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Insight into a Special Relation: the European Parliament and the European Ombudsman

Abstract. According to Arts. 20 (ex Art. 17 TEC) and 24 (ex Art. 21 TEC) of TFEU, European citizens are entitled to apply to the European Ombudsman. This right, stemming from European citizenship, is furthermore explained in Art. 228 TFEU (ex Art. 195 TEC), stating that any citizen of the Union or any natural or legal person residing or having its registered office in a Member State can complain in instances of maladministration in connection with the activities of the Union institutions, bodies, offices or agencies.¹ The European Parliament, as one of these institutions, represents next to the Council of the European Union the legislative power of the EU. From this starting point, the study aims to analyze the type of relation between an institution with decades-long history and an office with a history not much more than a decade and a half.

Keywords: European Parliament, European Ombudsman, petition, complaint, independence

The establishment of the European office was the result of a long way, formed among many by the attitude of the European Parliament and its Committee on Petitions.² If we try to describe the relationship between the European Ombudsman and the Parliament, the word “specific” seems to be the most adequate: the relation has more levels and these levels with connecting and complementing each other create its special nature and this can be approached or characterized from more sideways.

1. The petition and the complaint

Before the establishment the Office of the European Ombudsman by the Maastricht Treaty, the Committee on Petitions made an attempt to draw up a definition for the petition in the Resolution on the deliberation of the Committee on Petitions during the parliamentary year 1993–1994, declaring that petitions are all complaints, requests for an opinion, demands for action, reactions to Parliament resolutions or decisions by other Community institutions or bodies forwarded to it by individuals and associations.³ The necessity of further specification led the Committee to engage again in the issue and as a result, with little change in the prior

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¹ Except the Court of Justice of the European Union acting in judicial role.

² See more Friedery, R.: The Role of the European Ombudsman in Dispute Solving. *Acta Iuridica Hungarica*, 49 (2008) 4, 359–376; Friedery, R.: Az Európai Ombudsman Hivatalának történelmi és intézményi aspektusai (Historical and Institutional Aspects of the Office of the European Ombudsman). In: Balogh, M. (ed.): *Diszciplinák határain innen és túl* (Within and Beyond the Borders of Disciplines). Budapest, 2007, 125–139.

³ Report on the amendment of Rule 161 of Parliament’s Rules of Procedure, 16 December 1997, Committee on the Rules of Procedure, the Verification of Credentials and Immunities (Rapporteur: Brian Crowley). <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A4-1997-0416&language=EN#top>

definition, a petition was to be regarded as a requests for intervention, for action, for change of policy or for an opinion, submitted to the Parliament by any citizen of the Union and any natural or legal person residing or having its registered office in a Member State, individually or in association with others.⁴

The TFEU and the Ombudsman's Statute offer also a guide to make a difference between the petition and the complaint. If we compare Art. 228 TFEU (ex Art. 195 TEC) to Art. 227 TFEU (ex Art. 194 TEC) then the difference between the complaint and the petition can be clearly noticed. The former stipulates that the Ombudsman is entitled to receive complaints about alleged maladministration in connection with the activities of the Union institutions, bodies, offices or agencies, the latter states that the European Parliament can be petitioned on matters belonging to the Union's fields. Thus, in the case of the petitions the complained activity must relate to the fields of the European Union,⁵ while in the case of the Ombudsman this phrase cannot be seen⁶. This constitutes the main difference between the two non-judicial dispute resolution forums; it is possible to address a petition to the European Parliament in connection with Member States' authorities. The right to petition is of more general nature, whereby complaints can be in connection only with maladministration performed by Union institutions, bodies, offices and agencies. The Ombudsman helps to shed light on maladministration, the Committee on Petitions has the task to give adequate answer to complaints or opinion of natural or legal person in connection with the Parliament's resolution or decision of institutions and bodies. Art. 228 TFEU (ex Art. 195 TEC) states that a complaint can be lodged not only directly to the European Ombudsman but as well through a Member of the European Parliament: because there is no need for individual or direct interests to lodge a complaint, the person affected can persuade a Member of Parliament or other person fulfilling the personal requirements to refer the complaint on his or her own name to the Ombudsman.^{7;8} This possibility earns significance in cases, where the complainant does not fulfil the personal requirements, e.g. is not a European citizen. Contrary to this—although the subjects of the provisions are the same, thus any citizen of the Union or any natural or legal person residing or having its registered office in a Member State—, the person addressing the petition has to be directly affected by the matter and has to address the petition directly to the Parliament, thus has no options as in the case of the complaint.

