in the Healthcare Service provided by Government and set himself to investigate various complaints that were arising, as well as investigations on his own initiative in consultation with the Ombudsman.

### **1 One such case regarded the long-waiting times at the Accident and Emergency Department of the Mater Dei Hospital that patients have to endure, the Report of which was issued in June 2013.**

The long waiting times at the Accident and Emergency Department was already a problem at the old hospital “St Luke’s” but it aggravated following the opening of the new one. Despite the fact that Government authorities have been doing their utmost to address this issue the situation seemed to be worsening.

On analysis showed that an average of 300 patients attended daily the Accident and Emergency Department and these were then classified according to their priority – Priority 1 is the very urgent, Priority 2 – the urgent, Priority 3 – not urgent.

Having identified a series of setbacks that were causing stagnation in the various sections of the A & E Department, the Commissioner for Health passed on to make a number of possible solutions to alleviate the pressure and tension. He suggested to transfer patients to the appropriate ward once the acute phase is over, to discharge patients that are ready for discharge on a daily basis, to transfer convalescing patients to other hospitals until they are fit to be discharged, to add to the number of Basic Specialist Trainees or Higher Specialist Trainees in the Department, to induce patients with minor ailments to attend the clinics in their area instead of going to hospital whilst upgrading the said clinics in the various zones and added a number of other suggestions. The new Minister for Health had

replied that, immediately on his new appointment following a change in Government, he had set up a committee to address the problems.

## **2. Another own initiative investigation carried out by the Commissioner for Health is in connection with Out of Stock Medicines/Medical Materials/Surgical Devices within the Government Sector.**

In 2011 the Health Authorities acknowledged the problem of “Out of Stock Medicines” and appointed a Chief Executive Officer to lead the Unit that deals with the procurement of medicines, medical appliances, surgical devices and others. The problem aggravated by the increase of the diseases of the Fifth Schedule of the Social Security Act and by the Introduction of the “Pharmacy of your Choice” Scheme, throughout Malta and Gozo.

During the investigation the Commissioner for Health collected all the information of all the steps carried out to procure over 1,300 different medical products on the Government Formulary List which products should be available at all times. In the case of shortage of funds a priority exercise is carried out depending on the nature of the medicines required.

The same procedure takes place for the purchasing of Medical Aids and Surgical Instruments as for the ordering of medical products.

To ease the situation and increase in a faster way of obtaining medical products and supplies the Department of Health has “invested in a Procurement Workflow system which will be more electronically programmed and less paper-based.

The suggestion made by the Commissioner for Health is that the Central Procurement Supplies Unit staff should emphasise their work on the stocks that are available rather than check and simply report what is “out of stock”. His recommendations deal with amendments in Tender Documents to avoid clashes, to introduce without delay the new Procurement Workforce System, to train the staff in advance, to provide more funds, to adopt a ward pharmacy system in the Mater

Dei Hospital and at St Vincent de Paule Residence for the Elderly together with a number of other suggestions.

The Ministry for Health stated that the said issues have been taken up immediately as a high priority.

### **Conclusion**

In Malta there have been several attempts since the early 90's to create a public administration which would be transparent, accountable and which recognise the right of the citizen for an efficient public service. The Office of the Ombudsman which had its beginnings in 1995 has been among the first to acknowledge such rights of citizens by investigating in an impartial manner the number of complaints about poor service in administration as well as about breaches of rules and regulations by public Government entities.

From investigations carried out of the complaints that are received daily and by investigations on his own initiative the Ombudsman draws and sets out principles of good administration in issues which affect the citizens directly and which show concern for their well-being. In fact, the examples given above provide a clear indication of the great role that the Ombudsman plays as regards good administration.

كلمة الأستاذ عبد العزيز بنزاكور وسيط المملكة  
بمناسبة اختتام الدورة التكوينية الرابعة  
لفائدة مساعدي أعضاء جمعية الأبودسمان المتوسمين



## كلمة الأستاذ عبد العزيز بنزاكور وسيد المملكة

### بمناسبة اختتام الدورة التكوينية الرابعة

### لفائدة مساعدي أعضاء جمعية الأمبودسمان المتوسطين

الرباط- أيام 22 و23 و24 أكتوبر 2013

#### حضرات السيدات والسادة:

يطيب لي أن أترأس الجلسة الختامية لدورتنا هذه، التي انعقدت بالرباط في الفترة ما بين 22 و 24

أكتوبر 2013، حول موضوع " دور مؤسساتنا في تبسيط المساطر الإدارية والولوج إلى الخدمات

العمومية"، هذا الموضوع الذي يشكل أحد أهم مجالات اشتغال مؤسسات الأمبودسمان بحوض الأبيض

المتوسط، ليس فقط على مستوى تسهيل الولوج إلى الخدمات العمومية، ولكن أيضا من أجل ضمان جودة هذه

الخدمات، سواء من حيث أداء القائمين عليها أو من حيث الاستمتاع بها من لدن المستفيدين، وذلك في إطار

معادلة تجمع بين الواجبات والحقوق.

وإن الاهتمام بهذا الموضوع اليوم، وفي هذه الظرفية بالذات، يأتي في سياق تدعيم أخلاقيات المرفق

العمومي وضمان مجموعة من المبادئ، ومن أهمها الإنصاف والمساواة، في أفق أنسنة العلاقات بين الإدارة

والمرتفقين، مع استحضار روح المواطنة في بناء هذه العلاقات.

