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# MEAN STREETS

A REPORT ON THE CRIMINALISATION  
OF HOMELESSNESS IN EUROPE

POVERTY IS NOT A CRIME. IT'S A SCANDAL.



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## CHAPTER XII

### Ombuds Offices and NGO's: Defending the Rights of Homeless People



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The development of citizen's rights in the framework of a state meant to guarantee them has called attention to the right of the population as a whole to a good administration. Nevertheless, the most vulnerable groups, such as homeless people, often find it difficult to undertake legal action against the institution responsible for the violation of (or the failure to defend) their rights.

Regarding the fight for the rights of homeless people, the ombuds-office is an especially interesting institution. An ombudsman can act on behalf of a homeless person on the basis of an official complaint or an application by an interested party. The aim of such complaints can embrace a wide range of themes: from the insufficient capacity of shelters (which forces some people to sleep rough), to reintegration problems of a group of people who have been evicted from a certain area, to specific shelter services in the winter undertaken by public authorities, to the analysis of the supply and demand of social housing.

## **THE CONCEPT OF GOOD ADMINISTRATION AND THE ROLE OF OMBUDSMEN/OFFICES**

The concept of good administration is gaining importance in public management. It is directly related to the increasing penetration of Public Law into this area as an instrument that enables a means of assessing the quality of public management. The right to good administration becomes a guide for public officials' decision-making and, as such, it is an instrument for ombudsmen as monitors of the public administration. The concept of good administration differs from that of good governance, as the former is related exclusively to public administrations, while the latter has its origins in the recognition of the existence of networks, involving public and private actors, where public decisions are made (Ponce, 2007).

At the European Union level, the Charter of Fundamental Rights itself established, in Article 41, the right to a good administration, mainly focused on the defence of the impartiality of the EU institutions vis-à-vis citizens and natural and legal persons. The precise formula of good administration can be based upon several instruments, such as ethical codes, service charters, codes of good governance and good practices, citizen participation mechanisms or, for instance, reports by advisory bodies (Ponce, 2009).

These instruments need someone to enforce them, and this is the task that, among other institutions, ombudsmen are increasingly assuming. The main function of ombudsmen lays in the control of the administration and the defence of fundamental rights. Secondly, ombudsmen have a crucial role in the constant improvement of the concept of good administration, as well as in the enhancement of citizen rights and in the quality of public management.

The Charter of Fundamental Rights of the European Union (Article 43) empowers the European Ombudsman and establishes her functions: "Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role".

### **THE OMBUDSMAN'S FRAMEWORK FOR ACTION: SOME EXAMPLES FROM EU MEMBER STATES**

The ombudsman is an office designated by the State or the relevant administration to monitor the behaviour of the administration itself. Its functions are limited to issuing (after research and analysis) advice or recommendations to the administrations, involving actions for improvement, restitution, compensation or legislation, or the reconsideration of decisions already made. Nevertheless, the ombudsman cannot replace the functions of ordinary law courts. Consequently, in case of unlawful action or of rights violation by the administrations, the ombudsman must advise citizens to appeal (if possible) before the courts. Generally, ombudsmen provide their public service for free, which makes it a potentially universal appellate authority. Moreover, it is possible to find an ombudsman at each level of the administration: central, regional and local.

In Greece, we can find recent investigations by the Children's Ombudsman, an institution belonging to the so-called "Greek Ombudsman", in charge of investigating violations of children's rights, with the aim of giving advice to the relevant administrations (Moschos, 2010). Beyond describing the typologies of homeless children, the Ombudsman wrote precise recommendations emphasising the duties deriving from Article 21.4 of the Greek Constitution itself and from Article 27 of the UN Covenant on the Rights of the Child. The Greek Children's Ombudsman established a typology of homeless children and different measures to resolve their situation. For instance, for "street children", the Ombudsman recommended procedures other than arrest by the police. For children "in an irregular administrative situation", it was recommended to stop treating them like illegal immigrants and to provide them with public protection as minors in situation of risk. For "children of Roma families living in camps", the intervention of the Ombudsman grants those individuals easier access to public services. In cases of "minors suffering from severe neglect or violence", the Ombudsman noted the lack of resources and tools for the administration to intervene adequately when needed, which forces women

and minors to continue living with their aggressors for fear of becoming homeless (Moschos, 2010).

