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NETWORKING FOR SUSTAINABLE SPATIAL DEVELOPMENT OF THE EUROPEAN CONTINENT

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**Human rights and quality of life: the Eunomia Network of Ombudsman.
A project carried out by the Greek Ombudsman under the auspices of
the Office of the Commissioner for Human Rights of the Council of
Europe**

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Introduction

Ombudsman¹ institutions, some times under the title of Mediators (France) or People's Defenders (Spain, Greece), are independent mediation mechanisms between people (citizens and non-citizens) and the State (including public law entities and sometimes utility companies) aiming at providing out-of-court settlement of disputes. The usual wording, combating maladministration and safeguarding the respect for legality and people's rights and legitimate expectations, reveals an ambitious goal: to promote good governance acting as a -complementary to the Courts -mechanism of safeguarding the Rule of Law. Operational independence from the Government, the administration of which they have the mission to monitor, is considered a necessary feature of the Ombudsman institutions, which are accountable only to the Parliament. The persons appointed as Ombudsmen are often elected by an enhanced majority vote, adding thus a personal independence guarantee to their operation. Greece was one of the last countries in the EU to establish an Ombudsman office in 1997² (www.synigoros.gr) which acquired constitutional status in the 2001 constitutional amendment. The present Ombudsman, assistant Law professor Yorgos Kaminis, was elected by a unanimous vote by the Presidium of parliamentary parties and his predecessor, Professor Nikiforos Diamandouros is currently the European Ombudsman (www.euro-ombudsman.eu.int), elected by the European Parliament to investigate complaints about maladministration by EU institutions and bodies. The Ombudsman was included in the draft Constitution-some call it Convention- of the European Union by way of art. 43 of the Charter of Fundamental Rights of the EU that perceives the application to the Ombudsman as a right of the citizens and residents alike³.

¹ The word as well as the institution of "ombudsman" has a 19th century Swedish origin

² Law 2477/97, now amended by Law 3094/03.

³ the Charter adopts the wording of art. 195 of the Treaty establishing the EC (unified version, Official Gazette C 325/33/24.12.02) on the European Ombudsman's jurisdiction as non extending to the Court of Justice and the Court of First Instance acting in their judicial role.

I. The Greek Ombudsman's Office and the activities of the Eunomia programme

Profiting from the experience of its European counterparts and devoting hard work to the mission of securing the respect for legality including human rights as well as combating maladministration, in a state that suffers from bureaucracy, and poor level of quality service to the citizens, the Ombudsman institution in Greece earned gradually the confidence of the public, receiving annually an average of 10-11.000 complaints, a number quite impressive, bearing in mind the population (10 million) of Greece.

Rising up to the expectations of a constitutionally entrenched mission of consolidating the rule of law and at the same time undertaking a Council of Europe's programme of building similar institutions in the southeastern european geographical region was a quite ambitious pledge for the Greek Ombudsman.

Setting up an institution-building process is not an easy task. You have to specify your goal, your methods and your supporting group.

As prerequisites of an institution-building process one may identify: ⁴

- The approval of the hosting state
- The compatibility with international regulations
- The impartial and multilateral character
- The coordination of activities
- The understanding and taking into account of local institutions

The object: the promotion of Rule of Law and human rights, which is the very scope of ombudsman type institutions, proved an ideal ground for working with the Council of Europe.

In 1999 the Office of the Greek Ombudsman has begun cooperating with the Directorate of Human Rights of the Council of Europe, in the framework of the First Working Table of the Stability Pact, in an action plan for the building of civic institutions in Southeastern Europe, with emphasis given to the establishment of Ombudsman-type mediation institutions. The project was named EUNOMIA⁵, a title referring to the Rule of Law. The plan comprised a series of activities aiming to contribute to the shaping process and medium-term support for the 'young' mediation institutions in the countries of Southeastern Europe. Furthermore, they aimed to provide training for the ombudsmen personnel and the creation of informal international networks and their long-term support. During 2000 successive meetings took place in Strasbourg and in Athens on procedural and substantial issues and funding commenced at the beginning of 2001. In the beginning of 2004 the new steering group of the Eunomia Project convened in Strasbourg. Apart from the Greek Ombudsman, the new steering group includes the EU Ombudsman, while the Human Rights Commissioner of the Council of Europe (CoE), has filled in the position occupied so far by the Human Rights Directorate of the CoE. The purpose of the meeting was to review the activities of the first phase of the project (period 2001-2003) and to plan the next phase of its evolution. Having secured sufficient funding from the Greek Government the activities of the Eunomia Project will be prolonged well into 2006.