#### حضرات السيدات والسادة:

لقد تتبععت أشغال دورتنا هذه، التي اتسمت بتقديم مداخلات جوهرية ذات الصلة بدور مؤسساتنا في

تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية، وأسجل أن فعاليتها تشكل لبنة في بناء صرح

جمعية الأمبودسمان المتوسطيين، وإقامة شبكة من التواصل والتعاون والتبادل بين مساعدي أعضائها، ليس

فقط على مستوى تحسين العلاقات بين المؤسسات ولكن أيضا من خلال تعميق الدراسة في مجموع

الإشكاليات والقضايا التي تعرض عليها، وإن الأدوار التي يقوم بها الوسطاء والأمبودسمان بخصوص الموضوع الذي تناولتموه بالدراسة هي أدوار وقائية وتصحيحية في نفس الوقت، مما يجعلها تساهم في التقليل من حدة الكلفة الناجمة عن تعقيد المساطر الإدارية وصعوبة الولوج إلى الخدمات وغياب الشفافية والحكمة الجيدة، التي تؤثر سلباً على المجال الاقتصادي وعلى الإدارة والمواطن مما يخلق تفاوتات في الاستمتاع بالحقوق الأساسية.

وكخلاصة لما سبق ذكره، فإنه من الملح على مؤسساتنا في إطار رفع التحديات على هذا المستوى، والاستجابة لانتظارات المواطنين، وإعمال الأهداف التي وجدت من أجلها، أن تنكب على مختلف مختلف أوجهه وأبعاد إشكالية تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية لارتباطها بتعزيز الحكمة الجيدة في المرفق العمومي، سيما وأن بلداننا سواء في الشمال أو في الجنوب تعيش تحولات متنوعة وسريعة تطرح عليها رهان تحصين البناء الديمقراطي و ضمان حماية حقوق الإنسان.

### **حضرات السيدات والسادة :**

أود في الأخير، أن أتوجه بعبارات الشكر لجميع المشاركين على ما أبدوه من مثابرة واجتهاد ونفس طويل لمتابعة أشغال الدورة إلى نهايتها، وإغناء الحوار حول موضوعها، كما لا يفوتني أن أنوه بالمداخلات القيمة لجميع الخبراء الذين وبدون شك، برهنوا عن جدتهم في طيلة الثلاثة أيام من الدورة، وإننا لنقدر عالياً ما قدمه الجميع مشاركين وخبراء، من أفكار ومعلومات وأمثلة وممارسات جيدة، انضافت إلى خزانهم المعرفي وأغنت مراجعهم في مجال الوساطة.



ولن أختتم دون أن أدعوكم إلى مواصلة المجهودات وتقاسم المعلومات سواء مع زملائكم بالمؤسسات التي تعملون بها، أو مع مساعدي باقي المؤسسات أعضاء الجمعية حتى يتم تحقيق التواصل المنشود بينهم، من جهة ومع شركاءهم من دول أخرى يتوفروا على تجارب رائدة في مجال الوساطة.

والشكر موصول أيضا لمسؤولي وأطر ومساعدتي المعهد العالي للقضاء ونادي الأعمال الاجتماعية للقضاة، على الخدمات الجيدة التي ساهمت في إنجاح هذه الدورة وكذلك للسادة المترجمين على ما وفروا لكم من تسهيلات على مستوى التواصل ولجميع المنظمين من مؤسسة وسيط المملكة.

وأتمنى لكم عودة ميمونة لبلدانكم والتوفيق في مهامكم.

24 أكتوبر 2013

الأستاذ عبد العزيز بنزاكور  
وسيط المملكة المغربية

# FINAL REPORT

**Final report of the Fourth Training Session for Ombudsmen’  
Collaborators, Members of the Association of Mediterranean  
Ombudsmen (AOM)**

**Rabat on 22nd, 23rd, and 24th of October 2013**

*“The Role of Ombudsmen in Simplifying Administrative Procedures  
and Access to the Public Services”*

According to the Athens Resolution adopted during the Third Meeting of the Association of Mediterranean Ombudsmen (AOM) in December 2009, and to the Association’s working plan in the field of training, this AOM Fourth training session was organized in collaboration between the AOM and the Institution of the Mediator of the Kingdom of Morocco about *“the Role of Ombudsmen Institutions in Simplifying Administrative Procedures and Access to Public Services”*. It was held during three days in the Training Center in Rabat.

On this occasion, we bring up the process of creation of the Association which was first established owing to the initiative launched by the Mediator of the Kingdom (ex: Diwan Al Madhalim) in collaboration with the French Mediator (currently the Defender of the Rights) and the Defender of the People of Spain, in the aftermath of which the First Meeting for Ombudsmen and Mediators was organized in Rabat in November 2007, and crowned with the creation of a Mediterranean network for Ombudsmen, and the issuance of the Rabat Declaration which defines the main principles that gather the institutions of both

sides of the Mediterranean and the most appropriate framework for common action, cooperation and collaboration among such institutions.

The efforts continued in a second stage in December 2008 in Marseilles where they examined several issues relating to mediation institutions in connection with the Mediterranean environment, irrespective of the borders or the different conflicts. Therefore, we realized the necessity to create a tool for cooperation, collaboration and coordination among all the components of the Mediterranean network, which was called the Association of Mediterranean Ombudsmen. It was unanimously agreed upon that Morocco be in charge of the presidency of the AOM and the city of Tangiers was chosen to host its headquarters.

