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# Activities of the European Ombudsman under the Charter of Fundamental Rights: Promoting Good Administration through Human Rights Compliance

Alexei Avtonomov

Institute for International Law and Economics Named after Alexander Griboyedov, 111024 Moscow, Russia;  
a.s.avtonomov@yandex.ru

**Abstract:** The adoption of the Charter of Fundamental Rights has strengthened the position of the European Ombudsman, since the Charter contains an article specifically dedicated to the Ombudsman. At the same time, the Ombudsman, through her/his practice, contributes to the implementation in the everyday life of the provisions of the Charter and their further development. The consolidation and development of the provisions of the Charter by the European Ombudsman have proceeded especially rapidly since the Charter of Fundamental Rights received the status of a binding act. Due to the fact that the right to “good administration” contained in the Charter of Fundamental Rights has become one of the basic human rights in the EU since the Charter became legally binding, the competence of the European Ombudsman has acquired a new substantive and factual (functional) content, expanding her/his ability to positively influence the EU administration in the field of governance and respect for fundamental rights. This article examines, based on legal acts, statistical and other factual data, the interrelated issues (such as institutional and human dimensions of European integration) of ensuring the effectiveness of the Charter of Fundamental Rights through the activities of the European Ombudsman.

**Keywords:** the Charter of Fundamental Rights; the European Ombudsman; good administration; the right to good administration; maladministration; the European Union; human rights; a complaint to the European Ombudsman; an inquiry of the European Ombudsman



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## 1. Introduction

The Charter of Fundamental Rights needs an institutional mechanism for its adequate implementation. The European Ombudsman is one of the institutions that contributes to putting the Charter into practice. As it is stated in the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles), adopted by the Venice Commission (the Commission for Democracy through Law) on the 15–16 March 2019 and endorsed by the Council of Europe’s Committee of Ministers on the 2 May 2019, “Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms” (Principle 1)<sup>1</sup>. Some scholars contrast the work of human rights protection with the work of improving public administration in the work of the Ombudsman. For example, Najmul Abedin distinguishes between a so-called classical/original ombudsman, who focuses the efforts on good governance promoting and on administration (in its citizens treatment) improving, and a so-called human rights ombudsman (as well as hybrid and deviant models of ombudsman)<sup>2</sup>. Najmul Abedin shares, and to an extent follows, the

<sup>1</sup> The Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles). Opinion No. 897/2017. CDL-AD(2019)005. Or. Eng. Strasbourg, 2019, p. 3. Digital format: [https://www.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e) (accessed on 20 February 2021).

<sup>2</sup> (Abedin 2011)

classification of an ombudsman institution offered by Linda Reif, who clusters those institutions into classical ombudsmen and human rights (and other hybrid or specialized) ombudsmen and explores their role in good governance and human rights protection at the domestic and international levels (the European Ombudsman case also covered by this study)<sup>3</sup>. According to these classifications in principle, human rights ombudsmen, set up in new democracies and post-conflict peace-building processes, are opposed to classical ombudsmen working in old and stable democracies, though the methods by which both human rights and classical ombudsmen can use international and domestic human rights law and act to promote and protect human rights are shown. Meanwhile, some authors consider a notion of a “hybrid ombudsman” differently. Mala Sharma, for instance, sees a hybrid ombudsman as a transitional institution combining the features of a classical and organizational (i.e., created by a private or public organization for mediation purposes) ombudsmen<sup>4</sup>. Certain experts describe a dichotomy of maladministration redress and human rights protection in the ombudsman’s activities as a development of the institution: “The scope of an ombudsman’s mandate has expanded from purely redressing maladministration by government institutions to also considering whether human rights violations have taken place, with the purpose of remedying relevant power imbalances and enabling individuals to effectively enjoy economic and social rights”<sup>5</sup>. Therefore, as a matter of fact, executive ombudsmen (working as a part of an administration) and ombudsmen appointed by organizations to resolve internal disputes are just quasi-ombudsmen. Any real ombudsman exercises control over the activities of the public administration but does this primarily through the prism of considering individual complaints of individuals and legal entities against the actions or omissions of administrative bodies and civil servants, while complaints arise as a result of violations of the rights and/or legitimate interests of a particular person or specific persons by the actions or omissions of an authority or civil servant. Therefore, promoting good administration/repairing maladministration, on the one hand, and protecting human rights, on the other hand, are, to my mind, two sides of the same coin and that is why they are inseparable in the work of an ombudsman since the very beginning till now. Just as we look at one or the other side of the coin at a particular moment, so we can attach more importance to one or another aspect of the ombudsman’s work at a certain period or under certain circumstances, but this does not mean that any of the aspects do not exist or are less important in principle.

Thus, a fusion of good administration promotion and human rights protection backed by the Parliament is a characteristic feature of any real (not quasi) ombudsman. However, I am supposed to refrain myself from developing this thesis because it is outside of the scope of the topic designated in the title of the present article, it is only a related issue. Meanwhile, this characteristic feature is relevant for the European Ombudsman (as for any other ombudsman in general). Additionally, it is not by chance that the European Ombudsman has been instituted by the Maastricht Treaty, in which “citizenship of the Union is hereby established” (Article 8(1))<sup>6</sup> and the aim “to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union” was proclaimed (Article B)<sup>7</sup>. Nevertheless, only the following few rights were fixed fragmentary and lapidary in the Maastricht Treaty itself: the right to move and reside within the territory of the Member States (Article 8a), the right to vote and stand as a candidate at municipal elections and in elections to the European Parliament (Article 8b) and the right to petition to the European Parliament (Article 8d)<sup>8</sup>. The European Ombudsman is mentioned twice in the Maastricht Treaty: in Article 138e<sup>9</sup>

<sup>3</sup> (Reif 2004)

<sup>4</sup> (Sharma 2020)

<sup>5</sup> (Beqiraj et al. 2018)

<sup>6</sup> Treaty of European Union. Brussels-Luxembourg, 1992, p. 15.

<sup>7</sup> Ibid., p. 8.

<sup>8</sup> Ibid., pp. 15–16.

<sup>9</sup> Ibid., p. 63.

