

OMBUDSMAN AS PROMOTOR OF GOOD GOVERNANCE



**ERASMUS UNIVERSITY ROTTERDAM
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EXECUTIVE SUMMARY

In this study the role of the ombudsman as a promoter of good governance is explored. The following central question has been formulated: *How can the performance of National Ombudsman as promoter of good governance be improved?* In order to answer this question the theory of good governance is used. Good governance is a broad concept used by government and international organizations around the world. In late 1980s the concept emerged as the strategy of the international community to promote political reform in the developing countries and transitional democracies. Although good governance comprises nine different principles, this study is focused on one of them, namely: accountability. Mainly because, the ombudsman is frequently established as an external accountability mechanism.

The ombudsman can act as an accountability mechanism by: permitting members of the public to lodge complaints that the government has not acted legally or fairly; investigating the conduct of public administration; recommending changes of law, policy or practice when illegal or improper administration is uncovered; reporting to the legislature and the public; ability to take cases to constitutional and other courts for judicial determination; and the power to prosecute state officials. However, how effective the ombudsman is in his work depends on several conditions. In this study is chosen to look at the following influence variables: democratic governance, independence of the institution, jurisdiction and powers, financial resources, accessibility, and co-operation with the government and other bodies.

By comparing the effectiveness of the ombudsman in three different countries and looking for the explanations for the effective or ineffective performance the following can be concluded. The degree of influence an ombudsman has as promoter of good governance dependant on several factors. The first condition is the existence of a minimum level of democratic governance. It is for the ombudsman impossible to function effectively by the absence of any democratic system. Besides, the existence of democratic governance is also linked with one of the most important conditions, namely the co-operation of the government with the Institution. In countries with democratic governance the government is more likely to be willing to co-operate with control mechanisms such as the ombudsman. The importance of such mechanisms for the legitimacy of the government is recognised and valued. The third condition is the independence of the institution. For effectively doing his task, scrutinize the government, it is utmost important that the independence of the Office is secured. Another factor that influences the performance of the ombudsman is the financial resources. The ombudsman institutions must be in the possibility to employ the needed human resources for the effective case handling and more general investigations and recommendations on the violations of the side of the authorities. In addition, it is necessary that the resources are provided for adequate accessibility of the institution.

Looking at the above described factors that influence the performance of the ombudsman it can be said that some of those can be changed by the Institution. However, the main problem is that the variable that is of most influence, co-operation with the government, is very difficult to change. If the government authorities are not willing to accept that in order to win trust of the citizens and improve legitimacy it is needed to co-operate with the ombudsman and other control mechanisms, it is difficult for the ombudsman to change this. However, it is useful for these institutions to make more use of the media and make the non-compliance of the authorities public.

Although the outcomes of this study are based on case study of three different countries it also applicable to other Balkan countries. All these countries share the history of the transition democracy. Moreover, the ombudsman institutions in these countries are rather new, and it is likely to expect that they also are not perfectly functioning yet.

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PREFACE AND ACKNOWLEDGMENTS

My interest in the Ombudsman has been triggered by a documentary about the Human Rights Ombudsman of Bosnia and Herzegovina. In this documentary a case was presented of a man who was fired by a local authority based on his ethnicity. This was not the first case of unrightfully treatment of people by authorities I have heard about. Because of my background I am often visiting Bosnia and Herzegovina and I frequently hear complains about maladministration in the state. The documentary had also shown the reaction of the office of the Ombudsman and the actions they had taken to anticipate on the complaints made against the public authorities at all levels. Consequently, I was interested in the effort the Ombudsman was putting to improve good governance within the government. The research project for my master seemed the perfect opportunity to get insight information in this subject. For the project I have chosen to compare three countries at the Balkan. These countries are all former Yugoslavian countries. Republic of Slovenia which became EU-member in 2004; Republic of Croatia which became candidate member state in 2005; and Bosnia and Herzegovina which is putting enormous effort to become a candidate member state.

This research could not come to an end without the help of the two supervisors. I wish to thank Dr. Arthur Edwards and Dr. Frans van Nispen for their useful observations and comments.

Furthermore, it would not be possible to complete this project without the love and support of my family. My father Rifet Džanić and my brother Mirza Džanić have always been a source of encouragement. Finally, I want to express my deep appreciation to my fiancé Emir Mešić, for his constant encouragement and patience.