It should also be noted that confidence was renewed in the Kingdom of Morocco for three successive mandates to preside over the Association.

Up to the moment, seven AOM meetings were held, by virtue of which recommendations and proposals were issued, and they can be consulted at the Association's website [www.ombudsman-med.org](http://www.ombudsman-med.org) hosted by the Institution of the Mediator of the Kingdom, in addition to organizing four training sessions including the present one where 32 participants and experts represent the institutions members of the AOM. Moreover, an expert from the European Ombudsman and an Observer from the Commission of Venice took part in this session.

The opening session was characterized by the keynote speech of the President of the Association and Mediator of the Kingdom, Mr. Abdelaziz Benzakour wherein he stressed the importance of the theme

of the session in pointing out the strategic missions assigned to all the Ombudsmen institutions, being currently present, in disseminating the values of transparency and moralizing the public sector, through using the power of proposition vested with such institutions while contributing to administrative reform and to narrowing the gap between the public service users and the apparatuses of the public administration as well as to strengthening good governance.

He had also reiterated the role assigned to Ombudsmen institutions in relation to simplifying administrative procedures and access to services, and exchange of experiences and expertise in this domain.

In the aftermath, the representative of Venice Commission gave an overview of the creation of the Commission and its relationship with the Council of Europe and its activities, noting that Morocco is among the first countries of the Southern side of the Mediterranean to join this body.

The Moderator of the session Ms. Fatima Kerrich presented the general setting of the session and its objectives relating to the consolidation and orientation of Ombudsmen institutions, to building capacities of their personnel, and to the development of their professional and methodological knowledge.

1.the work of the session focused on five main modules, the first of which dealt with “*basics of administrative procedures (distinction*

*in law between the substantive and procedural rules, or form).*”, and was presented by

2.mr. mohammed benyahya, advisor of the mediator of the kingdom, where he gave a definition of the concept of administrative procedures as a set of necessary formalities and measures to be adopted by the administration in order to issue a certain decision in accordance with the law, while pointing out their characteristics in the light of the distinction made between such measures and the standard procedures to be followed at the courts of justice.

3.he added that unlike judiciary procedures, administrative procedures are not governed by a particular text, thus it becomes a factor that accentuates complexity, in addition to other factors relating to the complexity of the procedure of legislation and the multiplicity of stakeholders in such a way that the concept of administrative procedures is negatively impacted; a case in point are circulars and notes issued in the domain of taxes.

4. the expert stressed the importance of comparative experiences which aim at simplifying administrative procedures, while noting the central role of simplification conducted by administrative courts. he mentioned by way of illustration cases that may present problems at the level of implementation as well as those relating to the complexity of administrative texts, wherein procedural rules predominate substantive ones.

5.he has also called on ombudsmen institutions to instill values of simplification and transparency in administrative procedures.

6.the second module concerning “*simplifying administrative procedures and access to public services: constraints and alternative strategies*”, was presented by ms. dominique de vos, agency for administrative simplification in belgium, and mr. mohamed nassim, head of division at the ministry of public sector and modernization of the administration in morocco.

7.ms. de vos gave an overview of the belgian experience, namely the agency of administrative simplification in its creation, structures, prerogatives and own-initiative intervention. she also looked into their relation with the parliamentary ombudsman and the federal ombudsmen, while pointing out the procedural methods of complaints reception at the website dedicated for such purpose: [www.kafka.be](http://www.kafka.be) through the complaints-processing manner and the power of proposition vested with the agency in addition to the short-run strategies implemented to organize the simplification process, which aim at protecting citizen’s interests and alleviating administrative burdens. she also presented examples that illustrate the work of the agency, which include namely:

- inciting and accompanying public administrations in the creation of data basis to explain their procedures to citizens and provide the possibility to their access to information available to the administration, which is of concern to them.

- encouraging administrations to better cooperate with each other.
- Setting up new laws and proposing their entry into force.
- Revising, in its own-initiative, the civil code in consultation with all the territorial communes in Belgium, whose number is 549.

Mr. Nassim, on his side, highlighted the approach adopted in simplifying administrative procedures in Morocco, while comparing the previous experiences with modern ones. He also presented a strategic vision for simplification of such procedures and access to public services, which are likely to guarantee economic welfare and good reputation of the administration and strengthen the relationship between the citizens and the administration. In this regard, he fairly provided legal information which is of help to the system of administrative procedures and pointed out the complex aspects it may manifest, which could be attributed to the opacity of legal and organic texts. To this could be added the shortage of competent human resources and non-adoption of new technologies.

Moreover, he encouraged the administration to adopt every tool that is likely to simplify administrative procedures so as to guarantee the rights of citizens.

The Third Module dealing with *“current situation of the competences of the ombudsmen in the field of simplifying administrative procedures and access to public services, according to their regulatory laws”*, was co-presented by Albert Johnson, Head of Division, Parliamentary Ombudsmen of Sweden and Mr. Klavs Kinnerup Hede, Legal Advisor, Parliamentary Ombudsman of Denmark.



At the outset, The Swedish Expert gave an overview of the historical context of the creation of the Swedish Ombudsman, which is considered as the ancient mediation institution in the world, being created about two centuries ago.