(the Part Five “Institutions of the Community”), dealing with complaints and self-initiated inquiries in case of maladministration and in Article 8d<sup>10</sup> (the Part Two “Citizenship of the Union”). While the role of the European Ombudsman in the mechanism of overcoming maladministration is quite clear within the provisions of the Maastricht Treaty, the human rights of European citizens are predominantly implied and might be only derived from the provisions dedicated to labor, social, educational, cultural policies and the reference to the European Convention for the Protection of Human Rights and Fundamental Freedom (Article F(2))<sup>11</sup>, but they are not stipulated directly except a few of them, as mentioned earlier. The European Ombudsman, as an office combining the function of improving the quality of administration and the function of protecting human rights for effective activity, needs to have institutional opportunities and competence fixed and to have an unambiguous catalog of human rights enshrined. Such circumstance helps to understand the reason why the European Ombudsman has been interested in adopting the Charter of Fundamental Rights and in making it a binding act, as well as has contributed to its drafting. Additionally, it helps to understand the reason why the institution of the European Ombudsman was set up by the Maastricht Treaty (being mentioned in its two different parts) and why the European Ombudsman, since being founded, acquired the competence to react to individual complaints, as well as how the institution of the European Ombudsman evolved along with the development of European integration in general, including its institutional framework and citizenship. However, these issues are merely related to the subject of this article reflected in its title and cannot be studied thoroughly.

Therefore, since its inception in the beginning of the 19th century, an Ombudsman as an institution has been aimed at performing the following two functions: promoting the improvement of public administration and protecting the human rights violated as a result of actions or omissions of public authorities and civil servants. In the work of any ombudsman, both of these functions are tightly linked, one to the other, intertwined and manifested, although in specific conditions either one or the other may come to the fore. Despite a fairly large number of publications devoted separately to the problems of the implementation of the Charter of Fundamental Rights and the activities of the European Ombudsman, nevertheless, there is not enough research focused specifically on ensuring the effectiveness of the Charter’s provisions thanks to the work of the European Ombudsman. This article is aimed at filling this gap.

A wide range of studies are dedicated to the understanding of good administration, its promotion and maladministration redressing, as well as to the role of ombudspersons both at the national<sup>12</sup> and supranational<sup>13</sup> levels. Some scholars study international law standards in this sphere<sup>14</sup>. Certain experts link maladministration to corruption; for instance, Francesco Merloni made an interesting exploration in this field with in-depth suggestions, but primarily addressed them to the Anti-Corruption Authority rather than to the Ombudsman<sup>15</sup>. Meanwhile, the European Ombudsman takes a broader approach to maladministration than just corruption (by the way, Francesco Merloni does not equate in his monograph maladministration and corruption). Certain neighboring countries borrow the European experience in the field of administration and the ombudsman’s activities, adapting them to a specific country, as it is shown, for instance, by Elvettin Akman and Ahmed Özaslan for Turkey (“In particular, Western countries create different areas of complaint under the umbrella of the Ombudsman so that employees and citizens are not harmed by failures in public institutions . . . The establishment of an ombudsman institution determined in principle in the plans was decided by popular vote in 2010. The main characteristic of the Ombudsman is to adopt citizen-oriented work and to make

<sup>10</sup> Ibid., p. 16.

<sup>11</sup> Ibid., p. 9.

<sup>12</sup> For instance: (Addink 2015a); (Stanton and Prescott 2018).

<sup>13</sup> For example: (Börzel et al. 2008)

<sup>14</sup> For example: (Addink 2015b)

<sup>15</sup> (Merloni 2019)

advisory decisions on complaint issues<sup>16</sup>)<sup>16</sup> or by Alireza Dadashzadeh, Ali Babaei Mehr and Maryam Afshari for Islamic Law countries<sup>17</sup>. However, issues of good administration and maladministration are not the main issues within the theme reflected in the title of the present article, although they are related to this theme. That is why I will not explore good administration and maladministration as they are and even will not cite the European Ombudsman's soft law instruments dealing with good administration; I will focus my efforts on studying the implementation of the Charter of Fundamental Rights, including the right to good administration, to the extent necessary to learn the application of the Charter.

## 2. The European Ombudsman Institution and the Charter of Fundamental Rights

The European Ombudsman institution was set up by the Maastricht Treaty and the first Ombudsman was elected by the European Parliament in 1995. Initially, the European Ombudsman was able to promote overcoming maladministration within the system of bodies and institutions of the European Communities and the European Union. Meanwhile, in the 1990s only a few human rights were directly provided for at the supranational level and having been under the European Ombudsman's jurisdiction; however, individuals believed in the human rights defending mission of the European Ombudsman, lodging complaints before she/her assumed office and even before the election of the first Ombudsman (12 July 1995). By the day of the solemn undertaking before the Court of Justice of the European Communities in Luxembourg (27 September 1995), "53 complaints had already been registered, the first dating back to 8 April 1994"<sup>18</sup>. One of those rights within the European Ombudsman's competence, for instance, is devoted to public access to documents of European Communities and Union institutions and bodies and was investigated in a special report from the European Ombudsman to the European Parliament following an own-initiative inquiry<sup>19</sup> in 1996–1997<sup>20</sup>. However, in general, in the early period of the European Ombudsman's history, human rights were regulated predominantly at a national level. The adoption of the Charter of Fundamental Rights has strengthened the position of the European Ombudsman, as the Charter deals directly with human rights and the role of the Ombudsman. At the same time, the European Ombudsman has the tools to ensure compliance with and the implementation of the Charter's provisions. The first European Ombudsman himself took part in the Convention, which prepared and approved the Charter of Fundamental Rights, and contributed to its editing<sup>21</sup>. Jacob Söderman impacted the further promotion of the Charter after its proclamation in Nice in 2000: "My main goal at the Convention on the question of fundamental rights was to see to it that the Charter of Fundamental Rights become legally binding within the scope of European law"<sup>22</sup>. His successors in the office of the European Ombudsman continued his work, and this goal was achieved. The second European Ombudsman, Paraskevas Nikiforos Diamandouros, in his speech, pronounced on 23 May 2011, stressed that the Lisbon Treaty with the Charter of Fundamental Rights, incorporated as a legally binding act, broadened the Ombudsman's mandate in two main ways<sup>23</sup>. These were, according to Nikiforos Diamandouros, "firstly, before the Lisbon Treaty, the Ombudsman's mandate was limited to the first, 'Community',

<sup>16</sup> (Akman and Özaslan 2019)

<sup>17</sup> (Dadashzadeh et al. 2019)

<sup>18</sup> (Söderman 2005)

<sup>19</sup> "The Statute—Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties" contains the terms "enquiry" (for example, in Articles 3 and 5) and "inquiry" (for instance, in Article 4) while "the Implementing Provisions—Decision of the European Ombudsman adopting Implementing Provisions" and all other documentation issued by the European Ombudsman use the term "inquiry" (the acts cited are posted on the official website of the European Ombudsman). Despite the semantic proximity of these words, there are nuances in the meaning of each of them, which can lead to their different understanding. Numerically, the word "inquiry" prevails in the documentation of the European Ombudsman and in relation to the European Ombudsman; that is why I use it in the present article without any reservation and even when I refer to the content of the mentioned "Statute".