The procedures of the Committee on Petitions and the Office cannot be regarded as each other rivals. A basis for the co-operation is, when the lodged complaint regarding its content can be considered more a petition and vice versa. Hence, in this kind of cases the office will transmit the complaints toward the European Parliament's Committee on

⁴ Resolution on the deliberations of the Committee on Petitions for the parliamentary year 1996–1997 (Rapporteur: Roy Perry). <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A4-1997-0190&language=EN>

⁵ According to Art. 227 TFEU (ex Art. 194 TEC) "...have the right to address ... a petition to the European Parliament on a matter which comes within the Union's fields of activity".

⁶ According to Art. 228 TFEU (ex Art. 195 TEC) "...empowered to receive complaints.. concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies...".

⁷ In the first Annual Report of 1995, 8 from the 298 registered complaints had been lodged through a Member of Parliament.

⁸ Thus, complaints can be lodged *actio popularis* with the condition that both the complainant and the subject of the complaint can be identified.

Petitions, and the petitions, which are essentially complaining about maladministration, are automatically forwarded to the Ombudsman's Office.⁹ The necessity of a successful co-operation between the two comes from cases when it is not clear to which body should citizens turn to, what the difference is between the two procedures. Since in the relevant legislation this procedure is only an option, a possibility and not a duty for the Ombudsman, it is not automatically made: the Ombudsman can only make use of the transfer if the complainant also agrees with it,¹⁰ and the Committee on Petitions must follow this way, too.^{11;12} We should point out that if a complaint has already been investigated as a petition by the Committee, it is usually not justified for a further investigation by the Ombudsman, only when new evidence has been submitted in the meantime,¹³ but the Ombudsman's inquiry as an additional procedure is only in the latter case possible.

The relationship between the Parliament and the Ombudsman is even more toned: the Parliament even helps the Ombudsman to carry on the inquiry. This stems from the provisions that EU institutions, bodies, offices and agencies are required—such as the Parliament—to supply the Ombudsman with the requested information and must guarantee the access to their documents necessary for the Ombudsman. National institutions and bodies are also obliged to provide at the request of the Ombudsman with all the information which could clear the EU institution from maladministration. In this case access can be granted only after the concerned Member State had been notified, with exceptions when the information required is subject to law, or to secrecy falling under administrative decision, or fall under provision which cannot be made public. If the Ombudsman does not receive the requested help, or the request is refused, the Ombudsman can notify the European Parliament, which steps in using its political power to requests the necessary information for the Ombudsman. Furthermore, with the aim to share information of common interest, the Committee on Petitions—where it finds it necessary—invites the Ombudsman to attend the meetings of general and specific nature and to discuss matters of common interest.

⁹ Soon after the beginning, during the year 1996, 10 petitions were handed over to the Office and 5 complaints were given to the Committee of Petitions, in both cases with the consent of the complainant. The European Ombudsman suggested in further 42 cases that they should turn to the Parliament.

¹⁰ Art. 2(3) of the Decision of the European Ombudsman adopting implementing provisions, adopted on 8 July 2002 and amended by decisions of the Ombudsman of 5 April 2004 and 3 December 2008. Furthermore Implementing Provisions.

¹¹ See case 441/2002/ME, in which he advised that the submitted complaint should be forwarded to the Parliament. Indeed, the complainant alleged that the decision of the Council of the European Union limited his access to and the use of vitamins and minerals. Since the complaint contained no maladministration, but concerned the merit of Community legislation, therefore, the Ombudsman rejected it, but suggested to be referred as petition. See *The European Ombudsman: Annual Report 2002*. Luxembourg, 2003, 18.