In 2009, the Irish Ombudsman also ascertained that homeless people and homeless children had serious problems with access to basic state benefits, and, processing several claims, started an investigation. In her conclusions, the Irish Ombudsman ascertained that social workers had severe problems finding suitable housing for homeless children, because of the long waiting lists (OCO, 2009). The Office of the Irish Ombudsman even received applications and complaints from homeless children who had problems finding shelter through social services (Health Service Executive). In 2012, the Office presented the report "Homeless Truths. Children's Experiences of Homelessness in Ireland", which highlighted the children's experiences and perspectives. The intent of the report was to inform the decision-making of those working at both a policy and practice level to develop and improve services and supports for children requiring emergency care and accommodation (OCO, 2012).

Action by ombudsmen can be even bolder, as in the case of the Albanian Ombudsman, who undertook a symbolic action consisting of sheltering 51 Roma people, 25 of them children, in her own offices in the capital city, Tirana, to prevent them from a "possible death" from exposure during a cold spell in February 2012. These people had become homeless after being evicted twice from a property where they had camped with tents. The Albanian Ombudsman, insisted later to the Minister of Labour that a solution had to be sought for homeless people in extreme weather situations like the cold spell of last winter.

In Spain, the Ombudsman office has intervened several times for issues related to decent and adequate housing, not only invoking the right to housing, but also other constitutional requirements such as Article 9.2 of the Spanish Constitution, which establishes that "It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective [...]"; Article 10.1, which states that the dignity of the person, the inviolable rights which are inherent are the foundation of political order and social peace; or Article 39.1, which establishes that "the public authorities ensure social, economic and legal protection of the family". When 1987 was declared "International Year for the Homeless" by the United Nations, the Ombudsman decided to write a report on the situation of homeless people (back then, more commonly known as *traseúntes* ["transients"]). For that purpose, the Autonomous Communities (the governments of Spanish regions) were asked for information regarding available resources (especially shelters), and there was an evaluation of the coverage provided through those resources, and of the existence of practical projects aimed at improving the provided assistance (Múgica, 2009).

More than 20 years later, in April 2012, the Ombudsman exposed, in an annual report in the Congress of Deputies, that the number of homeless people in Spain was estimated at between 30,000 and 50,000 people, and proposed that they be provided housing from the stock of vacant social housing, which, according to the Ombudsman, could amount to hundreds of thousands of housing units (DP, 2012).

In addition, in Spain there are regional (from the autonomous communities) and local ombudsmen that have also reported on the situation of homeless people, the related social services, and housing policies. Remarkably, all of them emphasise that most complaints and reports related to homeless people are routed through NGO's. In fact, the Catalan Ombudsman (Síndic de Greuges) has a social council, formed by the main social organisations of the country, with a general advisory role and that also endorses and contributes to the Ombudsman's reports, including the final recommendations to the relevant administrations.

A report by the Andalusian Ombudsman, commissioned by the regional government itself, showed a detailed diagnosis of this problem, as well as an in-depth and transversal analysis of the laws, regulations, institutions, and administrations that take part (or should take part) in the resolution of these homelessness situations. Some of the recommendations enjoyed a prominent place: the need to have a specific regional legislation (in the autonomous community), as well as a dedicated budget; and creating an observatory on homelessness, in partnership with local councils and social institutions, which helps to prevent duplicities and to clarify the map of public intervention in this area (DPA, 2006). The Basque Ombudsman (Ararteko) also wrote a long report on the social, legal and administrative situation of homeless people in the Basque Country. Contrary to the Andalusian report, the material and motivation for the report came from the Basque Ombudsman, who resolved to give priority to research on the most vulnerable social groups and, consequently, assumed an exemplary autonomy in terms of initiating investigations and issuing recommendations to the regional and local institutions of the Basque Country. The Basque Ombuds' report (Ararteko's report) also includes a list of recommendations for legislative changes. Its main point concerns the clarification of the responsibilities of each administration, as the research concluded that inter-administration confusion is too often used as an excuse to exonerate administrations from assuming responsibilities that, in most cases, involved a jurisdictional conflict. In consequence, the ombudsman calls for comprehensive policies and for a clear leadership. This institution has requested a consistent harmonisation of the legislative framework, from local coexistence ordinances to the regulation of social services and the management of social infrastructures, often in contradiction (Ararteko, 2006). Just like the Andalusian Ombudsman, the Ararteko report is calling for better budget provision for assistance to homeless people, and for an improved coordination and a more comprehensive understanding of this problem.