⁴ see the Eunomia Project leaflet by the Greek Ombudsman.

⁵ The sole funding source of the EUNOMIA project "*Contribution to the creation of mediator institutions focusing on Southeast European countries and their respective networking*" is the Greek Foreign Ministry.

The activities under the Eunomia project and some selected publications can be found in the Greek Ombudsman site, under www.synigoros.gr/eunomia. The Eunomia project has implemented over 50 activities, mainly in Southeastern Europe, since 2001.

All this could not have been achieved without having expert personnel, with the qualifications, knowledge and will to work on the project. Around 30 members of the expert staff of the Ombudsman's office, (lawyers, engineers, political scientists, archaeologists and others) participate in the Eunomia project which relies a great deal on the interdisciplinary character of the pool of experts and their fresh ideas, initiative, various professional and communication skills.

Throughout the past 5 years, the Ombudsman as well as members of the Ombudsman expert staff have taken part in training seminars and short-term missions

Visiting Southeast European states (as well as hosting visits from representatives of) Albania (2000, 2001,2005), Kosovo (2000, 2001), Bosnia and Herzegovina (2002), Republic of Serbia (RS) entity of Bosnia - Herzegovina. (2002), Montenegro (2001, 2004), Voivodina (2004).

Training seminars aim to familiarize the respective Ombudsman staff with the experiences of the Greek Ombudsman on day-to-day practices and functions, to explore matters of common interest and to establish mutual understanding of the different role that the Ombudsman undertakes within the constitutional system of societies of rule of law and those in transitory phase (i.e. Kosovo, Vojvodina). The contacts also promoted the bilateral solution of issues.

i.e the issue of Albanian immigration to Greece, 2001-2002: the ombudsmen reached a common decision to establish a permanent link (hot-line) between the two institutions in order to meet with efficiency the Albanian immigrants needs for rights protection.

The Ombudsman experts have also been discussing legislative proposals with the agencies involved and producing legal expertise, commissioned by the Council of Europe, on draft bills on Ombudsman institutions.

Bulgaria 2000, Slovakia 2001, Montenegro, draft bills of 2002 and 2003). Republic of Serbia (RS) 2004 (following a request from the OSCE mission in Serbia).

It has to be noted the Greek Ombudsman's involvement in the introduction of an Ombudsman's office in Turkey. The Turkish Parliament chose the Greek-Austrian partnership of Ombudsmen as twinning partners in a EU programme to the building of this institution.

In 2004 at Nevsehir of Cappadokia – Turkey, a seminar devoted to “The Role of the Ombudsman in a State Governed by the Rule of Law” was jointly organised by the Turkish Parliament, the Council of Europe's Commissioner for Human Rights and the Greek Ombudsman's “Eunomia” Project. The seminar – which was attended by the European Ombudsman, Ombudsmen from several European countries, numerous Turkish parliamentarians, administration officials and civil society representatives – aimed to further develop the ongoing discussions in Turkey on the possible introduction of an Ombudsman's office. Also in December 2004, a conference entitled “Setting up an Ombudsman Institution” was held in the premises of

Dolmabahce Palace and of Bilgi University in Istanbul, Turkey. The event, which was instigated by the upcoming adoption of a bill establishing an Ombudsman institution in Turkey, was a product of the collaboration between the Greek Ombudsman, the Grand National Assembly of Turkey and Law Faculty of Bilgi University of Istanbul. Participants included high-level delegations from Ombudsman institutions in the EU and international organizations, as well as Turkish officials, academics and representatives of the civil society. The sessions covered a wide range of important issues encountered in the Ombudsman's daily work, through experience sharing, reflection, and in-depth discussions among all participants.