¹² The Ombudsman acted similarly in case 2881/2004/JMA, where a group of complainants sent an open letter to the *El Triangle* newspaper in Barcelona about alleged discrimination, alleging that the European Constitution did not recognize the Catalan language as official. However, the complaint related to a proposal for amending the Treaties, and according to the Ombudsman it was not related to maladministration thus, it fell outside the scope of his mandate and was forwarded to the European Parliament as petition. See *The European Ombudsman: Annual Report 2004*. Luxembourg, 2005, 39.

¹³ *The European Ombudsman: Annual Report 2000*. Luxembourg, 2001, 21.

2. Subject of inquiry: the maladministration

In the provisions regarding the European Ombudsman, we cannot find any further specification what they understand under the term of maladministration. It is only referred to in the Treaty and the Statute to the extent that the Ombudsman examines instances of maladministration. It is established that maladministration occurs, when an EU institution does not act in accordance with the Community law, or neglects or fails to take account the principles and rules created by the European Court of Justice and the Court of First Instance. The uncertainty surrounding of the definition of maladministration made the European Ombudsman further clarification,¹⁴ and the definition was also adopted by a 1998 European Parliament decision. However, cases of maladministration cannot be listed exhaustively, which is proved by the complaints handed to the Ombudsman office. Indeed, a wild variety of situations must be taken into careful consideration, whether they have exhausted instances of maladministration or not.¹⁵ Regarding the European Parliament, limits of maladministration can be determined by the European Parliament's political power. The classical Ombudsman offices have been established within the frame of the parliament to control the administration, and not for the supervision of the parliament's legislative or other work. Although the situation cannot be fully compared to the European level, the activities of the European Parliament cannot be considered as administrative activities, thus complaints in connection with the European Parliament's and its Committee on Petitions' political activity are to be considered inadmissible. Therefore, for example in complaint 420/9.2.96/PLM/B the alleged maladministration, namely poor administration by the Committee on Petitions the handling of the petitions was more of a political issue than maladministration: as the right to petition laid down in the Treaty has a constitutional value, the Parliament's responsibility is to organize its services thus it can perform its institutional functions.¹⁶ Similarly, the decision of the European Parliament about the French nuclear tests in the Pacific was inadmissible because it concerned a political decision.¹⁷

As we cannot see a clear division of legislative and executive powers at European level, so the European office does not meet the traditional image of Ombudsman ordered to the legislative power,¹⁸ and although basically he is a Parliamentary Ombudsman, the supervision is extended as well to the Parliament. Nevertheless, this control is limited: as complaints in connection with activities or decisions with rather political than administrative nature are not considered to be admissible, hence the Committee on Petitions cannot be supervised by the Ombudsman as its activities belong to the Parliament's political actions.

¹⁴ First in the annual reports of 1995 and 1997.

¹⁵ See more Friedery, R.: A hivatali visszasság, a maladministration az európai ombudsman nézőpontjából (Maladministration from the point of view of the European Ombudsman). *Új Magyar Közigazgatás*, (2009) 10–11, 20–28; Friedery, R.: Az európai ombudsman tevékenységét érintő hatásköri kérdések (Questions Regarding the Mandate of the European Ombudsman's Procedure). *Állam- és Jogtudomány*, 49 (2008) 4, 473–495.

¹⁶ See complaint 420/9.2.96/PLMP/B in The European Ombudsman: *Annual Report for 1996*. Luxembourg, 1997, 14.

¹⁷ See The European Ombudsman: *Report for the year 1995*. Luxembourg, 1996, 9.

¹⁸ Meese, J. M.: *Das Petitionsrecht beim Europäischen Parlament und das Beschwerderecht beim Bürgerbeauftragten der Europäischen Union*. Frankfurt am Main, 2000, 182.