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Selma Džanić

In almost every country in the world public administration has significantly expanded in the past century. With the expansion also the number of complains about governmental performance has grown. At the same time the role of the government has changed. There has been a shift from government to governance. In this chapter the problems deriving from this shift will be discussed. Section 1.1 contains the problem analysis. In section 1.2 the relevance of the research is given, followed by research questions in section 1.3. Besides, in section 1.4 the methodology of research is given.

1.1 Problem Analysis

Governance is used as a broad concept to cover new ways of governing. The word *governance* is derived from the Greek word 'Kyberman' and 'Kybernets' meaning to 'steer and to pilot, or be at the helm of things' (Fonseka, 2000). Even though the concept has been frequently used there is no widely accepted definition of the term. The shift from government to governance can occur in different directions. The literature (Van Kersbergen & Van Waarden, 2004; Pierre & Peters, 2000) identifies three shifts within governance. Firstly, there is an upward shift from nation-state towards international public institutions with supranational characteristics. The states have chosen to give up parts of their sovereignty to supranational institutions such as the European Union (EU), the World Trade Organization (WTO) or the North American Free Trade Association (NAFTA). Secondly, there is a downward shift from national government towards regional and local authorities. Finally, there is a shift from public towards semi-public and private organizations.

In addition, governance also can occur in different forms. The forms of governance used in this research are: governance by government, governance without government, network governance, economic governance, good governance, and multi-level governance (Van Kersbergen & Van Waarden, 2004; Pierre & Peters, 2000). Besides, even if good governance is used in the literature as a form of governance, it also can be seen as a way to give judgement on other forms of governance. The concept of good governance has been accepted by a growing number of international organizations, governments and policymakers as standard of conduct for governance (Reif, 2004). Good governance includes the principles such as accountability, transparency, rule of law, participation, equity and inclusiveness, responsiveness, effectiveness and efficiency, fairness and coherence (Stiglitz, 2003; Woods, 2001; Commission, 2001, www.unescap.org, Reif, 2004).

As described above the role of the government has changed in the past decades, however the numbers of complains about their performances has not decreased. The governments around the world are experiencing a widening gulf between themselves and the people they serve. In addition, the changing role of government has also brought up new problems. The shifts in governance have caused problems of governability, accountability, responsiveness and legitimacy. Furthermore, the traditional institutions of checks and balances on power and accountability have become less effective due the shifts (Van Kersbergen & Van Waarden, 2004).

As an answer to these developments new mechanisms of checks and balances have been established, such as courts, interest associations, policy evaluation studies etc. In addition, many countries have established the ombudsman institutions as new control mechanism. However, a condition for successfully functioning of the ombudsman is that there exists some form of democratic governance.

The countries compared in this study have a history where this condition was not always met. Until recently, the countries in Central and Eastern Europe used to have a 'strong state-run sector and highly centralized management of economy' (Zieliński, 1999). Besides, in such totalitarian states the role of the state and its civil servants towards the citizens is quite different as in democratic countries. In a totalitarian state the governments as well as the servants are unaccountable to the citizens and the interest of these citizens is totally ignored. However, due to the developments in the past these countries started to change their systems towards democratic governance. Furthermore, the countries that are seeking membership of the European Union have to make changes towards the standards of the European Union. Within these standards a democratic state must be 'kind to the citizen, account for his needs and defend human dignity' (Zieliński, 1999). As part of the movement towards democratic governance these countries have established the ombudsman as attempt to develop accountability and build good governance. Nowadays, the ombudsman is believed to act as a mechanism which improves transparency and accountability of the government, with the result that it promotes good governance within a country (Reif, 2001).

1.2 Research Relevance

Aim of the Research

Doing research on Ombudsmen and their role in promoting good governance has different aims. The information on public policy in the Balkan is lagging behind compared to the body of knowledge of the countries in Western-Europe or United States. The more general objective therefore is to improve the body of knowledge of public administration in the Balkan countries. Furthermore, the intention is to produce information on the role of the National Ombudsman in the Balkan. Next to general objectives, the relevance of the project is twofold. Firstly, there is academic relevance and secondly, there is practical relevance.