<sup>20</sup> Special report of the European Ombudsman to the European Parliament following the own-initiative inquiry into public access to documents (616/PUBAC/F/IJH). In *Official Journal of the European Union*. C 044, 10.02.1998, pp. 0009—0014.

<sup>21</sup> (Söderman 2005)

<sup>22</sup> *Ibid.*, p. 102.

<sup>23</sup> <https://www.ombudsman.europa.eu/en/speech/en/10496> (accessed on 24 February 2021).

pillar and the third pillar, that is, police and judicial cooperation in criminal matters. The Ombudsman was not empowered to open inquiries in relation to actions in the field of Common Foreign and Security Policy. However, after the Treaty of Lisbon abolished the so-called ‘pillar’ structure of the EU, the former second pillar—the Common Foreign and Security Policy—now also falls within the Ombudsman’s mandate<sup>24</sup>, and “secondly, the European Council is now explicitly included in the Union’s institutions. As a result, its actions or omissions now also fall within the Ombudsman’s mandate<sup>25</sup>. His statement was made a year after the Charter became enforceable; over ten years much more data has been accumulated for research and generalization.

Thus, the third European Ombudsperson, Emily O’Reilly, issued, in 2018, a Special Report in Strategic Inquiry on the Transparency of the Council Legislative Process<sup>26</sup>, in which maladministration was found; therefore, the right to good administration, stipulated in Article 41 of the Charter of Fundamental Rights, was violated. The Council did not implement a number of the Ombudsman’s recommendations, including eliminating the widespread practice of restricting access to legislative documents during the decision-making process; therefore, the report was sent to the European Parliament in search of support, as the Ombudsman considers transparency important for the democratic rule of law of the European Union (EU). The European Parliament overwhelmingly supported the Ombudsman’s proposals in early 2019, and ten Member States took the lead, backing an inter-institutional legislative database, and suggesting that the guidelines on marking documents as restricted from public access be updated, and that the outcome of negotiations on draft laws be proactively published<sup>27</sup>. Therefore, the right to good administration plays an important role in the activities of the European Ombudsman.

The right to good administration was incorporated at one time into the Charter of Fundamental Rights by the efforts of the European Ombudsman. Klara Kańska argues that the right to good administration is a new fundamental right that emerged at the turn of the 20th and 21st centuries. She gives a high assessment of this fundamental right, shows its doctrinal basis and more immediate origins. Analyzing and commenting on Article 41 of the Charter, she comes to the conclusion that, although Article 41 is a significant development in terms of individual administrative rights, it offers a one-sided vision of the function of administrative law<sup>28</sup>. Since Klara Kańska wrote this article (2004), the right to good administration has been developed at a doctrinal and practical level.

Actually, the protection of the right to good administration, which is, in fact, the reverse side of the fight against maladministration, serves as the basis for the consideration of complaints, as well as for conducting an inquiry on the own initiative of the European Ombudsman. In the words of Koen Lenaerts, “Just like certain Treaty provisions and general principles of EU law, the CJEU (the Court of Justice of the European Union—A.A.) has held that a fundamental right enshrined in a provision of the Charter may produce horizontal direct effect, provided that such a Charter provision is sufficient in itself and does not need to be made more specific by other provisions of EU or national law to confer on individuals a right on which they may rely as such<sup>29</sup>. Nevertheless, there are correlations between the provisions of the acts that ensure their mutual complementarity and harmonious application.

### 3. Initiation of Ombudsman’s Proceedings

Article 43 of the Charter of Fundamental Rights provides for the lodging of a complaint with the European Ombudsman: “Any citizen of the Union and any natural or legal person

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Case OI/2/2017/TE, opened on 10 March 2017, decision on 15 May 2018, <https://www.ombudsman.europa.eu/en/special-report/en/94921> (accessed on 24 February 2021).

<sup>27</sup> European Ombudsman. Annual Report 2019, <https://www.ombudsman.europa.eu/en/annual/en/127393> (accessed on 24 February 2021).

<sup>28</sup> (Kanska 2004)

<sup>29</sup> (Lenaerts 2019)

residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role<sup>30</sup>. Some details are added by Article 228 (ex-Article 195 TEC) of the Treaty on the Functioning of the European Union<sup>31</sup>. The first subparagraph of paragraph one in this article has almost the same formula as Article 43 of the Charter: “A European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. He or she shall examine such complaints and report on them”. Meanwhile, the second subparagraph of the mentioned paragraph prescribes further actions: “In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution, body, office or agency concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution, body, office or agency concerned. The person lodging the complaint shall be informed of the outcome of such inquiries”. Therefore, the general basis for starting an inquiry is the assumption that there may be an instance of maladministration in the activities of an institution, body, office or agency of the EU. This can be either the assumption of the applicant filing the complaint, or the assumption of the European Ombudsperson himself/herself, due to the fact that she/he has the right to initiate investigations on his/her own initiative.

Maladministration, which serves as the ground for an Ombudsman’s inquiry, is quite a broad notion. Significantly, for the subject of the present article, the European Ombudsman, since the very beginning (i.e., since 1995), has linked maladministration inter alia with a lack of respect for fundamental rights as a duty of community institutions, though it is not limited to a lack of such respect<sup>32</sup>. It is obvious that “maladministration” is a phenomenon opposite to “good administration”. However, what is “good administration”, the violation of the right to which causes the Ombudsman’s action? The answer to this question can be found primarily in Article 41 of the Charter of Fundamental Rights, which deals with the right to good administration. Thus, Article 41(2) reads that the right to good administration includes “(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions”. However, this list of elements of the right to good administration cannot be considered exhaustive.

The Statute—Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman’s Duties (as amended—adopted in 1994, amended in 2002 and 2008)<sup>33</sup> and the Implementing Provisions—Decision of the European Ombudsman adopting Implementing Provisions of 2016<sup>34</sup> cannot help, because these acts have neither definitions nor features describing “good administration” or “maladministration”. Nevertheless, the notion of good administration (as well as mal-

<sup>30</sup> The Charter of Fundamental Rights is cited from: *Official Journal of the European Union*. C 326/391, 26 October 2012, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12012P/TXT> (accessed on 25 February 2021).

<sup>31</sup> The Treaty on the Functioning of the European Union is quoted from: *Official Journal of the European Union*. C 326/47, 26 October 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN> (accessed on 25 February 2021).

<sup>32</sup> See: European Union. *The European Ombudsman. Report for the Year 1995*. Strasbourg, 1996, p. 8.

<sup>33</sup> Cited from: <https://www.ombudsman.europa.eu/en/legal-basis/statute/en> (accessed on 25 February 2021).