As it is apparent from the aforementioned activities, bilateral collaboration was the key in the beginning of the Eunomia project, in order to promote the establishment of ombudsman type institutions in Southeastern Europe. The second phase of the programme is focusing on multilateral collaboration⁶. As our relations, contacts and exchange of ideas progressed, the Eunomia project moved from networking of institutions to networking on common issues, targets and methods applied by the Ombudsmen in the region of Southeastern Europe.

II. Environment as a field of Ombudsman networking under the auspices of the CoE

More than 1/4 of the annual complaints to the Greek Ombudsman (3113 for the year 2004) relate to environment protection, infrastructure works and urban planning and they are processed by the Quality of Life Department of the Ombudsman's Office.

Main subjects of the complaints handled by the Quality of Life Department of the Greek Ombudsman's Office in 2004:

<i>Urban environment</i>	<i>32,10%</i>
<i>Natural environment</i>	<i>25,37%</i>
<i>Encumbrances on property</i>	<i>11,84%</i>
<i>Licencing of industrial and handicraft enterprises</i>	<i>7,47%</i>
<i>Public works</i>	<i>4,71%</i>
<i>Utilities infrastructure</i>	<i>3,36%</i>
<i>Damage recovery</i>	<i>3,23%</i>
<i>Transport infrastructure</i>	<i>3,16%</i>
<i>Cultural environment</i>	<i>2,49%</i>
<i>Various</i>	<i>6,26%</i>

In the last 2 years of the Eunomia project, networking by objective fostered environment as a key issue of the work of the ombudsman institutions. Environment thus emerged as both an important field of work and a right to be effectively protected by the ombudsman institutions. This was not an easy development. The initial difficulty we entailed was the preconception shared by some international or state organizations that traditional human rights, perceived in a narrow sense, was the sole object of the ombudsman institutions in countries of Southeastern Europe going through the process of transition to democracy. The answer of the Greek Ombudsman, in line with the Council of Europe, was that the Ombudsman has a broader mission related to the Rule of Law⁷, that is substantial enjoyment of

⁶ The shift from bilateral to multilateral method of collaboration was stressed by the Eunomia project officer Dimitris Hormovitis, in *D.Christopoulos-D,Hormovitis (eds) The Ombudsman in South Eastern Europe*, Ant.N.Sakkoulas, Athens-Bruylant, Bruxelles, 2005, Introduction, p.11s.

⁷ see the analysis of the transition phases of new democracies towards consolidating the actual exercise of rights in D.Cristopoulos, N.Diamandouros: Traditional Rights Protection Mechanism and the Rising

entrenched rights, legal rules being fully complied with by all state organs and applied with fairness and reasonableness. Liberal democracies have to justify their title in their everyday approach to people and raising the standards of the service, in a rights-minded manner, to the citizens is a key contribution of the ombudsman to the Rule of law. In this analysis, the protection of environment emerges as a right of the people to safeguard and raise the standards of their quality of life.

The Ombudsman receives numerous complaints by people (individuals, informal groups and NGOs) stressing and stressed by the deterioration of their natural environment, the problems in infrastructure providing for the basic needs (water, electricity, waste disposal) of an urban society and many others. Whenever we meet people suffering from the air pollution of industries in proximity, parents concerned about the radiation emissions from antennas close to schools, etc. we do not adopt an academic attitude of analyzing whether or not a so called third generation right is involved. The entrenched in the constitution⁸ protection of the environment, initially perceived as a limitation to property, introducing public interest concerns to a crucial for liberal democracies right, in the greek courts rulings gradually acquired an autonomous status as a separate constitutional value⁹. This is an indication that legal theory is shifting from the abstract consideration of individuals to act in liberty to a more holistic consideration of people in their active role as members of the society with the right to have their basic needs secured and their full potential realised as to how they want to live a life of quality. I must note here the analysis of M.Dejeant-Pons who brings light into the conception of environment as no less than a human right¹⁰. The Ombudsman's role in that is crucial, contributing in raising awareness, and developing an environment-minded administration, not only adopting high environmental standards but also willing to fully comply with them and proceeding to economic development in a proportionate manner, adopting policies after having conducted the appropriate environmental impact assessments, and after consultations with the people and all the grass root organisations concerned. The participatory element of a liberal democracy is further safeguarded by the Ombudsman who monitors the respect of the individual's right to environmental information and by definition seeks for a common understanding between the citizen and the administration.