3. The decision-making of the Ombudsman

In cases, where the Ombudsman finds maladministration at the end of the inquiry and there is still a possibility to redress the maladministration by the institution, body, office or agency concerned, or the maladministration is of general nature or more serious, the Ombudsman informs the institution concerned and the complainant about his finding with a report and a draft recommendation. The institution concerned has three months to explain its position in a detailed opinion. If the Ombudsman's draft recommendation is not accepted within the time-frame, it is refused, or the institution concerned cannot find any other acceptable solution, or the Ombudsman does not find the detailed opinion satisfactory then the Ombudsman has authority to make a special report.¹⁹ This report is submitted to the European Parliament, the concerned institutions and the complainant, in which the instance of maladministration is reviewed and a recommendation²⁰ can be laid down, too. In this case emphasis is on the European Parliament, because it can help to resolve the situation: using the decisions of the Parliament to accept the recommendation and call upon the institution to solve the problem.²¹ The significance of the aforementioned is strengthened by the fact that the competence of the European Ombudsman is quite limited, because an Ombudsman decision has no binding power.²² This means that if there is no problem-solving solution between the concerned institutions and the complainant, the Ombudsman turns to the last and most significant means: using the help of another institution. The importance of a special report is that the concerned institution's political adjudication is at stake. The first special report—concerning the public access of documents—was submitted to the Parliament in 1997 and the case ended successfully.²³ The special report has no legal effects "...vis-à-vis third parties within the meaning of Art. 173 of the Treaty (ex Art. 230 TEC) and is not binding to the Parliament", as stated by the Court of First Instance in Case T-103/99. Indeed, the Parliament is "...free to decide, within the framework of the powers conferred on it by the Treaty, what steps are to be taken in relation to it".²⁴ Therefore, the Parliament can freely decide to adopt a decision about the Ombudsman's recommendation, namely, adopting a decision the Parliament calls upon the concerned institution to settle the case.

However, the European Ombudsman has another reporting obligation, similarly to his other European counterparts. According to Art. 228 of TFEU (ex Art. 195 TEC) and Art. 3(8) of Decision 94/262 of the European Parliament, the Ombudsman has to submit an annual report at the end of each annual session in connection with the outcome of the inquiries. Neither this report has binding effect to the Parliament, but in the frame of the

¹⁹ See more special reports on <http://www.ombudsman.europa.eu/cases/specialreports.faces>.

²⁰ Art. 8(4) of the Implementing Provisions.

²¹ For example in case 713/98/IJH, after submitting a special report, the European Parliament called on the European Commission to hand over data requested before by the complainant.

²² See Case C-167/06 P *Kominou and Others v. Commission* [2007] ECR I-141, para. 44.

²³ Special Report by the European Ombudsman to the European Parliament following the own initiative inquiry into public access to documents (616/PUBAC/F/IJH) <http://www.ombudsman.europa.eu/en/cases/specialreport.faces/en/378/html.bookmark>

²⁴ See Case T-103/99 *Associazione delle Cantine Sociali Venete v. Ombudsman and Parliament* [2000] ECR II-4165, para. 50.

annual report the Ombudsman has the opportunity to give general observations regarding the conduct of the institutions'.^{25; 26}

4. Election and dismissal

According to Arts. 228 of TFEU (ex Art. 195 TEC) and 194 of the European Parliament's Rules of Procedure, the Ombudsman is elected by the European Parliament. I must draw the attention to an earlier inconsistency, namely, that there was an election and a nomination procedure as well. First, the office had been filled by an election procedure, and after winning the election procedure the candidate was appointed by the European Parliament. Therefore, some authors have mentioned the European Ombudsman as an elected official, while others as an appointed one, since the Ombudsman was both elected and appointed. This quite inconsistent rule has been abolished by the Lisbon Treaty, since it amended the relevant article: according to the amendment the Ombudsman is elected by the Parliament, and thus the election procedure is not followed by a separate appointment.

The amendment of the Lisbon Treaty has not only resolved the contradictions between the two terms, but the new wording reinforces the independence and the legitimacy became stronger. That is to say, the appointment carries dependency between the appointed and the appointer, as opposed to a democratic election.