<sup>34</sup> Quoted from: <https://www.ombudsman.europa.eu/en/legal-basis/implementing-provisions/en> (accessed on 25 February 2021).

administration) has a certain volume, the limits of which should not be set arbitrarily. It is through the limitation of rights permitted by the Charter itself that the scope of each right and, therefore, the volume of the mentioned notion can be perceived. The Charter contains a category of the essence of a right, which gives a clue to setting the scope of each fundamental right: “Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms” (Article 52(1)). Koen Lenaerts, analyzing Article 52 of the Charter and the practice of its application by the Court of Justice of the European Union, has come to a conclusion: “As an absolute limit on limitations, the essence of a fundamental right defines a sphere of liberty that must always remain free from interference”<sup>35</sup>. Bearing all this in mind, let us turn to the practice of the European Ombudsman.

The subject matters of the inquiries conducted by the European Ombudsman gives everyone an understanding of the elements constituting maladministration. The 2019 Annual Report of the European Ombudsman enumerates the following subject matters: transparency and accountability (e.g., access to information and documents); culture of service (e.g., citizen-friendliness, languages and timeliness); proper use of discretion (including in infringement procedures); respect for procedural rights (e.g., the right to be heard); good management of EU personnel issues; recruitment; respect for fundamental rights; sound financial management (e.g., concerning EU tenders, grants and contracts); ethics; public participation in EU decision-making; and other<sup>36</sup>. The same classification of the elements of maladministration, which served as the subject matters for the Ombudsman’s inquiries, was used previously, including, for example, in 2018<sup>37</sup>. By the way, even this list of subject matters is not exhaustive, and yet it provides an insight into the understanding of the signs of maladministration versus good administration in the context of the Charter of Fundamental Rights and the practices of the European Ombudsman. The signs and content of good administration (as well as maladministration) are still discussible and are considered and construed in courts’ rulings, the decisions of sundry bodies and institutions, scientific monographs and articles; but, as mentioned earlier, the detailed analysis of good administration (and maladministration) is beyond the scope of this article as it follows from its title, and it is studied in so far as it is necessary to understand the peculiarities of the application of the Charter of Fundamental Rights by the European Ombudsman.

Consistent with Article 3 of the Implementing Provisions, the European Ombudsman determines the admissibility of a complaint from the point of view of her/his mandate and a complaint’s subject matter. The Secretariat may request the complainant to provide further information or documents to enable the Ombudsman to make that determination. A complaint recognized as admissible is assessed by the Ombudsman to decide whether there are grounds to inquire into it (Table 1).

<sup>35</sup> (Lenaerts 2019)

<sup>36</sup> European Ombudsman. Annual Report 2019, <https://www.ombudsman.europa.eu/en/annual/en/127393> (accessed on 24 February 2021).

<sup>37</sup> European Ombudsman. Annual Report 2018, <https://www.ombudsman.europa.eu/en/annual/en/113728> (accessed on 24 February 2021).

<sup>38</sup> The European Ombudsman. Annual Report for 1996. Luxembourg, 1997, p. 102.

<sup>39</sup> The European Ombudsman. Annual Report for 1997. Luxembourg, 1998, p. 311.

<sup>40</sup> The European Ombudsman. Annual Report for 1998. Luxembourg, 1999, p. 295.

<sup>41</sup> The European Ombudsman. Annual Report for 1999. Luxembourg, 2000, p. 289.

<sup>42</sup> The European Ombudsman. Annual Report 2000. Luxembourg, 2001, p. 245.

<sup>43</sup> The European Ombudsman. Annual Report 2001. Luxembourg, 2002, p. 269.

<sup>44</sup> The European Ombudsman. Annual Report 2002. Strasbourg, 2003, p. 261.

<sup>45</sup> European Ombudsman. Annual Report 2017, <https://www.ombudsman.europa.eu/en/annual/en/94827> (accessed on 24 February 2021).

<sup>46</sup> European Ombudsman. Annual Report 2018, <https://www.ombudsman.europa.eu/en/annual/en/113728> (accessed on 24 February 2021).

<sup>47</sup> European Ombudsman. Annual Report 2019, <https://www.ombudsman.europa.eu/en/annual/en/127393> (accessed on 24 February 2021).

**Table 1.** Number of complaints outside and within the European Ombudsman’s mandate.

Year	Number of Complaints Outside the European Ombudsman’s Mandate	Number of Complaints within the European Ombudsman’s Mandate
1996	598	323
1997	998	368
1998	911	411
1999	1140	414
2000	1241	482
2001	1306	524
2002	1663	653
2003	1767	603
2004	2729	930
2005	2673	811
2006	2768	849
2007	2401	870
2008	2544	802
2009	2392	727
2010	1983	744
2011	1846	698
2012	1720	740
2013	1665	750
2014	1427	736
2015	1239	707
2016	1169	711
2017	1430	751
2018	1300	880
2019	1330	871

Sources: European Ombudsman. Annual Report for 1996<sup>38</sup>, European Ombudsman. Annual Report for 1997<sup>39</sup>, European Ombudsman. Annual Report for 1998<sup>40</sup>, European Ombudsman. Annual Report for 1999<sup>41</sup>, European Ombudsman. Annual Report 2000<sup>42</sup>, European Ombudsman. Annual Report 2001<sup>43</sup>, European Ombudsman. Annual Report 2002<sup>44</sup>, European Ombudsman. Annual Report 2017<sup>45</sup>, European Ombudsman. Annual Report 2018<sup>46</sup>, European Ombudsman. Annual Report 2019<sup>47</sup>.

Thus, a steady, long-term trend consists in a significant excess of the number of complaints outside the scope of the Ombudsman’s mandate over those within her/his mandate. In 2011, the European Ombudsman adopted a new procedure for dealing with complaints falling outside the mandate. The Ombudsman Office’s Registry treats those complaints with a view to explain to applicants the reasons they considered each specific complaint as falling outside the European Ombudsman’s mandate and the possibility, if it is the case, of handing a complaint in to another competent body or consulting the applicant on where to turn. Meanwhile, applicants have the right to make a justified request for the European Ombudsman to reconsider the decision on recognizing a complaint as falling outside the mandate. According to the Ombudsman, this procedure, introduced in 2011, for handling such complaints has significantly reduced the amount of time needed to respond to complainants in cases falling outside the Ombudsman’s mandate<sup>48</sup>. This 2011 change of procedure for handling complaints that are outside the European Ombudsman’s

<sup>48</sup> European Ombudsman. Annual Report 2012. Luxembourg, 2013, p. 16.

mandate has special importance due to the fact that the majority of complaints received by the Ombudsman have been and are outside her/his mandate.