The Ombudsman institution's advantages in this field are:

-the experience to identify systemic problems in administration and to seek in a broad minded manner reasonable short term measures and long term effective solutions. The need for both short term protective measures and a more global long term perspective, is very apparent in approaching environmental issues.

-the method of solutions to be worked out and reached by way of mediation which brings into contact the administration and the people, an interaction crucial to the Rule of Law.

Exploring environment as well as other matters of common interest came as a natural outcome of strengthening contacts in Eunomia by way of multilateral conferences and two-party training visits.

Role of Mediation in South Eastern Europe, in *D.Christopoulos-D,Hormovitis (eds) The Ombudsman in South Eastern Europe, ibid, p.30.*

⁸ art.24, 18 Of the Greek constitution

⁹ for this gradual development in Courts' decisions see i.,e. the Greek Conseil d'Etat cases 695/1986, 3135/1993, 261/1997.

¹⁰ M.Dejeant-Pons-M.Pallemaerts, *Droits de l'Homme et environnement*, CoE publishing 2002.

Between 20-22 November 2002, the Greek Ombudsman, in the framework of Eunomia project, invited to Athens a delegation from the Ombudsman institutions of the two entities of Bosnia-Herzegovina (BiH), the Republika Srepska of BiH, and the Federation of BiH, to attend the meeting of the Athens Ombudsman Network for the Protection of the Environment (ANPE), which is a project supported by the EU.

In 2003, the Greek Ombudsman started to introduce thematic workshops in its contacts and training seminars with representatives of respective Ombudsman offices and that included issues of protection of the environment and urban planning and respective case handling:

Albanian Ombudsman delegation in Athens, 2003, Kosovo Ombudsman delegation in Athens 2003, Vojvodina Ombudsman delegation in Athens, 2004, Montenegro Ombudsman delegation in Athens, 2004, FYROM Ombudsman delegation in Athens, 2005.

The protection of environment appeared also as an important issue that the Greek Ombudsman's Office introduced in the international workshops it organised under the Eunomia project:

In May 2003 the Greek Ombudsman organised a 2-day International Workshop in Athens on the 'Ombudsman's role in South-Eastern Europe – strengthening the rule of law as a step towards European integration'. During the course of the Workshop senior officials from the Ombudsman institutions of Albania, the entities of Bosnia – Herzegovina, Croatia, FYRoM and Kosovo as well as representatives from the Ombudsman law drafting committees of Montenegro and Bulgaria, presented the historical framework of the establishment and functioning of the Ombudsman in their respective countries. In addition they exchanged views with experts from the Greek Ombudsman, the Council of Europe and the OSCE on thematic sessions. The Greek Ombudsman experts presented inter alia the policy networks for developing international cooperation on the example of environment, with emphasis given to the relation of networking with the openness and effectiveness principles of democratic government¹¹. In November of the same year, the Greek Ombudsman organized a Conference in Sofia entitled "The role of the Ombudsman in Southeastern Europe (SEE)". The event was held on the premises of the Bulgarian National Assembly with co-hosting of the Bulgarian Ministry of Justice, the Presidency of the Bulgarian Assembly and the Center for the Study of Democracy. The Conference aimed to promote the Ombudsman institution, especially in view of the introduction of this institution in Bulgaria in the beginning of 2004. The proceedings were followed by representations from practically all the Ombudsman institutions in Southeastern Europe as well as Ombudsmen of other European States and international institutions striving towards the establishment of democratic institutions in SEE. The environmental protection was again introduced by the Greek Ombudsman's experts as a common aspect of the institution building process and the establishment of the rule of law in Southeastern Europe, namely under the title of the contribution of the Ombudsman to the implementation and enforcement of the EU *acquis de droit* in

¹¹ A paper by the senior investigator in the Quality of Life Department of the Greek Ombudsman Ms Emilia Liaska, focusing on a networking programme for the protection of the environment initiated by the Greek Ombudsman and funded by the EU Commission, in *D.Christopoulos-D,Hormovitis (eds) The Ombudsman in South Eastern Europe, op.cit.note 6, p. 168.*

environmental legislation, a major challenge also for EU candidate and accession countries¹².