Art. 228 of the TFEU (ex Art. 195 TEC) does not rule any specific requirements for the person holding the office. However, with a closer look, a number of conditions can be seen as a guarantee of impartiality and knowledge necessary for the performance of this duty. First, only EU citizen can take the office of the European Ombudsman, who must possess a full range of civil and political rights, as well as every guarantee of independence. This person is necessary to meet the conditions for the exercise of the highest judicial position in his or her country, or have the acknowledged competence and experience to take on the duties of the European office.²⁷

From the point of view of the wording, the phrase "or" implies the possibility that it is not necessary to have legal qualification for the position if the person concerned has sufficient expertise and experience. Nonetheless, this expertise and experience has to be that thorough, which allows decision-making and task completing in complex legal issues. The requirement of expertise is underlined as well by the fact that so far only such persons have been elected to head the office, who, as national ombudsmen had gained sufficient experience.²⁸ Analyzing their professional life, we shall draw attention to the fact that while Söderman²⁹ gained wide experience thanks to its position in various fields of the

²⁵ See the annual reports on <http://www.ombudsman.europa.eu/activities/annualreports.faces>.

²⁶ See Case T-103/99, para. 50.

²⁷ Art. 6(2) of the Statute.

²⁸ Jacob Söderman was a Finnish Ombudsman before the appointment, while the incumbent Nikiforos Diamandouros was before the first Greek Ombudsman.

²⁹ The course of life of Jacob Söderman shows that an Ombudsman with experiences in different areas of the administration was elected: Minister of Justice in 1971, Member of Parliament in 1972–82, Head of Labour Safety, Department in the Ministry for Social Affairs and Health in 1971–1982, Governor of the Province of Uusimaa 1982–89, Parliamentary Ombudsman of Finland 1989–95. Of course, other positions in public or educational life were occupied by him, but basically he is a practical expert. Since September 2007 he works as a Member of the Finnish Parliament.

administration, and Diamandouros³⁰ made notable career in the academic life. In short, while the first European Ombudsman received the office as practical expert, the second as academic professional.

The provisions regarding the appointment and removal following the election can be found in the TFEU and the Rules of Procedures of the European Parliament.³¹ At the early stages the provisions regarding the election soon proved to be in need of amendment, for example the candidate elected by simple majority of the Committee on Petitions should have been presented to the full meeting, but the election twice failed, hence the appointment of the Ombudsman had to wait until June 1995. Indeed, these election rules went over many changes. The then President of the European Parliament on 14 November of 1994 raised the question of amendment of the provisions regarding the Ombudsman's appointment. As a result, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities decided to recommend the amendment of Art. 159, and having finished the draft it was submitted to the Parliament on 29 November.³² The Parliament returned the report on its 14th December meeting to the Committee, which then prepared and presented a second draft.³³ This second report was repeatedly returned to the Committee on 14 March 1995,

³⁰ Diamandouros was in 1980–1983 Director of Development at Athens College, in 1983–1988 Program Director for Western Europe and the Near and Middle East at the Social Science Research Council, New York, in 1988–1991 Director of the Greek Institute for International and Strategic Studies, in 1995–1998 Director and Chairman of the Greek National Centre for Social Research (EKKE), has been Professor of comparative politics at the Department of Political Science and Public Administration of the University of Athens since 1993. In 1999 and 2000, he was appointed member of Greece's National Commission on Human Rights and the National Council for Administrative Reform, respectively, from 1998 to 2003 the first National Ombudsman of Greece.

³¹ While the Maastricht Treaty setting up the office was signed on the 7 February in 1992 (entered into force in November 1993), the Statute of the Ombudsman was adopted by the Parliament only on the 9 March of 1994.

³² The report suggested the following amendments. According the amended Art. 159(4) the committee submits its *candidates* for vote *in the order of votes obtained in committee* instead of choice of *candidate*. The new subsection (6) says that in electing the Ombudsman the Parliament shall apply the provisions of Rule 14(1) by analogy instead of a secret ballot held on the basis of a majority of the votes cast. Subsections (5) and (8) were deleted, namely the vote shall be put *on the agenda* for the part-session following the forwarded proposal, and in case of negative vote the committee makes a *new proposal* or the President of Parliament issues a *further call* for nominations. See more *Report on the amendment of Rule 159 of the European Parliament's Rules of Procedure concerning the appointment of the Ombudsman*. Committee on the Rules of Procedure, the Verification of Credentials and Immunities, 29 November 1994 (A4-0085/94) PE 210.749.