One can notice another trend: the overall quantity of complaints lodged with the European Ombudsman increased after the adoption of the Charter of Fundamental Rights by the European Parliament in December 2000. Obviously, it was the result of the appearance of the catalog of the rights of a citizen of the European Union. In spite of the uncertain legal status of the Charter of Fundamental Rights and the absence of its binding force at that time, this document oriented the European Ombudsman in the efforts to protect human rights in connection with maladministration redress, taking into account the peculiarities of the Ombudsman's work, such as providing mediation and giving recommendations to bodies and institutions. It is noteworthy that, on the contrary, the entry of the Charter of Fundamental Rights into legal force in December 2009 led to a reduced number of complaints filed with the European Ombudsman. The full legal effect of the Charter of Fundamental Rights, on the one hand, has consolidated the official capacities of the European Ombudsman, while, on the other hand, it has given EU citizens access to other human rights protection mechanisms, including judicial ones, and complaints are scattered across different mechanisms.

The time limit prescription for filing a complaint with the European Ombudsman is two years from the moment when the person became aware of the facts that served as its basis. The lodging of a complaint must be preceded by an appeal to the institution or body concerned. The filing of a complaint with the European Ombudsman does not affect the statute of limitations for administrative or judicial remedies. The complaint must allow the person lodging the complaint and the object of the complaint to be identified; the person lodging the complaint may request that her/his complaint remain confidential.

The European Ombudsman is competent to conduct own-initiative inquiries for which the Ombudsman finds grounds. The procedures applicable to inquiries opened following a complaint can be applied by the Ombudsman, to the extent that they are relevant, to own-initiative inquiries. The number of inquiries conducted by the Ombudsman on her/his own initiative is significantly less than the number of inquiries carried out on the basis of complaints. For example, in 2019 the European Ombudsman opened 456 inquiries on the basis of complaints and only 2 own-initiative inquiries and closed 552 complaint-based inquiries and 8 own-initiative inquiries<sup>49</sup>. Nevertheless, inquiries conducted on the Ombudsman's own initiative look into issues of significant public interest. They enable the European Ombudsman to investigate what appear to be systemic problems in the EU bodies, offices, institutions and agencies and promote positive developments in key areas of activity. For instance, case OI/3/2017/NF was opened by the European Ombudsman on 27 March 2017 with the adoption of her decision on 28 February 2019<sup>50</sup> on How the European Commission Manages "Revolving Doors" Situations of Its Staff Members, and this case deals with a conflict of interest and lobbying in the EU at the Union level.

#### 4. Inquiry Procedure

Upon receiving a complaint and finding it admissible, the European Ombudsman must immediately inform the institution, office, agency or body concerned. The Ombudsman must also inform the person who filed the complaint as soon as possible about the actions that she/he has taken on it, as it is provided for in Article 2 (paragraphs 2 and 9) of the Statute—Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties. The Ombudsman may, aimed at conducting an inquiry, prompt the petitioner or any third party to supply the Ombudsman with information or documents, or to give explanations regarding the information or documents already delivered to the Ombudsman. The Ombudsman may also invite an applicant to meet with him/her to spell out questions concerning the inquiry.

<sup>49</sup> European Ombudsman. Annual Report 2019, <https://www.ombudsman.europa.eu/en/annual/en/127393> (accessed on 24 February 2021).

<sup>50</sup> [https://www.ombudsman.europa.eu/en/decision/en/110608#\\_ftn64](https://www.ombudsman.europa.eu/en/decision/en/110608#_ftn64) (accessed on 25 February 2021).

The European Ombudsman has the right to request the relevant institution, body, office or agency to provide a response to the applicant's allegations and to express its opinion on concrete elements of the allegations and on questions linked to the complaint.

The European Union institutions, offices, agencies and bodies are obliged to supply the Ombudsman with any information she/he has requested from them and give her/him access to the files concerned. Officials and other servants of EU institutions, offices, agencies and bodies must testify at the request of the Ombudsman.

Access to classified information or documents, in particular to sensitive documents within the scope of Article 9 of Regulation (EC) No 1049/2001<sup>51</sup>, shall be subject to compliance with the rules on security of the community institution, office, agency or body concerned. The institutions, offices, agencies or bodies supplying classified information or documents, as mentioned in the previous subparagraph, shall inform the Ombudsman of such classification. The European Ombudsman is to negotiate, preliminarily with relevant agencies, bodies, offices or institutions, the conditions for handling secret information or documents and other information subject to the requirement of professional privacy. The pertinent institution, agency, office or body has to grant access to sundry documents emanating from a Member State and proclaimed to be confidential in consistency with law or regulation only if that Member State has given its foregoing consent. They are to grant the right to use other documents originating in a Member State after having informed the relevant Member State. The Ombudsman has no right to make public the content of such documents. The Ombudsman may, for the protection of the legitimate interests of the complainant or of a third party, classify information in any documents, including those submitted by an applicant, as privy to the Ombudsman's own initiative.

It is not only the institutions, bodies, offices and agencies of the EU, but also the bodies of the EU Member States, that are obliged to provide the European Ombudsman with any information that may contribute to the identification of violations of good administration. The exceptions are cases where such information is subject to laws and regulations on secrecy or provisions that do not allow its transfer. However, even in this case, the EU Member State concerned may allow the European Ombudsman to obtain this information, provided that she/he guarantees its non-disclosure.

The Ombudsman is entitled to hold possession of the documents gained from an institution or a Member State in the course of an inquiry and declared to be secret by that institution or Member State, only for the period of the inquiry. The Ombudsman may ask an institution or Member State to keep such documents for a duration of at least five years, notifying them after this time frame that the Ombudsman no longer holds the documents.

Responses to the questions of the European Ombudsman and requests for documents and information must be made by the institutions, bodies, offices and agencies within the time limits specified by the Ombudsman, which under normal conditions should not exceed three months. The exact time frame for providing a response should be reasonable, taking into account the complexity and urgency of the inquiry. If the European Ombudsman considers that the inquiry is of public interest, the time frame for a response should be as short as possible. If the institution, body, office or agency concerned cannot provide a response to the Ombudsman within the established time frame, it must submit a reasonable request for an extension. If the Ombudsman considers it appropriate to do so, the Ombudsman may take steps to ensure that a complaint is dealt with as a matter of priority, taking into account strategic objectives.

The Ombudsman may make public non-confidential information about the progress of an inquiry. In particular, in inquiries of public interest, the Ombudsman may publish the letters the Ombudsman sends to the institutions or Member States, and the replies thereto (Article 9.3 of the Implementing Provisions<sup>52</sup>).

<sup>51</sup> *Official Journal of the European Communities*. L 145/45, 31 May 2001, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=EN> (accessed on 25 February 2021).

<sup>52</sup> *Implementing Provisions—Decision of the European Ombudsman Adopting Implementing Provisions*, <https://www.ombudsman.europa.eu/en/legal-basis/implementing-provisions/en> (accessed on 28 February 2021).