The most ambitious environment related activity we engaged in so far within the Eunomia network of Southeast European (SEE) Ombudsman institutions, was a capacity building seminar we organized in a small village in the Prespa Lakes' district in the Northwest of Greece, in June this year.

It was a training seminar aiming to enhance the environmental case handling capacity of SEE Ombudsman institutions staff members, capitalizing on the experience and knowledge of the Greek and other EU Ombudsmen on such issues. The seminar hosted Ombudsman representatives from Albania, Austria, Bosnia – Herzegovina, Spain, Serbia – Montenegro (Kosovo, Montenegro, Vojvodina) and the FYR of Macedonia.

The Prespa seminar first presented the normative framework for environmental protection and sustainable development, including the European Union¹³ and Council of Europe's achievements¹⁴. Then we moved to the actual implementation of the legal framework, the drawbacks and delays in the transposition of EU directives into Greek national legislation¹⁵ and the application of international and national laws in the Transboundary Prespa Park. This last presentation was made by a representative¹⁶ of the Society for the Protection of Prespa, an NGO, in cooperation with whom this seminar took place. A useful cooperation in terms of learning the actual environmental problems of this area of special protection, which were further illustrated by a visit to the lake area, and also keeping the link with the civil society in discussing the effective application of the normative framework of protection. The seminar proceeded with the Ombudsman's respective work. First the participating Ombudsman institutions mandates were presented¹⁷ and compared and the question of raising public awareness was discussed. Then the works focused on case handling, presentations on 5 topics (Wildlife Habitats protection¹⁸, Water Resources Management¹⁹, Municipal Waste Management²⁰, Illegal Constructions²¹, Industrial Air Pollution²²) by representatives of the Greek, the Austrian and the Catalan Ombudsman were made. Finally, 3 moot cases proposed by the Society for the Protection of Prespa were discussed in a workgroup exercise,

Evidently, the workgroup cases were useful in identifying the similarities in the systemic problems of the participating countries in the public administration's environment agenda and working out the best practices and methods of ombudsman intervention. But what made this seminar a pledge for further deepening our cooperation with our neighbour countries' Ombudsman institutions, was that the moot cases we addressed in the workshops, were actually submitted as formal complaints by the Society for the Protection of Prespa to the 3 Ombudsman institutions of

¹² A paper by the senior investigator in the Quality of Life Department of the Greek Ombudsman Ms Ioanna Koufaki, analyzing the importance of the *acquis communautaire* in the field, *ibid.* p.164.

¹³ A paper by dr.juris Ch.Petrou,

¹⁴ Presented by M.Dejeant-Pons, Council of Europe-DG IV

¹⁵ Presentation prepared by the Greek Ombudsman's experts A.Salamaliki and Ch.Tsaitouridis.,

¹⁶ Ms Vassiliki Roumeliotou.

¹⁷ By a representative of each Ombudsman, in the case of Greece by the expert A.Bosdoyanni.

¹⁸ by the Greek Ombudsman's expert N.Vittis.

¹⁹ by the Catalan Ombudsman's expert S.Vernia.

²⁰ by the Greek Ombudsman's expert C.Antoniades.

²¹ by M.Mauerer, Director, the Austrian Ombudsman Board

²² by the Greek Ombudsman's expert K.Fliatoura.