³³ According to the amendments

- the President of Parliament shall not only after his election but in the cases referred to in Rule 159(10) call for nomination,
- the call is to be published in the Official Journal of the European Communities,
- the nominations must include all supporting documents,
- three to five nominations shall be selected and then submitted in alphabetical order by the committee, except when there is only three or less nominations, in this cases these are automatically submitted to Parliament,
- regarding the before mentioned, the proposals are to be placed on the agenda for the part session,
- only the two candidates obtaining the largest number of votes can continue after the first ballot, and in the event of a tie the older candidate shall be elected,

which then submitted a third report³⁴ proposing the amendments. The Parliament finally adopted a decision on May 16 amending the Rules of Procedure.³⁵

Following the amendments of the election process, Jacob Söderman, the first European Ombudsman was elected in June 1995 and then re-elected in 1999, whereas after his retirement on 1 April 2003 Nikiforos Diamandouros took charge of the office for the remaining time of the parliamentary term. Then, at the start of the new parliamentary term, Diamandouros was elected as the new European Ombudsman on 11 January 2005.

Another aspect of the relation between the Office and the Parliament is that the Ombudsman's term of office has the same duration as of the Parliament, and the election takes place after every parliamentary election. Although the procedure for electing the Ombudsman is a little complex, it includes many elements of transparency,³⁶ and this underlined for example by the provision that at the beginning of each parliamentary term the President of the European Parliament calls for the nomination of the Ombudsman either immediately after his election, or at the case of death or dismissal of the Ombudsman, and for the submission of nominations sets a time-limit.³⁷

According to the regulations the candidate must have the support of the representative of at least forty Member State, who are nationals of at least two Member States, and one representative can support only one candidate. To meet the criteria of openness and transparency, there are other guarantying provisions. The hearings are public for representatives. Thereafter, a list of the formal nominations in alphabetical order is to be submitted to the Parliament. After the secret vote, the majority of the votes decides and the vote may consist of three rounds, in cases if it fails to elect a candidate with an absolute majority in the first two rounds. In the third round only the two candidates with the most votes in the second round can be voted.³⁸ In this case the simple majority of the present representatives decide, however in tie vote the older candidate prevails. Before the vote begins, the President must ensure that at least half of the Members of Parliament is present. Before the Lisbon Treaty, the Ombudsman was appointed by the qualified majority of the Parliament following the parliamentary elections. Because of the nature and the extent of the preparatory work regarding the appointment, the Committee on Petitions carried out a large amount of these works.³⁹

– the nominations received to the call are automatically to be considered admitted to the selection process until the renunciation of the person. See more *Second report on the amendment of Rule 159 of Parliament's Rules of Procedure concerning the appointment of the Ombudsman*. Committee on the Rules of Procedure, the Verification of Credentials and Immunities, 21 February 1995 (A4-0024/95) PE 211.013/fin.

³⁴ *Third report on the amendment of Rule 159 of Parliament's Rules of Procedures concerning appointment of the Ombudsman*. Committee on the Rules of Procedure, the Verification of Credentials and Immunities, 25 April 1995 (A4-0094/95).

³⁵ Decision amending Rule 159 of Parliament's Rules of Procedure concerning appointment of the Ombudsman, 16 May 1995 (Official Journal 1995 C 151, 33).

³⁶ Pierucci, A.: Les recours au médiateur européen. In: Epaminondas, M. A.: *European Citizenship*. Maastricht, 1994, 114.

³⁷ Rule 204 of the Rules of Procedure of the European Parliament.

³⁸ *Ibid.* Rule 205(5).

³⁹ During Diamandouros's first electoral procedure in 2005, in the first round 564 voted in support for him from the 609 votes cast, thus it can be said that the representatives were convinced by his substitute for Söderman following the his retirement. OJ L21, 1.25.2005, 8.