If the assistance that she/he requests is not forthcoming, the Ombudsman should inform the European Parliament, which is supposed to make appropriate representations (Article 3(4) of the Statute—Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman’s Duties). According to Article 4(4.9)<sup>53</sup> of the Implementing Provisions, if an institution or a Member State does not provide the Ombudsman with assistance, the Ombudsman shall remind the institution or Member State concerned why that assistance is necessary. If, after discussion with the institution or Member State concerned, the matter cannot be resolved to the satisfaction of the Ombudsman, the Ombudsman has the competence to inform the European Parliament and request it to take whatever action it considers appropriate.

The Ombudsman should inform the applicant of the advancement of the inquiry, as appropriate. If the Ombudsman believes it necessary to explain to the applicant any component of the institution’s answer to the Ombudsman, the Ombudsman may choose to supply the applicant with the relevant institution’s response. If the Ombudsman makes such a decision, she/he may also hand in to the applicant a duplicate of the Ombudsman’s message to the institution asking for an answer.

The Ombudsman may commission any studies or expert reports that he or she considers relevant to the inquiry. For example, the Decision of the European Ombudsman closing her own-initiative inquiry, OI/8/2014/AN, opened on 19 May 2014, with the adoption of the decision on 11 May 2015, regarding the extent of the compliance of the European Commission EU cohesion policy with the fundamental rights enshrined in the Charter of Fundamental Rights<sup>54</sup> is based on a profound study of the replies and reports received from the European Commission, the national ombudspersons of EU States Members and a range of civil society organizations concerned. The “European Ombudsman Strategy: ‘Towards 2024’—Sustaining Impact” (document adopted on 07 December 2020<sup>55</sup>) provides for conducting research in at least the following two paragraphs: priority four in objective one (“Develop a more systematic and substantive follow-up of our work. Revise how we assess the medium to longer-term impact of our recommendations, suggestions and every other tool we use in order to influence positive change”) and priority two of objective two (“Increase our awareness of the changing dynamics of the EU and the political, social, economic and legal context in which we operate, and where appropriate, to engage in, and contribute to, relevant debates and developments on European democracy”), although the achievement of other priority objectives also seems to involve research, albeit in a less explicit form.

Thus, the rules of inquiry procedure manifest the discretionary powers of the European Ombudsman, supported by the corresponding duties of the institutions, bodies, offices and agencies subject to her/his inspections, combined with ensuring the transparency of her/his activities and the right to participation of the parties affected by her/his decision in the inquiry process (the democracy aspect of the principle of “good administration”). The search for agreement and the balance of the interests of the parties are aimed at ensuring the principle of efficiency. The need for compliance with the law (the rule of law aspect of the concept of “good administration”) is derived from the content of all the instruments regulating the activities of the European Ombudsman. Irena Cuculoska refers to “the term ‘right to good administration’ as a narrower term than the term ‘right to good governance’, which” she considers “more appropriate when talking about this right guaranteed at the European Union level”<sup>56</sup>, and rightly notes that, “the principle of good administration (or more broadly: good governance) despite its significance, still remains imprecisely defined”<sup>57</sup>. Without going into a discussion about the ratio of the volumes of the concepts of “good

<sup>53</sup> Implementing Provisions—Decision of the European Ombudsman Adopting Implementing Provisions, <https://www.ombudsman.europa.eu/en/legal-basis/implementing-provisions/en> (accessed on 28 February 2021).

<sup>54</sup> <https://ombudsman.europa.eu/en/decision/en/59836> (accessed on 26 February 2021).

<sup>55</sup> [https://ombudsman.europa.eu/en/strategy/our-strategy/en#\\_ftn2](https://ombudsman.europa.eu/en/strategy/our-strategy/en#_ftn2) (accessed on 26 February 2021).

<sup>56</sup> (Cuculoska 2014)

<sup>57</sup> *Ibid.*, p. 19.

governance” and “good administration”, since this is not part of the objectives of this study, I draw attention to the fact that “good administration” has not only substantive, but also procedural, content.

The Ombudsman may decide to discontinue an inquiry at the request of the complainant. This does not prevent the Ombudsman from opening an own-initiative inquiry into the subject matter of the complaint.

The applicant has the right to apply to the European Ombudsman with a request to reconsider the decision made by the Ombudsman, as well as any conclusion in the decision closing the inquiry, with the exception of the conclusion about maladministration. At the same time, when submitting a request for the reconsideration of the decision of the European Ombudsman, the applicant has the right to familiarize themselves with the materials of the case.

### 5. Consequences of the European Ombudsman’s Actions

The Ombudsman may make suggestions for improvement regarding issues related to the inquiry in the course of an inquiry. If the European Ombudsman considers that a situation exposed in a communication can be fixed, the Ombudsman encourages the relevant institution to find a solution. The respective institution, body, office or agency is to answer the Ombudsman’s proposal for a solution within a particular timeframe, which usually should not exceed three months. The exact timeframe of a response should be reasonable, given the complexity and urgency of the inquiry. If the Ombudsman comes to a conclusion that the inquiry has public interest, the reply from the institution is asked for as soon as reasonably possible. If the institution, body, office or agency concerned is not in a position to provide a reply to the Ombudsman within the set timeframe, it is supposed to make a reasoned request for an extension. The Ombudsman supplies the applicant with a duplicate of the proposal for a solution and the institution’s (body’s, office’s, or agency’s) response to the mentioned proposal after receiving the reply from the relevant institution. The applicant may surrender observations to the Ombudsman within one month.

Where the Ombudsman finds no maladministration, that a solution has been found or that no further inquiries are justified, the inquiry is to be closed with a decision setting out the findings; and the Ombudsman sends the decision to the complainant and to the institution concerned (Article 6.2 of the Implementing Provisions<sup>58</sup>). In 2017, no maladministration was found in 164 cases that were closed; 166 cases were settled by the institution (body, office, or agency) with solutions achieved or partly achieved; it was decided that no further inquiry was justified in 27 cases; maladministration was found in 24 cases that were closed; and 11 other cases were closed<sup>59</sup>. In 2018, no maladministration was found in 254 cases that were closed; 221 cases were settled by the institution (body, office, agency) with the suggestions accepted and the solutions achieved; it was decided that no further inquiry was justified in 56 cases; maladministration was found in 29 cases that were closed; and 10 other cases were closed<sup>60</sup>. In 2019, no maladministration was found in 316 cases that were closed; 187 cases were settled by the institution (body, office, or agency) with the solutions achieved or partly achieved; it was decided that no further inquiry was justified in 30 cases; maladministration was found, and recommendations were agreed or partly agreed in 29 cases that were closed; and 5 other cases were closed<sup>61</sup>. Therefore, a great, sometimes the major, portion of inquiries are and have been terminated by the European Ombudsman with no maladministration recognized. A significant number of cases have been settled by a relevant institution (body, office, or agency) due to mediation of the European Ombudsman.