Academic Relevance

This study focuses on the role of the Ombudsman in promoting good governance mainly through improvement of accountability. Studying accountability fits within the framework of 'New Public Management (NPM)'. The interest in governance has been raised by the 'managerial revolution' in the public sector. Due to NPM the emphasis in the public sector was laid on evaluation and performance. Besides, the concept of the state and the government has changed. Because of these changes, the problems with accountability became a central issue within these new ways of governing (Pierre & Peters, 2000). Problems with accountability are linked with legitimacy problems that many governments are facing (Held, 1984). Searching for solutions for legitimacy problems leads to a research on new ways to improve accountability of the governments.

In the past the term accountability was generally concerned with auditing; traditional book-keeping functions: control and protection of public funds against corruption and waste. However, with addition of performance and quality standards the role of auditing has changed. The public dimension of NPM accountability is illustrated by the term 'stakeholders'. The distinction can be made between internal (staff and management) and external (the public) stakeholders. Within NPM thinking accountability to external stakeholders can be achieved through other channels than the traditional ones, for instance through complaint procedures and ombudsman (Harlow, 2002).

Practical Relevance

The research will not only be focused on drawing conclusions. Next to that, the aim of the research will also be to do recommendations. Three different countries will be taken account of in the analysis and therefore the different ombudsmen will be compared to each other. It is expected that during the research differences in success to promote good governance will be exposed between the three. The research will show the strengths and weaknesses of the three ombudsmen institutions. After drawing conclusions, it will be possible to do recommendations to the different ombudsmen. They will have the possibility to learn from each other.

1.3 Research Questions

The shift from government towards governance and the establishment of ombudsman to promote good governance lead towards the following question: How effective is the ombudsman as promoter of good governance? In addition, this thesis is an international comparative study of the role the National Ombudsmen has as promoter of good governance and therefore the following countries will be compared: Bosnia and Herzegovina, Republic of Croatia, and Republic of Slovenia. However, because the aim of the research as described in section 1.2 is also to do practical recommendations, the central question is formulated as follows:

How can the performance of National Ombudsman as promoter of good governance be improved?

For answering the central question different research questions have to be formulated.

With the intention to look at the way the ombudsman is promoting good governance the term good governance has to be defined. However, good governance is a part of the broader concept governance and therefore it is firstly needed to define the concept governance and to give insight in the different forms of governance. Therefore the following question will be addressed:

1 *What is meant with governance and especially good governance?*

After defining the concept it is needed to look at the criteria of good governance. Therefore, the second research question is formulated as follows:

2 *What are criteria for good governance?*

In addition, there are factors that influence the work of the ombudsman. In order to look at the effectiveness of their work these factors have to be identified. Consequently the following question is formulated:

- 3 *Which factors influence the effectiveness of the ombudsman institution in promoting good governance?*

In this study the role of the ombudsman in promoting good governance is explored, for that reason it is necessary to look at the ombudsman institution. Ombudsmen in different countries have other responsibilities and duties. The fourth question therefore will look at the jurisdiction, and the extent and adequacy of the powers given to the institution.

- 4 *What is the jurisdiction and power given to the ombudsman by the national law to improve good governance?*

The role of the ombudsmen in promoting good governance will be explored by doing different case studies. Consequently, the effort undertaken to promote good governance of the ombudsmen in different countries has to be identified. Therefore the following question is formulated:

- 5 *Which efforts is the ombudsman putting to improve good governance within those three countries?*

In addition, after identifying the work the ombudsmen have done to improve good governance it is needed to look at the effectiveness of this work. Therefore the following question has to be answered:

- 6 *What is the contribution of the ombudsmen to good governance in a country?*

After giving answer to the above formulated research questions the differences between countries are shown and with that also the strengths and weaknesses in effectiveness of the ombudsman in promoting good governance are exposed.

1.4 Methodology

In this section the method of inquiry will be given. Besides, also the experienced limitations will be discussed.

1.4.1 Methods of Inquiry

In this section the method of research done in this study will be explained. Terms used to explain are derived from the book *Methoden en technieken van Bestuurskundig Onderzoek (Methods and Techniques of Social Research)* written by Hakvoort (1997).