The duties of the Ombudsman can be ceased when the current term of office expires, namely, with the entry into office of the new Ombudsman. This occurs when the Ombudsman is not re-elected to a new parliamentary term.⁴⁰ If the mandate is terminated prematurely, for the remaining parliamentary term the Parliament appoints the successor within a three-month time-limit. Except for the case of dismissal, the Ombudsman will remain in office until his successor takes office.⁴¹ Resignation, the event of death and dismissal can also lead to the duties to be ceased. To the request of the European Parliament the Court can dismiss the Ombudsman if he no longer fulfils the conditions, or is guilty in serious misconduct, and did not voluntarily resign. That is, according to Rule 206 of the Rules of Procedure of the European Parliament, one tenth of the representatives can request the dismissal. The request of the members is forwarded to the relevant committee, whose members will decide whether there are any well-founded grounds for dismissal. If there are, a report will be submitted to the Parliament and released to vote. However, before the vote, at his request, the Ombudsman can express his own views. Before the secret-ballot, the President of the Parliament ensures that half of the Parliament's component members are present. If they decide to remove the Ombudsman from the office, the Ombudsman resigns. Nonetheless, it can happen that the Ombudsman does not resign voluntarily then the President applies to the Court of Justice regarding the dismissal. So thus we can see in the case of the dismissal that after a vote of confidence, where the majority is in favour of the dismissal, the Ombudsman has the option of voluntary departure, namely to resign, and if the Ombudsman does not take this possibility, the drastic way follows.

5. Aspects of independence

Although it is generally accepted that the complete independence and impartiality is of great importance in every Ombudsman's position, independence is in particular emphasized in the case of the European Ombudsman,⁴² which is toned down by the fact that the power of the Ombudsman is always granted by some other body. The European Ombudsman's independence can be seen as a coherent one, whose elements are following: independence laying in the person of the Ombudsman, independence of the office staff, independence of the office from budgetary side.

5.1. Independence of the Ombudsman

According to Art. 228 of the TFEU (ex Art. 195 TEC) the European Ombudsman carries out his duties in complete independence, furthermore Art. 9 of the Ombudsman's Statute declares that the Ombudsman shall be completely independent. These provisions are taken into practice, when the Ombudsman takes an oath before the Court of Justice to perform his duties with complete independence. The rules limiting the scope of activity ensure the realization of the impartiality requirement: during the term of office the Ombudsman is not permitted to hold any political or administrative office, or engage in other occupations gainful or not, thus cannot engage any educational position, and following the election the Ombudsman must refrain from any other activities incompatible with this position.

⁴⁰ Both Jacob Söderman and Nikiforos Diamandouros were re-elected.

⁴¹ Art. 7 of the Statute.

⁴² Gregory, R.: The European Union Ombudsman. In: Gregory, R.–Giddings, Ph. (eds): *Righting Wrongs: The Ombudsman in Six Continents*. Amsterdam, 2000, 159.

The requirement regarding independence is underlined by the provisions that the duties are performed with complete independence, in the general interest of the Communities and of the citizens of the Union, namely, the Ombudsman can neither seek nor accept instructions from any government or other body, and must refrain from any action incompatible with the nature of his duties. Whereas the Ombudsman acts in the general interest, accordingly, independence is essential for the undiminished confidence towards the fair procedures of the Ombudsman.

It is very important to mention whether the independence is not affected by the possibility of election and re-election. Theoretically, it is possible that the Ombudsman—in order to be re-elected—tries to please to the Parliament during the official activities. On one hand, however, this is contradicted by the facts that in person an active official determined in many topics and subject matters took up the role as European Ombudsman as seen before in different cases, and his successor follows this path as well—both of whom had national experiences in this kind of work. On the other hand, the position of the European Ombudsman differs from several national Ombudsmen, because the supervision of the Parliament falls within the competence of this body. Furthermore, abandoning the nomination process by the European Parliament, strengthened the democratic nature. Here, we should point out that although the Ombudsman can be dismissed by the Parliament, it is only possible in cases of serious misconduct or the conditions for the performance of duties are not fulfilled any longer.