He has also highlighted its method of functioning as well as its adjustment with the developments of the modern world, noting that the institution acts on the simplification of administrative procedures in collaboration with other institutions, such as the National Audit Office and a body annexed to the Ombudsman and MP's who monitor the Government's action and elaborate reports in this respect.

Concerning access to public services, the lecturer referred to two articles of the statutes:

**Article 4:** *“If a Parliamentary Ombudsman or the Chancellor of Justice in the course of activities laid down in Article 1 receives information from another public authority that is subject to secrecy, this secrecy shall apply also within the office of the Parliamentary Ombudsmen or the Office of the Chancellor of Justice. However, if the information is contained in a document, produced in connection with these activities, secrecy shall apply within the Ombudsman's Office or the Office of the Chancellor of Justice only if it can be assumed that some public or private interest would suffer extensive damage or considerable harm, through disclosure of the information.”*

**Article 5:** *“Citizens shall be enabled to have access to information and telecommunications tools in order to acquire legal and official documents and instill the principle of transparency either with public authorities or with citizens.”*

On his part, Mr. Klavs initiated his presentation through referring to the investigation and inspection missions entitled to the institution of the Danish Ombudsman, through which he seeks to fight against bureaucracy and simplify administrative procedures, noting the constraints that the institution faces due to austerity policies adopted as a consequence of the economic crisis.

He has also tackled the topic of simplifying administrative procedures which is carried out in painstaking fashion in such a way that complaints-processing is seriously and swiftly handled, and stressed the necessity for administrative officials to be fully aware of the role of the Ombudsman. Yet, he pointed out that notwithstanding the efforts exerted in order to improve the administration's action and to simplify procedures such as creating call centers and introducing a sophisticated computer system, there are some dysfunctions resulting from lack of competence among the public agents about the best manner information could be provided.

The Fourth Module concerning *“Major issues drawn from complaints, related to simplifying administrative procedures and access to public services.”* was presented by Ms. Raluca Trasca, Legal Officer, European Ombudsman and Mr. Albert Johnson, Head of Division, Parliamentary Ombudsmen of Sweden.

The Expert of the European Ombudsman dealt with the power of intervention of the Ombudsman, which resulted in many cases in the presentation of effective proposals to amend the laws, while supporting her stand with the reaction of public authorities to the recommendations

of the European Ombudsman concerning the opening of citizen-reception offices during two hours a day.

Later on, she looked into the other roles performed by the European Ombudsman such as the one played in the domain of the judiciary, in addition to narrowing the gap between the citizens and the administration in such a manner as to strengthen proximity. Such proximity is illustrated through opening offices in different EU countries as of 1993.

She has also pointed out the ethical aspect in the Ombudsman's action, which is taken as a reference to strengthen the rule of law and entitle citizens to the right of complaints-lodging provided that they will be legally well-founded. In addition, she recalled that the European Union adopts the principles of transparency and good governance while presenting some cases of the initiatives launched by the European Ombudsman with the aim of enabling citizens to have access to documents and to guarantee their right to access to information on the basis that openness is the rule while secrecy is the exception.

As for the Fifth Axis, dealing with « *Proposals and recommendations suggested by Ombudsmen institutions in the field of simplifying administrative procedures and access to public services and results* », it was co-presented by Ms. Raluca Trasca, Legal Officer at the European Ombudsman and Ms. Maria Rosaria Bonello, Senior Investigating Officer at the Parliamentary Ombudsman of Malta. The first Expert focused on the follow-up devoted to the European Ombudsman's

proposals and recommendations in the field of simplifying administrative procedures and access to public services.

In this respect, she noted that the outcome is assessed from a triple perspective, namely, the promotion of proactive *transparency*, the empowerment of citizens in *infringement* procedures and the promotion of *ethical* conduct of EU public servants.

She further explained that as far as transparency is concerned, the Ombudsman's proposals target several issues, such as producing documents and policy papers in a more comprehensive, non-technical language, encouraging all EU institutions to create online registers of easily accessible documents as well as designating information officers responsible to ensure that the right of public access is guaranteed.

Moreover, she pointed out that the Ombudsman's work in the field of infringement procedures and complaints submitted to persuade the Commission to adopt an internal set of bidding rules through which the latter committed itself to procedural guarantees in connection with the complainants and to respect those guarantees in practice.

By codifying ethical principles and principles of good administration, the European Ombudsman offers to the public not only a comprehensive tool to help them understand exactly what they can expect from the administration but also enables officials to be fully aware of the rules they should abide by and apply when coming into contact with the public.

Finally, she mentioned four principles that the EU Civil servants shall bear in mind while being in office, namely integrity, objectivity, respect for others and transparency.

Ms. Bonello, on her side, has given an overview of the creation of the Maltese Parliamentary Ombudsman, while noting that this institution, while being independent from the other authorities, serves as a watchdog that monitors the work of the public authorities and bodies. She noted that the Maltese institution inspires from the comparative European practices and experiences.

She then moved to present sample cases where the Maltese Institution has intervened, namely, in the field of school transportation, “Enemalta Corporation” in the domain of power supply and the damage caused to citizens by sudden surge. She has also mentioned the cases lodged against the Department of social Services for rejecting to renew the Invalidity Pension Allowance, for the state of roads and lack of signals, in addition to other cases opened on the Ombudsman.