This study is an international comparative study of the role the national ombudsman has as promoter of good governance. Three different countries will be compared, namely: Bosnia and Herzegovina, Republic of Croatia and Republic of Slovenia. The project is a descriptive project with explanatory aspects. The study will be based on the search for variables that influence the effectiveness of the ombudsmen.

Because in this project the comparison between several countries is central it is a comparative research. However, within comparative research several problems can be distinguished. First of all, theoretical and methodological problems arise because of the comparison. Problems and terms are culturally bounded and therefore differ between countries. Other problems with comparative studies are language differences and interpretation problems. Because one of the aims of the research is to provide practical recommendations the following central question has been formulated: *How can the performance of National Ombudsman as promoter of good governance be improved?* The answer to this question will be based rather on qualitative research instead of quantitative research. To be able to come up with verified conclusion more than one research technique will be applied. The following techniques will be used: content analysis and secondary analysis.

Content analysis

Content analysis is a technique that analyses available information that had been collected for other purposes to give answers to research questions. For the purpose of this study the following analysis has been used:

- Review of the literature on governance and good governance;
- Analysis of the literature on the ombudsman to get more information on the background and work of the ombudsman in general;
- Study of the national legislation to collect information on the jurisdiction and powers of the ombudsmen;
- Analysis of the annual and special reports to find out which efforts the ombudsmen have taken to improve good governance;

Secondary analysis

Secondary analysis is a technique that analyses information that had been collected for other purposes to give answers to research questions. In this research an analysis has been made of studies on ombudsmen done by different international organizations such as OSCE and World Bank.

1.4.2 Scope and Limitations

This study is only focusing on one aspect of good governance, namely accountability. For the reason that, the ombudsman is seen as an external accountability mechanism. This means that the other factors that are influencing good governance will not be taken into account. Besides, the terminology of accountability is not used everywhere and if it is used it is often imported from the English language. In several European languages no exact equivalent or translation is available (Harlow, 2002). In addition the research will focus on the national ombudsman while there are also Ombudsmen on local level. Besides, the study will not look at all factors that are influencing the effectiveness of the ombudsman. For instance, the personal character and credibility of the individual ombudsman plays a role. However, this will not be taken into account in this research.

The original planning for gathering information for this research thesis included holding interviews with personnel from various ombudsmen institutions.

However, due to a lack of cooperation I was faced with, this turned out to be impossible. Several individuals from various ombudsmen institutions were approached but were absolutely not cooperative when it came to holding interviews. Therefore, I decided to base and focus this research on other sources of information. The disadvantage of this way of research is that the information from interviews is information from first hand and by the other two the information is already at hand, but collected for other purposes. Nevertheless, the annual reports of the institutions were quite comprehensive and included different sections focused on good governance. Therefore the information used for this study can also be seen as information from the first hand, because the annual reports are written by the institutions themselves.

Another limitation was the lack of some data concerning the number of (unjustified) cases and the budget. This led to difficulties with comparing the data and drawing accurate conclusions. The lack of data was caused by several factors. For example, information about functioning of BaH ombudsman was not complete due to a total shutdown of the ICT department of this institution. The information available on the Internet was either not accessible or not up-to-date. Another example is the lack of some data concerning the Croatian ombudsman due to a total loss of all information dated before 2001, when a new computer system has been installed and implemented in this institution.

2.1 Introduction

It is not in the scope of this research to design or test theories. In this report theories will be used as help for answering the central question and sub-questions. The theoretical framework as shown in this chapter will be not only used for answering the questions but also for raising new questions. This chapter shows the perspectives that will be used to look at the issue raised by the central question. The theoretical framework is built on the concept governance (2.2). Besides, in the scope of this study the focus will be mainly on the good governance concept (2.3). Moreover, the link between legitimacy and democracy will be explored (2.4). In addition, as seen in the problem definition the ombudsman is mainly concerned with one aspect of good governance namely: accountability (2.5).