The Catalan Ombudsman wrote the report "Homelessness in Catalonia. Persons, administrations, organisations". The main conclusions and recommendations of the report were related to the need for an improved coordination between administrations, and a harmonisation of the existing legislation and regulations; the creation of an observatory on homelessness-related problems; increasing the budgetary provisions for awareness-raising of the population; reinforcing the links between labour and housing policies, and policies for the homeless, as well as the cooperation of social entities helping those people (SG, 2005). In the Catalan case, it should also be emphasised that local ombudsmen are showing a growing level of activity, which sometimes involves actions sparked by claims made by social organisations helping homeless people. In 2010 in the municipality of Cornellà, the local Ombudsman wrote a report on the right

to housing. Among other measures, the local Ombudsman demanded that regulations were set up to grant priority access to social housing to people in an emergency situation derived from their loss of a home, and demanded a plan specifically targeted to assist roofless people (SGC, 2010).

In England, an official investigation was started to analyse systematically the enforcement of legislation related to assistance for homeless people at the local administrative level (LOG, 2011). The results of the Ombudsman's research constitute a complete guide for reviewing and improving municipal policies of assistance to homeless people. The point of departure lies in the assumption that the lack of the due responsibility by local governments can have, as a consequence, serious errors in: the prevention of homelessness; the duty to undertake consultations (to analyse the real level of risk faced by applicants); the design and evaluation of applications; and the provision of short-term accommodation. The study made by the Ombudsman (and the ensuing recommendations to town councils) is based on an in-depth analysis of four cases of negligence by the municipal administration with serious consequences for the claimants, whose situation was worsened by an inappropriate response by the administration. It is precisely thanks to such claims by affected people that the Ombudsman decided to analyse the legal framework and its enforcement in practice, and prepared this guide of good administration for municipalities and their management of cases of actual or potential homelessness.

Finally, it is important to note that in a country like Finland, as a true reference regarding housing and homelessness policies, the Ombudsman has also played a role in the set up of a national strategy to reduce long-term homelessness (2008-2011). On two occasions, the parliamentary Ombudsman drew attention to the illegality of denying the individual right to decent housing, which is often replaced by shelters or temporary housing solutions that keep applicants in a situation of marginalisation, without providing them with the resources needed to improve their situation in a sustainable way. The Finnish Ombudsman even investigated a claim by a Roma family that was denied the right to apply for housing, which violated their right to non-discrimination and to equality in access to social housing. The excuse for such denial of rights was that the local mayor felt that this family would cause unrest in the neighbourhood.

## CONCLUSIONS

Ombudsmen are institutions empowered by the administration itself to provide their services for free. They are the guardians of the consistency of public policies and administrations. Consequently, they become advocates and attorneys on behalf of the people vis-à-vis the administration. In the early twenty-first century, given the wide range of sectors and issues currently included as public policies, ombudsmen can channel their tasks to many social areas, including issues related to the situation of homeless people and the existing (or not existing) related public policies. However, ombudsmen have no legal power to force councils to follow their recommendations.



These institutions monitoring good government by the administration are driven by claims by citizens. Unfortunately, few vulnerable groups make complaints to ombudsmen. So it is all the more important that the NGOs working daily on behalf of homeless people take their cases of rights violations to ombudsmen so that all cases of irregular administrative action undermining a consistent public policies approach can be analysed by the ombudsmen. Ombudsmen are not policy-makers, but they can and should influence policy with their recommendations and studies on the consistency between those policies and citizen's rights. Consequently, collaboration with ombudsmen is a useful tool for NGOs and an important way forward for improving the situation of helpless homeless persons.

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OF HOMELESSNESS IN EUROPE

Criminalising and penalising homeless people for carrying out life-sustaining activities in public because there is no where to go is a problem across the EU. Policies and measures, be they at local, regional or national level, that impose criminal or administrative penalties on homeless people is counterproductive public policy and often violates human rights.

Housing Rights Watch and FEANTSA have published this report to draw attention to this issue. This report brings together articles from academics, activists, lawyers and NGOs on the topic of human rights and penalisation. Divided into three main sections, the report provides an important theoretical and historical background, before highlighting examples of penalisation across the EU, and finally suggesting measures and examples on how to redress this dangerous trend.

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