<sup>58</sup> Implementing Provisions—Decision of the European Ombudsman Adopting Implementing Provisions, <https://www.ombudsman.europa.eu/en/legal-basis/implementing-provisions/en> (accessed on 28 February 2021).

<sup>59</sup> European Ombudsman. Annual Report 2017, <https://www.ombudsman.europa.eu/en/annual/en/94827> (accessed on 24 February 2021).

<sup>60</sup> European Ombudsman. Annual Report 2018, <https://www.ombudsman.europa.eu/en/annual/en/113728> (accessed on 24 February 2021).

<sup>61</sup> European Ombudsman. Annual Report 2019, <https://www.ombudsman.europa.eu/en/annual/en/127393> (accessed on 24 February 2021).

An example of a decision of no maladministration found is one adopted on 13 September 2018 in the case 969/2018/MMO, opened on 18 June 2018<sup>62</sup>, on the European Commission's alleged failure to send an acknowledgement of receipt concerning an infringement complaint against Lithuania as regards to the implementation of Article 17 of the Charter of Fundamental Rights. The European Commission received a complaint with allegations of non-compliance by Lithuania with Article 17 (1)—right to private property. The European Commission explained that all actions were taken by the authorities of Lithuania in accordance with Lithuanian law, which meant that there was no Union institution, body, office or agency involved, and no EU norms applied, therefore, there was no legal base for the European Commission interference. The complainant insisted and the European Commission answered that everything had been already explained. The European Ombudsman, having considered the situation, came to a conclusion that the European Commission correctly and timely responded to the complainant, which is why no maladministration found.

Where the Ombudsman finds maladministration, the European Ombudsman makes any appropriate recommendation(s) to the institution (body, office, or agency) concerned in accordance with Article 3(6) of the Statute—Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties<sup>63</sup> and asks the institution (body, office, or agency) concerned to provide an opinion on the recommendation(s) within three months. The opinion shall state whether and, if so, how, the institution (body, office, or agency) has implemented or intends to implement the recommendation(s). The Ombudsman shall forward the opinion to the complainant, who may submit comments on it within one month.

Let us look at the statistics of compliance by EU institutions, bodies, offices and agencies with the European Ombudsman's decisions that revealed maladministration. In 2013, 50 critical remarks were made in 40 decisions, while 83 further remarks were made in 53 decisions. A single decision may contain more than one remark, and both kinds of remarks may be included in the same decision. Taking critical and further remarks together, the rate of satisfactory follow-up was 81%. The follow-up to further remarks was satisfactory in 83% of cases, whilst the rate of satisfactory follow-up of critical remarks was 78%. These results are slightly lower than those achieved in the previous year when the rate of satisfactory follow-up to critical and further remarks was 83%. The follow-up to further remarks was satisfactory in 90% of cases in the 2012 report, whilst the rate of satisfactory follow-up to critical remarks was the same, at 78%. Finally, it is noteworthy that the Commission provided a satisfactory follow-up in only 72% of cases, compared to 88% in the 2012 report<sup>64</sup>. In 2014, the EU institutions complied with the Ombudsman's proposals at a rate of 90%. This is by far the highest figure achieved to date. Since the office started recording compliance statistics in 2011, the institutions have on average been complying at a rate of 80%. As the report shows, the rate of compliance can vary significantly from one institution to another—from 100% in some cases, to 0% in the worst case. The Commission, for instance, complied at a rate of 86% (up from 73% in 2013)<sup>65</sup>. The European Ombudsman's Report reveals that, in 2015, the EU institutions complied with the Ombudsman's proposals in 85% of instances, a slight increase from 83%. Of the 14 institutions examined, 11 scored 100%, while the Commission—which accounts for the largest portion of the inquiries that the Ombudsman conducts—scored 77%. As the report shows, in 2016 the rate of compliance can vary significantly from one institution to another—from 100% in some cases, to 77% in the worst case (up from 33% in 2015). The European External Action Service (EEAS), the Council of the European Union and

<sup>62</sup> <https://www.ombudsman.europa.eu/en/decision/en/103439> (accessed on 27 February 2021).

<sup>63</sup> The Statute—Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, <https://www.ombudsman.europa.eu/en/legal-basis/statute/en> (accessed on 28 February 2021).

<sup>64</sup> Putting it Right? How the EU Institutions Responded to the Ombudsman in 2013, <https://www.ombudsman.europa.eu/en/annual/en/58401> (accessed on 27 February 2021).

<sup>65</sup> Putting it Right? How the EU Institutions Responded to the Ombudsman in 2014, <https://www.ombudsmn.europa.eu/en/annual/en/61644> (accessed on 27 February 2021).

the European Medicines Agency (EMA), for instance, had a 100% compliance rate<sup>66</sup>. In 2017, the EU institutions complied with the Ombudsman's proposals in 81% of instances (a slight decrease from 85% in 2016). The institutions reacted positively to 80 out of the 99 proposals for improvement made by the Ombudsman. There were 148 other cases in which the Ombudsman considered that the institutions had taken steps to improve how they work. Eight out of the 14 institutions had a 100% compliance rate, while the European Commission—which accounts for most cases—had a 76% compliance rate<sup>67</sup>. In 2018, the EU institutions complied with the Ombudsman's proposals in 77% of instances, a slight decrease from the 81% in 2017. The institutions reacted positively to 90 out of the 117 proposals for improvement made by the Ombudsman. The proposals were made in 69 cases, with 52 of these cases leading to the institutions taking steps to improve how they work. Eleven institutions had a 100% compliance rate, while the European Commission—which accounts for most cases—had a compliance rate of 70.9%<sup>68</sup>. In 2019, the EU institutions cooperated satisfactorily in 79% of instances, which represents an improvement on the previous year. The institutions reacted positively to 93 out of the 118 proposals the European Ombudsman made to correct or improve their administrative practices. Out of the 17 institutions to which the Ombudsman made proposals, 10 responded satisfactorily to all of the solutions, suggestions and recommendations that the Ombudsman proposed. EU institutions accepted 6 out of 10 solutions proposed by the Ombudsman in cases that were closed in 2019. A total of 83 suggestions were made in cases that were closed in 2019. The follow-up to suggestions was satisfactory in 93% of cases, which is higher than previous year's rate of 82%<sup>69</sup>. Therefore, as the given statistical data testify, trends in the area of compliance with the suggestions and proposals of the European Ombudsman are unstable and ambiguous.