2.2 Governance

As already mentioned the term governance is derived from the Greek word 'Kyberman' and 'Kybernets' meaning to 'steer and to pilot, or be at the helm of things' (Fonseka, 2000). In the last decades the concept has been used frequently by international organizations, governments and policymakers all around the world. However, there is no widely accepted definition of the term. Governance implies a change in the meaning of government, a 'new process of governing' (Rhodes, 1997:15). It is 'the process of decision-making and the process by which decisions are implemented (or not implemented)' (www.unescap.org). The government is just one of the actors in governance. The concept has the capacity to 'cover the whole range of institutions and relationships involved in the process of governing' (Pierre & Peters, 2000:2). Consequence of governance is that 'the outcomes of administrative action are in many areas not the outcomes of authoritative implementation of pre-established rules, but rather the result of a co-production of the administration and its clients' (Rhodes, 1997:57).

One of the first promoters of the concept governance and good governance within the countries in the Balkan has been the World Bank. The use of the concept has mainly been in the field of economic development and democratic reforms. This organization has also used different definitions of this term in its existence, however this study refers to the definition the World Bank had published in its report 'Transparency, Incentives and Prevention (TIP) for Corruption Control and Good Governance' from 2002:

'Governance is the process and institutions by which authority in a country is exercised:

- 1. the process by which governments are selected, held accountable, monitored and replaced;*
- 2. the capacity of governments to manage resources efficiently, and to formulate, implement, and enforce sound policies and regulations; and,*
- 3. the respect for the institutions that govern economic and social interactions among them.'*

Nowadays, the influence of the European Union on Balkan countries is increasing. In order to become member of the Union these countries already have or are putting effort to improve their governments. Therefore the definition as used by the European Union is playing a role in this study. The European Commission has developed a White Paper on Governance, and in this paper the following definition is used: '*Governance means rules, processes and behaviour that affects the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence*' (Commission, 2001:8). In the definition the 'European level' is mentioned, however it can be assumed that this also should be the case on the national level.

2.2.1 Shifts in Governance

The shift from government to governance can occur in different directions. The literature (Van Kersbergen & Van Waarden, 2004; Pierre & Peters, 2000) identifies three shifts within governance.

The first shift that has occurred is the upward shift from nation-state towards international public institutions with supranational characteristics. Since the Second World War the importance of the international actors and organization, the international community has grown. The states have chosen to give up parts of their sovereignty to supranational institutions such as European Union (EU), the World Trade Organization (WTO) or North American Free Trade Association (NAFTA). Not only governments have shifted their powers to the international community, there has also been a shift from the national court to supranational courts. The second shift has been the downward shift from national government towards regional and local authorities. The decentralization of the state power to regional and local institutions has been different in diverse countries. However, in almost every country the growth of the sub-national government has been faster than the growth of the national government. The third and final shift has been the shift from public towards semi-public and private organizations. The powers and capabilities have been moved from the public sector towards non-governmental organizations. These organizations are used to fulfil governmental functions. In addition, some activities have been fully left to the private sector, often through privatisation. Besides, in some countries there has been a shift from governance by executive and legislative powers to the judiciary.

2.2.2 Forms of Governance

In addition, governance also can occur in different forms. In this research six different forms of governance are distinguished (Van Kersbergen & Van Waarden, 2004; Pierre & Peters, 2000; Rhodes, 1997).

Governance by Government

The concept of governance by government is the traditional view of top-down authority of the state. The government is seen as capable of steering and governing the society through traditional governance instruments as law and coercion (Pierre & Peters, 2000).

Governance without Government

This concept refers to governance without interfering of the state. The first use is derived from the international relations theories. It refers to governance in the form of international or even global governance and global democracy. In addition, governance without government is also referring to 'self-organizations of societies and communities, beyond the market and short of the state' (Van Kersbergen & Van Waarden, 2004:146).

Network governance

Although in the literature different networks can be distinguished, there is agreement in conceptualization of the concept. Networks are pluricentric forms of governance in contrast to the, multicentric (market) and unisentric (state). Rhodes (1997:53) considered network governance as self-organizing, inter-organizational networks; able to 'resist government steering, develop their own policies and mould their environments'. Besides, they are characterized by an 'exchange of resources and negotiations and by rules of the game negotiated and agreed by network participants'.

Economic governance

In economic governance the government is only one source of institutions that govern economic transactions. Markets have to be created and maintained by diverse institutions in order to perform effectively. Economic governance often takes place without direct state interference, though 'the shadow of hierarchy may either incite private actors to create private governance institutions or back-up private governance arrangements' (Van Kersbergen & Van Waarden, 2004:147).