The Maltese Ombudsman has transcended the traditional role assigned to such institution, which intervenes on the basis of complaints filed to it; its scope of intervention also involves own-initiative intervention, via submitting proposals to reform legal texts and to better organize citizens-reception structures.

It also includes enhancing the principles of good administration and improving the quality of the services provided to Maltese citizens, while ensuring that their rights have been observed.

مركز التكوين وتبادل الخبرات في مجال الوساطة

الدورة التكوينية الرابعة لفائدة مساعدي الوسطاء، أعضاء جمعية الأمبودسمان المتوسطيين

الرباط أيام 22 و 23 و 24 أكتوبر 2013

" دور مؤسسات الأمبودسمان في تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية "

## التقرير التركيبي

بناءً على قرار أثينا المصادق عليه خلال اللقاء الثالث لجمعية الأمبودسمان المتوسطيين في دجنبر

2009، وكذا مخطط عمل الجمعية في مجال التكوين، تم تنظيم الدورة التكوينية الرابعة بتعاون بين الجمعية ومؤسسة وسيط المملكة المغربية حول " دور مؤسسات الأمبودسمان في تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية " بمركز التكوين بالرباط على مدى ثلاثة أيام.

وبهذه المناسبة، نستحضر مسار تأسيس جمعية الأمبودسمان المتوسطيين الذي عرف أولى إرهاباته مع المبادرة التي قامت بها مؤسسة وسيط المملكة المغربية (ديوان المظالم سابقاً) بتعاون مع الوسيط الفرنسي (المدافع عن الحقوق حالياً) والمدافع عن الشعب الإسباني، تم على إثرها تنظيم أول لقاء للأمبودسمان والوسطاء بالرباط في نونبر 2007، توج بإحداث شبكة متوسطة للأمبودسمان، وإصدار إعلان الرباط الذي حدد المبادئ الأساسية التي تجمع مؤسسات الضفتين والإطار المناسب للعمل المشترك والتعاون والتنسيق في ما بينها.

وقد تواصلت الجهود في مرحلة ثانية، بمرسلياً في دجنبر 2008 تم خلالها تدارس عدة قضايا تهم مؤسسات الوساطة في علاقتها بالمحيط المتوسطي بغض النظر عن الحدود والنزاعات المختلفة، تراءى على إثرها آنذاك وجوب خلق آلية للتعاون والتنسيق والتشاور بين جميع فعاليات الشبكة المتوسطية، وهو ما اصطلح على تسميته بجمعية الأمبودسمان المتوسطيين، وبإجماع كل أعضائها تم الاتفاق على أن يتولى المغرب رئاستها وأن تتخذ من مدينة طنجة مقراً لها، كون هذه الحاضرة تشكل محطة للاتصال والعبور والتعايش بين مختلف الحضارات والثقافات.

كما ينبغي الإشارة إلى أنه تم تحديد الثقة في المملكة المغربية ثلاثة مرات متتالية لرئاسة الجمعية منذ إحداثها.

وقد تم لحد الآن عقد سبع ملتقيات للجمعية انبثقت عنها عدة توصيات ومقترحات يمكن الاطلاع عليها على الموقع الإلكتروني للجمعية [www.ombudsman-med.org](http://www.ombudsman-med.org) الذي تحتضنه مؤسسة وسيط المملكة، فضلا عن تنظيم أربع دورات تكوينية بما فيها الدورة الحالية والتي التأم خلالها 32 مشاركا وخبرا يمثلون المؤسسات العضوة بالجمعية، بما فيهم خيرة عن الوسيط الأوروبي وملاحظة عن لجنة البندقية التابعة لمجلس أوروبا.

هذا، وقد تميزت الجلسة الافتتاحية لهذه الدورة بكلمة النقيب عبد العزيز بنزاكور وسيط المملكة المغربية ورئيس الجمعية والتي أكد من خلالها على أهمية موضوع الدورة في تجسيد المهام الاستراتيجية المؤكولة لحل مؤسسات الأوبودسمان، والمتجلية في نشر قيم الشفافية وتخليق المرفق العمومي، من خلال القوة الاقتراحية التي تتوفر عليها إسهاما في الإصلاح الإداري وتقليص الفجوة بين المرتفقين وأجهزة إدارة الدولة وتكريس الحكامة الجيدة.

كما أكد على الدور الذي ينبغي أن تقوم به مؤسسات الأوبودسمان بشأن تبسيط المساطر الإدارية والولوج إلى الخدمات، وتبادل التجارب والخبرات في هذا المجال.

عقب ذلك، تناولت ممثلة لجنة البندقية الكلمة حيث تطرقت لسياق نشأة اللجنة وعلاقتها بالمجلس الأوروبي وأنشطتها، مشيرة إلى كون المغرب يعد من أوائل الدول العضوة باللجنة على صعيد جنوب الحوض المتوسطي.

بعدها، قامت منسقة الدورة السيدة فاطمة كريش بتقديم الإطار العام للدورة وأهدافها الرامية إلى دعم وتوجيه استراتيجية عمل مؤسسات الأوبودسمان والرفع من قدرات ومؤهلات العاملين بها وتطوير معارفهم المهنية والمنهجية.