5.2. Independence of the Office

At the initial establishment of the office, the independence of the staff had not been sufficiently guaranteed, hence Section I regarding the European Parliament in the European Communities' budget planned for the financial year 1995 provided that staff engaged in investigation of cases in accordance with Art. 228 of TFEU (ex Art. 195 TEC) is employed on temporary basis, while the rest of the staff is ordered by the Secretary-General of the European Parliament. The European Parliament had already held the view that in order to maintain the independence and effectiveness of the Ombudsman's activities the entire staff should be assigned to the Office during the period of the Ombudsman's mandate and the EU's three institution should record in a joint statement principles governing on one hand for the staff employed by the Ombudsman, on the other hand for the status of temporary or contract staff conducting inquiries, in a way to ensure the effectiveness and independence of the Ombudsman.⁴³

The institutional independence is strengthened by several provisions. The current legislation states that the Ombudsman may specify the internal structural and internal rules of procedure. Furthermore the Ombudsman is assisted by a secretariat, and the principal officer is appointed by him. In matters concerning the staff, the Ombudsman has the same status as the institutions within the meaning of Art. 1 of Staff Regulations of Officials of the European Communities.⁴⁴ The secretariat's officials and servants are subject to the rules and regulations applicable to officials and other servants of the European Communities, and their number per year is approved as part of the budgetary procedure. Those officials of the European Communities and of the Member States, who are appointed to the secretariat, are

⁴³ European Parliament Resolution on the role of the European Ombudsman appointed by the European Parliament, 14 July 1995. OJ 1995 C 249, 226.

⁴⁴ Art. 11(4) of the Statute.

to be seconded in the interests of the service and are guaranteed to automatic reinstatement in their institution of origin.⁴⁵ The secondment is a decision by the institution of origin, which can be a Community institution or body or an institution from the Member States. The obligation to reinstate a certain official is therefore for the institution of origin. As far as the Community institutions are concerned, the secondment is foreseen in the staff regulations and the obligation for the administration is therefore clear. For institutions in the Member States, the Ombudsman could merely ensure, in the exchange of letters foreseen in the enclosed provisions, that the guarantee foreseen in the Statute of the European Ombudsman is offered to the official in question.⁴⁶

5.3. Budgetary independence

In the preliminary period after the nomination of the first Ombudsman in 1995 and 1996, the Parliament made provision for the Office's staff and material needs, which support was based on an agreement between the Parliament and the Ombudsman of 22 September 1995. From the financial year 1997 all operating costs of the Ombudsman's secretariat was covered by its own budget; but the European Parliament still provided the assistance necessary for avoiding unnecessary duplication of staff and expenditure. In the first annual report of the Office in 1995, the office's budget was annexed to the Parliament's budget and regarded as "a guarantee of independence of the Ombudsman and which should be treated in the same way"⁴⁷. The Statute originally provided that the Office's budget is annexed to the Parliament's one in the budget of the European Union, however, the Council later on agreed with a proposal suggesting the Ombudsman's budget shall be wholly independent, and after the decision from 1 January 2000 the budget can be found in a separate chapter in the Union's budget, currently in Section 8.

As shown in the study the complex nature of the relation means that the Parliament is represented almost in every momentum of the Office's life. The Office can be regarded as the extended arm of the Parliament, as a complementary of its control mechanism. However, as the analyzed aspects clearly underline, this complementary function does not mean dependent role but a co-ordinate relation, which is among others mostly strengthened by the fact that the Parliament was put under the Ombudsman's mandate, contrary to several examples in Member States.

⁴⁵ *Ibid.* Art.11(3).

⁴⁶ The European Ombudsman: Rules applicable to the secondment of officials and agents from international, national, regional and local public administrations and bodies to the European Ombudsman and to the secondment of the European Ombudsman officials and of temporary agents to international, national, regional and local public administrations and bodies. The document was made available for research by the Office of the European Ombudsman.

⁴⁷ The European Ombudsman: *Report for the year 1995*. Luxembourg, 1996, 6.