Albania, FYROM and Greece²³. And in the seminar we had the chance to work together our steps of investigation and mediation to the relevant 3 countries public authorities. This investigation is pending and we are about to proceed in the coordination of our actions, that entails trans-national cooperation in our functions as Ombudsmen. That is an ambitious pilot project, inaugurating trans-national communication and coordination of activities of the three respective ombudsman offices of Albania, FYROM and Greece, in order to address in a coordinated way the converging environmental problems arising in one biotope, the area of Prespa Lake, and it holds a significant symbolic meaning, since the Prespa Lake (the bigger of the 2 of the Prespa lakes) has a tripartite national frontier into the water surface, separating the 3 sovereign states of FYROM, Albania and Greece, whose neighbouring past has not been without clouds.

Conclusions

While we held this multinational conference in Prespa, one day an old lady in black in the village nearby asked us who we were and the reason we visited her village. We tried to explain and then she said that she was very happy to see us because not many young people were around in the village, her own son migrated to Australia! I think this incident illustrates the problem of working on making sustainable development possible while the people of the region directly concerned are absent, unaware of the process, have even emigrated to try their luck elsewhere. The CEMAT guidelines²⁴ putting into perspective social cohesion²⁵, include the need for effective participation of the society in the process of spatial development²⁶. That observation brings a burden upon the shoulders of all key factors concerned, international organizations, governments, academics, ombudsman institutions, to build bridges with the civil society and raise the local people's awareness, degree of information and actual participation in all stages of discussing, planning and taking initiatives on regional development.

Social cohesion in Europe as one of the objectives of territorial development policy brings solidarity into the game, solidarity being a forgotten word, a principle of cooperation to be revalorized. The idea that cooperation is indispensable because there are common challenges for the countries beyond national boundaries, was the idea underlying the Prespa programme of the Eunomia project and a key concept for the whole Eunomia project of Ombudsmen networking. I saved for the end the principal asset of our networking: confidence building through introspection.

As the Eunomia Project manager and lecturer in State theory, Dr.Dimitris Christopoulos, remarks: *“Our familiarization with the institutions of another political community functions in a demystifying way...The long term challenge which institution building presents, along with its preoccupation with the improvement of institutional performances, is a process of deconstruction of the nationally*

²³ The Greek case concerned the boundaries of area to be expropriated for the National Park of Prespa, while preserving the human factor in the sustainable development of the lake. The Albanian case concerned the measures against depletion of water resources endangering wildlife and protected species. The FYROM case concerned the pollution of water of the lake and the problem in enforcing the protection of the lake as a natural reserve.

²⁴ Recommendation Rec(2002)1 of the Committee of Ministers of the Council of Europe, Guiding Principles for Sustainable Spatial Development of the European Continent.

²⁵ “Les Principes directeurs...visent en particulier à mettre en cohérence les attentes économiques et sociales par rapport au territoire avec ses fonctions écologiques et culturelles, et ainsi à contribuer à un développement territorial à grande échelle, durable et équilibré », *ibid* , para. 8.

²⁶ *ibid*, para. 82.

stereotypical discourse about the “other”-whoever this might be²⁷. “Institution building can be regarded as an introspection: by examining the institutions of others, we come to know better our own institutional juncture, our vested interests and inadequacies. In this manner, institution building is not a one-way action. It becomes an interactive process, rewarding from all sides. From others, we learn about ourselves; with their knowledge and experience we enhance our own potential. Yet the most important aspect is that institution building may function as a confidence building measure among States carrying a heavy historical legacy of distrust and national rivalry. In the final analysis, this becomes the most important contribution of institution building. The Ombudsman’s role in this procedure is both factually and symbolically crucial. If we agree that confidence building aspires to achieving a rapprochement between states, institutions and individuals, through the lifting of mutually negative stereotypes, then it seems hard to consider a better means of achieving this than through the goal that the Ombudsman institution is designated to serve: The promotion of rule of law and human rights. This is the heritage and conclusion of the first five years of implementing the Eunomia project in Southeastern Europe, but also the guideline for its forthcoming activities in a broader geographical context.”²⁸

²⁷ in D.Christopoulos-D,Hormovitis (eds) *The Ombudsman in South Eastern Europe*, op.cit.note 6, p. 18: “From Institution Building to Confidence Building in the Balkans”,

²⁸ Dimitri Christopoulos, a summary in the Eunomia leaflet, o.c. note 4.