وقد ارتكزت أشغال الدورة على خمسة محاور رئيسية:

تتناول أولها موضوع " تقديم مفهوم المساطر الإدارية (الفرق في القانون بين قواعد المضمون وقواعد الشكل)، قدمه السيد محمد بنحيا، مستشار لدى وسيط المملكة ، استعرض فيه تعريفا مدققا لمفهوم المساطر الإدارية كمجموعة من الشكليات والإجراءات الواجب سلوكها من طرف الإدارة لإصدار قرار معين، حتى يكون صحيحا وسليما من الناحية القانونية، موضحا خصائصها على ضوء التمييز فيما بينها وبين المساطر المألوفة الإلتباع لدى المحاكم القضائية.

وقد واصل في هذا التفسير أنه وبخلاف المساطر القضائية، فإن المساطر الإدارية غير منظمة بنص خاص، الأمر الذي يجعلها مصدرا مغديا للتعقيد إضافة إلى عوامل أخرى مرتبطة بتعقد مسطرة التشريع وتعدد المتدخلين فيها مما ينعكس سلبا على مفهوم تبسيط المساطر الإدارية كما هو الأمر بالنسبة للمناشير والدوريات الصادرة في مجال الضرائب على سبيل المثال.

وقد أولى الخبير أهمية بالغة في مداخلته للتجارب المقارنة التي تتوخى تبسيط المساطر الإدارية، مؤكدا على الدور المحوري الذي يلعبه القضاء الإداري في تبسيطها، مستدلا ببعض الحالات التي تثير إشكالات على مستوى التطبيق وكذا المرتبطة منها بتعقد النصوص الإدارية والتي تعرف توسع قواعد الشكل على حساب قواعد المضمون.

كما دعا مؤسسات الأمبودسمان إلى ترسيخ قيم التبسيط و الشفافية في المساطر الإدارية.

أما المحور الثاني حول " تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية: العراقيل والاستراتيجيات البديلة" فقد عمل على تقديمه كل من السيدة دومنيك دوفو، مساعدة المدير العام لوكالة تبسيط المساطر الإدارية بلجيكا والسيد محمد نسيم، رئيس قسم بوزارة الوظيفة العمومية وتحديث الإدارة بالمملكة المغربية.

من جهتها تطرقت الخبيرة إلى التجربة البلجيكية وخصوصا وكالة التبسيط من حيث إحداثها وهيكلها واختصاصاتها ومبادراتها التلقائية وعلاقتها بالأمبودسمان البرلماني والأمبودسمانات الفيدرالية مشيرة إلى الطرق الإجرائية في تلقي الشكاوى عبر الموقع الإلكتروني الخاص بالشكايات [kafka.be](http://kafka.be) وكيفية



المعالجة، والقوة الاقتراحية التي تتمتع بها الوكالة، والاستراتيجيات المرحلية لتنظيم التبسيط الرامية إلى حماية مصلحة المواطن والتخفيف من العبء الإداري، معززة ذلك ببعض الأمثلة لعمل الوكالة:

- كحث الإدارات ومواكبتها من أجل إحداث قواعد معطيات خاصة بتوضيح مساطرها للمواطنين وتوفير إمكانية ولوجهم لمعلوماتهم المتوفرة لدى الإدارة قصد الاطلاع وكذا حث الإدارات على التنسيق فيما بينها.
- وكذا مثال إمكانية خلق الوكالة لقوانين جديدة واقتراح إدخالها حيز التنفيذ.
- ومثال عمل الوكالة بمبادرة منها على مراجعة القانون المدني بتشاور مع جميع الجماعات الترابية البلجيكية والبالغ عددها 549 وكالة.

**في حين تطرق السيد محمد نسيم** في مداخلته المقاربة المعتمدة في تبسيط المساطر الإدارية في المغرب مقارنة التجارب السابقة مع نظيراتها الحديثة، مقترحا تصورا استراتيجيا لتبسيط المساطر الإدارية والولوج إلى الخدمات العمومية، يكفل الرخاء الاقتصادي والسمعة الحسنة للإدارة وتوطيد علاقة المواطن مع الإدارات، حيث قدم العديد من المعلومات القانونية والعملية لمنظومة المساطر الإدارية وما يشوبها من تعقيد راجع إلى عدم وضوح النصوص القانونية والتنظيمية، إضافة إلى ندرة الموارد البشرية الكفاءة وعدم الاعتماد على وسائل التكنولوجيا الحديثة، حاثا الإدارة على سلوك كل ما من شأنه تبسيط الإجراءات الإدارية حرصا على ضمان حقوق المواطنين.

**وقدم المحور الثالث حول: تشخيص مهام مؤسسات الأمبودسمان بخصوص تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية وفقا للمقتضيات القانونية المنظمة لها،** كل من الخبيران ألبرت جونسون، رئيس قسم بالأمبودسمان البرلماني للسويد وكلافز كينراب هيد، رئيس قسم التحري، مستشار قانوني بالأمبودسمان البرلماني الدانماركي.

**في البداية تناول السيد ألبرت** السياق التاريخي لنشأة مؤسسة الأمبودسمان السويدي باعتبارها أقدم مؤسسات الوساطة في العالم حيث أنشأت قرابة قرنين من الزمن، وطريقة اشتغالها وكذا مواكبتها للتطورات التي عرفها العالم الحديث، مشيرا إلى أن هذه الأخيرة تعمل على تبسيط المساطر الإدارية

بمساعدة مجموعة من المؤسسات الأخرى، كالمكتب الوطني للافتحاص وهيئة ملحقة بالأمبودسمان وأعضاء من البرلمان يعملون على مراقبة ورصد عمل الحكومة وإعداد التقارير.