The Ombudsman, after analyzing the opinion of the institution concerned and any comments submitted by the complainant, may close the inquiry setting out definitive findings. The Ombudsman reports to the European Parliament on his or her inquiries on a regular basis, including by way of an annual report. The Ombudsman may submit a Special Report to the European Parliament on any inquiry in which the Ombudsman finds maladministration and that the Ombudsman considers to be of significant public interest.

Where the Ombudsman becomes aware that the matter under investigation by the Ombudsman has become the subject of legal proceedings, the Ombudsman must close the inquiry and inform the complainant and the institution.

## 6. Conclusions

Acquiring the status of a binding legal act after the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights has become one of the basic instruments of the EU legal system. The European Ombudsman participated in the preparation of the draft Charter, and at the same time, after the entry into force of the Charter, strengthened the position of the Ombudsman, becoming one of the legal pillars of his/her activities.

One of the elements linking different aspects of the European Ombudsman's activities—monitoring activities against EU bodies, institutions, offices and agencies in order to avoid and repair maladministration, on the one hand, and the promotion and protection of human rights, on the other hand—is the right to good administration, which is enshrined in Article 41 of the Charter. It is widely known that in the case law of the European Court of Justice “good administration” is seemed to refer to the public interest sphere, which may

<sup>66</sup> Putting it Right? How the EU Institutions Responded to the Ombudsman in 2016, <https://www.ombudsman.europa.eu/en/annual/en/87679> (accessed on 27 February 2021).

<sup>67</sup> Putting it Right? How the EU Institutions Responded to the Ombudsman in 2017, <https://www.ombudsman.europa.eu/en/annual/en/110768> (accessed on 27 February 2021).

<sup>68</sup> Putting it Right? How the EU Institutions Responded to the Ombudsman in 2018, <https://www.ombudsman.europa.eu/en/annual/en/123473> (accessed on 27 February 2021).

<sup>69</sup> Putting it Right? How the EU Institutions Responded to the Ombudsman in 2019, <https://www.ombudsman.europa.eu/en/annual/en/135909> (accessed on 27 February 2021).

sometimes, but not always, generate individual legal rights<sup>70</sup>. Then, the European Court of Justice developed this attitude by explaining that the principle of sound administration does not, in itself, confer rights upon individuals, except where it constitutes the expression of specific rights for the purposes of Article 41 of the Charter<sup>71</sup>. “Good administration” as a fundamental public law concept has its origins in various aspects of the historical development of European society. Among such aspects, the principle of the rule of law, democracy and state institutional development are distinguished. As a result of this approach, the principle of respect for human rights, along with democracy and the rule of law, are beginning to be seen as the cornerstones of a more general concept of “good administration”.

Based on the Charter’s notion of maladministration and the Charter’s human rights principles of “good administration”, the task of detecting violations of governance, including through a breach of fundamental rights provided for by the Charter, is broader than just a check for legality. An important role in fulfilling this task is assigned to ensuring the adequacy, efficiency and integrity of government and meeting the legitimate expectations of citizens, including in cases where the administration lacks obligations, which might be enforced by legal coercion.

The competence to initiate an inquiry on its own initiative gives a proactive character to the activities of the European Ombudsman in the process of improving administration in the EU, allowing it to be considered not only as a body for reviewing complaints, but also as a body that promotes the democratization of the dialogue between a citizen and the government, ensuring the transparency of this government and the participation of citizens in making power decisions and improving the mechanism for protecting rights and freedoms. Examples of strategic inquiries conducted by the European Ombudsman demonstrate the scale of its activities and its focus on the implementation of the principles of “good administration”—compliance, transparency, participation, efficiency, accountability and human rights.

The substantive legal basis used by the European Ombudsman in carrying out inquiries in the field of fundamental human rights compliance is the legal norms of the sources of law of the European Union, regulating relations connected to the right to “good administration”. Such norms are contained in the sources of the primary EU law—the founding treaties of the European Union (with the Charter of Fundamental Rights incorporated), as well as in a number of sources of secondary EU law, including the decisions of the Court of Justice of the European Union and the soft law acts of the European Ombudsman.

The main areas of activities of the European Ombudsman are as follows: control (complaint based and own-initiative inquiries); mediation (seeking a settlement by the institution, body, office or agency in the course of the inquiry); human rights protection (making decisions on specific cases opened on complaints); regulation (soft law rules in decisions on strategic inquiries and strategic initiatives); prediction (suggestions and proposals to prevent maladministration and to promote good administration). The systemic nature of the development of the institution of the European Ombudsman is ensured by the following two consecutive documents adopted by the current European Ombudsman, Emily O’Reilly: Strategy of the European Ombudsman “Towards 2019”<sup>72</sup> (approved on 17 November 2014) and European Ombudsman Strategy: “Towards 2024”—Sustaining Impact<sup>73</sup> (issued on 7 December 2020).

The following main features of the impact of the Lisbon Treaty on the legal status of the European Ombudsman can be distinguished as follows: firstly, giving the Charter of Fundamental Rights of the European Union legal force along with the founding treaties of the European Union normatively enshrined the right of EU citizens and legal entities to “good administration” in the source of EU law of supreme legal force and allowed the

<sup>70</sup> Case T196/99 *Area Cova and Others v Council and Commission* [2001] ECR II-3597, para. 43.

<sup>71</sup> See: Case T-193/04, *Hans-Martin Tillack v Commission* [2006] ECR II-03995.

<sup>72</sup> <https://www.ombudsman.europa.eu/en/document/en/58332> (accessed on 28 February 2021)

<sup>73</sup> <https://www.ombudsman.europa.eu/en/strategy/our-strategy/en> (accessed on 28 February 2021)

European Ombudsman, based on the provisions of European Union law, to operate with the principles of “good administration”, developed by judicial case law and legal academic doctrine; secondly, the entry into force of the Lisbon Treaty contributed to the expansion of the competence of the European Ombudsman, both in terms of the composition of the persons involved, the scope of jurisdiction and the breadth of powers; thirdly, changes in the activities of the European Ombudsman were caused both by general changes that the Lisbon Treaty introduced into the legal framework for the activities and the institutional system of the European Union, and by changes made to the norms of the EU legal acts directly regulating the rights, duties and responsibilities of the European Ombudsman.

Bearing in mind that a legally binding nature is absent from the decisions of the European Ombudsman, including those relating to the fundamental rights enshrined in the Charter, they, judging by the statistical data, are executed by the bodies, offices, agencies, and institutions of the EU in the overwhelming majority of cases. At the same time, the decisions of the Ombudsman are incarnated in the acts of the EU bodies, offices, agencies, and institutions, establishing the corresponding rules as already mandatory. This is one of the ways to develop the provisions of the Charter of Fundamental Rights.

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