أما بخصوص الولوج إلى الخدمات العمومية، فقد سرد السيد المحاضر مادتين من القانون المنظم لها:

-المادة 4: التي تحتم على كل وكالة تقديم الإرشادات و الإجابة على الأسئلة التي يتقدم بها المواطن وكذا توجيهه إلى الجهة المختصة.

-المادة 5 : التي تنص على تمكين المواطنين من المعلومات ووسائل الاتصال قصد الحصول على المستندات القانونية والرسمية وإقرار مبدأ الشفافية سواء مع السلطات العمومية أو مع المواطنين.

ومن جهته استهل السيد كلافز مداخلته بالإشارة إلى عملية التحقيق والتفتيش المنوطة بمؤسسة الأمبودسمان الدانماركي والتي يتوخى منها محاربة البيروقراطية وتبسيط المساطر الإدارية، مشيراً إلى بعض الإكراهات التي تواجهها في ظل الأزمة الاقتصادية والمتمثلة في ضعف الموارد المالية المرصودة لها.

كما تطرق إلى موضوع تبسيط المساطر التي تتم بصورة دقيقة مما ينعكس على معالجة الشكايات بجدية وسرعة فائقة، موضحاً أنه من الضروري توفر الوعي التام بدور الأمبودسمان لدى المسؤولين الإداريين، غير أنه سجل أنه على الرغم من المجهودات المبذولة لتحسين عمل الإدارة وتبسيط المساطر كخلق مراكز الاتصال وإدخال نظام معلوماتي متطور، فلا تزال هناك بعض التعثرات الناتجة عن عدم كفاءة وإلمام الموظفين بإعطاء المعلومات المطلوبة مضيفاً أن الكفاءة ضرورة ملحة لإرضاء المواطنين.

**المحور الرابع: الإشكالات الكبرى المستخلصة من الشكايات المتعلقة بتبسيط المساطر الإدارية والولوج إلى الخدمات العمومية قدمته كل من السيدة رالوكا تراسكا، مسؤولة الشؤون القانونية بالوسيط الأوروبي والسيد آلبرت جونسون، رئيس قسم بالأمبودسمان البرلماني للسويد.**

استهلّت الخبيرة المسؤولة عن الشؤون القانونية بالوسيط الأوروبي مداخلتها بالحديث عن قوة تدخل الوسيط الأوروبي والتي أدت في أحيان كثيرة إلى تقديم مقترحات فعالة لتغيير القوانين مستدلة

بتجاوب السلطات العمومية مع توصيات الوسيط الأوربي لفتح مكاتب لاستقبال المواطنين لمدة ساعتين في اليوم بعد أن كانت مغلقة في وجوههم.

بعد ذلك تطرقت إلى الأدوار الأخرى للوسيط الأوربي كالدور القضائي وتقليص الفجوة بين المواطنين والإدارة و تجسيد هذا القرب بفتح مكاتب بمختلف دول الاتحاد الأوربي و ذلك ابتداء من سنة 1993.

كما تطرقت الخبرة إلى جانب محكم في عمل الوسيط الأوربي يتمثل في تبني الأخلاقيات كمرجعية لتكريس سيادة القانون، وتمكين المواطنين من الحق في تقديم الشكاية شريطة أن تكون مبنية على أسس قانونية سليمة، كما ذكرت بأن الاتحاد الأوربي يعتمد في توجهه على مبدأ الشفافية والحكامة الرشيدة وقدمت بعض الحالات التطبيقية لمبادرات الأمبودسمان الأوربي قصد تمكين المواطنين من الحصول على الوثائق وحققهم في المعلومة عل أساس أن الانفتاح هو الأصل والسرية هي الاستثناء.

**وقدم المحور الخامس حول الاقتراحات والتوصيات الصادرة عن مؤسسات الأمبودسمان في مجال تبسيط المساطر الإدارية والولوج إلى الخدمات العمومية ومآلها كل من الخبيرتان السيدة رالوكا تراسكا، مسؤولة الشؤون القانونية بالأمبودسمان الأوروبي، والسيدة ماريا روزاريو بينيلو، مسؤولة مكلفة بالتحري بالأمبودسمان البرلمان بمالطا.**

وبخصوص هذا المحور، ركزت الخبرة الأولى على المتابعة التي يتم تخصيصها لمقترحات وتوصيات الأمبودسمان الأوربي في مجال تبسيط الاجراءات الإدارية والولوج إلى الخدمات العمومية. وفي هذا الصدد، سجلت أن تقييم النتائج يتم انطلاقا من منظور ثلاثي الأبعاد، ولاسيما من خلال النهوض بالشفافية الاستباقية وتمكين المواطنين من مساطر الخروقات وتعزيز السلوك الأخلاقي لدى الموظفين بهيئات الاتحاد الأوربي.

وأضافت أن مصالح الأمبودسمان تدرس قضايا مختلفة متعلقة بالشفافية كإعداد الوثائق وملفات السياسات بشكل شامل ووفق لغة واضحة ومبسطة، وتعمل على تشجيع مؤسسات الاتحاد الأوربي على إحداث سجلات إلكترونية تشمل وثائق يمكن الولوج لها بسهولة، فضلا عن حثهم على تعيين

مسؤولين مكلفين بالحرص على مدى احترام حق العموم فيولوج للمعلومة، من خلال وضع مبادئ الأخلاقيات ومبادئ الإدارة الجيدة، لمنحهم آلية شاملة تساعد على استيعاب ما يتوقعونه من الإدارة، وكذا تمكين المسؤولين من أن يكونوا على وعي بالقواعد التي ينبغي احترامها وتطبيقها خلال التعامل مع العموم.

كما أشارت إلى أن عمل الأمبودسمان في مجال الخروقات المتعلقة بالمساطر والشكايات الرامية إلى إقناع المفوضية الأوروبية بتبني مجموعة من القواعد الملزمة والتي تلتزم من خلالها المفوضية بالضمانات المسطرية المتعلقة بالمشتكين وباحترام هذه الضمانات على أرض الواقع.

وفي الأخير، تطرقت إلى المبادئ التي ينبغي على الموظفين العاملين بالمؤسسات التابعة للاتحاد الأوروبي أخذها بعين الاعتبار خلال أدائهم لمهامهم، وتشمل على الخصوص النزاهة والموضوعية واحترام الآخرين وكذا الشفافية.

**من جهتها، قدمت السيدة بونيلو** لمحة عن إحداث مؤسسة الأمبودسمان البرلماني مالطا، مشيرة إلى أن هذه المؤسسة، التي تعد مستقلة عن باقي السلط، تعمل كمراقب لعمل السلط والهيئات العمومية، مشيرة إلى أن هذه المؤسسة تجاوزت الدور التقليدي المنوط بها لتتدخل عبر المبادرة التلقائية. وأضافت أن المؤسسة المالطية تستلهم من الممارسات والتجارب الأوروبية المقارنة.

وانتقلت إلى تقديم حالات تطبيقية تبرز تدخل المؤسسة وتهم مجال النقل المدرسي وتوزيع الطاقة الكهربائية (شركة "إينمالطا" على سبيل المثال) والحالات المسجلة ضد قطاع الخدمات الاجتماعية نتيجة رفض تحديد المعاش الخاص بالأعطاب الصحية وكذا شكايات تتعلق بحالة الطرق وغياب التشوير ضمن حالات أخرى.

كما يقوم بتقديم مقترحات لتعديل النصوص القانونية وكذا لتنظيم بنيات استقبال المواطنين وتشجيع مبادئ الإدارة الجيدة وتحسين جودة الخدمات المقدمة لمواطني مالطا، مع ضمان احترام حقوقهم.

# QUESTIONNAIRE

CENTER FOR TRAINING AND EXCHANGE ON MEDIATION

**FOURTH TRAINING SESSION OF THE MEDIATOR'S COLLABORATORS MEMBER OF THE AOM**  
**« The role of Ombudsman institutions in simplifying administrative procedures and access to public services »**

**Rabat, 22<sup>nd</sup> - 24<sup>th</sup> of October 2013**

## *Evaluation of the Training*

*This questionnaire was elaborated by the Training Center; it will help us know better the needs of the collaborators of Ombudsmen members of the AOM and improve the organisation of the next sessions.*

*A synthesis of your answers will be presented during the closing session, please give this questionnaire back to a member of the organizing team before 10:30.*

تم إعداد هذه الاستمارة من طرف مركز التكوين. وستساعدنا على معرفة حاجيات مساعدي الأمبودسمان أعضاء الجمعية بشكل أفضل وتحسين تنظيم الدورات المقبلة. وسيتم تقديم ملخص لأجوبتكم خلال الجلسة الختامية للدورة، لذا يرجى منكم إرجاع هذه الاستمارة إلى أحد أعضاء اللجنة التنظيمية قبل العاشرة والنصف صباحاً.

N.B. Check the correspondent cell according to your choice ضع علامة في الخانة الموافقة لاختيارك

<i>Choice of the session theme</i> اختيار موضوع الدورة	<i>Insufficient</i> ضعيف	<i>Sufficient</i> متوسط	<i>Excellent</i> ممتاز
Content of the training modules مضمون المحاور المتناولة في الدورة			
Duration of the training مدة التكوين			
Skills of experts جودة الخبراء			
Data and Visual aids الدعائم البيداغوجية			
Conditions and organization الظروف والتنظيم			
<i>Session running and coordination</i> سير الأشغال والتنسيق			

*Strong points of this training:*

نقط قوة الدورة

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*Weak points:*

نقط ضعف الدورة

.....

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.....

.....

*Propositions and suggestions of topics for next sessions:*

اقترح موضوع الدورة المقبلة

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*Other comments*

ملاحظات إضافية

.....

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.....

.....

# ATTENDANCE SHEET OF THE COLLABORATORS OF MEDIATORS

**Rabat, 22<sup>nd</sup> - 24<sup>th</sup> of October 2013**

*Coordinator: Ms. Fatima Kerrich, Head of the Department of Communication,  
Cooperation and Training, Mediator's Institution of the Kingdom of Morocco.*

	Name of the participant	Country and institution	Function	Contacts (phone, fax, email)
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4	Mr. Ishaq Hussein Alotoom		Investigator – Infrastructure Unit	+962777711409
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