Multi-level governance

Multi-level governance can refer to different government levels as well as to involvement of both private and public actors. In multi-level governance the international, national and sub-national processes of governance are 'interlinked in a negotiation fashion' (Pierre & Peters, 2000:72). This approach is characteristic for the decision-making processes in the European Union.

2.3 Good Governance

Good governance is a broad concept used by government and international organizations around the world. In late 1980s the concept emerged as the strategy of the international community to promote political reform in the developing countries and transitional democracies. The international donor community embraced democracy and governance assistance as its main priority. The two concepts, democracy and governance, are two complementary and independent concepts. Both are concerned with the reform of political systems, institutional structures and governing processes in developing and transitional countries. However, democracy from the political perspective and governance from an economic perspective. The perspectives are concerned with reliability and predictability, openness and transparency, accountability, as well as efficiency and effectiveness of public policy. The combination of the two concepts implies a greater attention of the international community to the interplay between political and economical reforms. In the past these reforms have been seen as two separate issues and this lead to inconsistent reform strategies.

The World Bank therefore had started to set political conditions for economic assistance in order to promote democracy and good governance. However, nowadays it is known that this strategy of conditionality setting has failed to reach its desired objectives. The international community has recognised that building democracy and good governance in developing countries and transitional democracies is a long and difficult process. Besides, the outcomes of reforms are unpredictable and sometimes reversible. (Santiso, 2001) Now the emergence of good governance is illustrated, the following sections describe the concept more in detail.

2.3.1 Definition

There is no one clear definition of good governance. However, Dias and Gillies (in: Reif, 2001:63) have defined a broad notion of good governance. Their definition is as follows: *'[T]he responsible use of political authority to manage a nation's affairs. It requires a professionally competent, honest and merit-based civil service, sound fiscal management and public financial accountability, effective state institutions to formulate and implement national development policies, and a just and predictable legal framework. The challenge of good governance is to build an efficient, democratic culture within the machinery of government; one which respects human rights and is accountable to the civil culture at large.'*

World Bank is using good governance as 'the exercise of political power to manage a nation's affairs' in order to shape its lending policy for the third world countries (Rhodes, 1997:49). Good governance is described by this institutions as *'epitomized by predictable, open and enlightened policy making, bureaucratic imbedded with a professional ethos, an executive arm of government accountable for its actions, and a strong civil society participating in public affairs; and all behaving under the rule of law'* (UNDP, in IDLO, 2003).

In addition, the establishment of the Human Rights Ombudsman in Bosnia and Herzegovina had been a part of the United Nations (UN) mission 'post-conflict peace-building'. Therefore this report will also look at the definition of good governance as used by the UN. The UN Secretary General (in: Reif, 2004:67) has defined good governance as follows: *'[G]ood governance comprises the rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights, and the meaningful participation of all citizens in the political processes of their countries and in decisions affecting their lives.'*

2.3.2 Principles of Good Governance

From the White Paper and the above cited definitions of governance nine principles that underpin good governance can be identified (Stiglitz, 2003; Woods, 2001; Commission, 2001; www.unescap.org; Reif, 2004). The first principle *accountability* is a key requirement of good governance. In general, an organization or an institution should be accountable to those who are affected by its decisions or actions. However, accountability can not be enforced without transparency and the rule of law. *Transparency* implies that decisions are taken and implemented in an open manner which follows rules and regulations.

Besides it also means that information is accessible and understandable for the general public. Third principle, *rule of law* implies that there exists a fair legal framework that is enforced impartially. Besides it also involves protection of the human right. The fourth principle, *participation* means that both men and women are involved in decision-making process. Participation implies not only freedom of association and expression but also an organized civil society. Participation implies also that the principles of *equity and inclusiveness* are granted. This means that everybody within a society has the opportunity to improve or maintain their well being, especially the most vulnerable members. Sixth principle of good governance is *responsiveness*. It means that organizations and institutions try to serve all stakeholders within a reasonable timeframe. The seventh principle *effectiveness and efficiency* means that the results produced by organizations and institutions are meeting the needs of the society on the basis of clear objectives. Next to that, the results are produced by making the best use of the resources available. Next to the above defined principles good governance requires *fairness* and *coherence* in organizations actions and policies. The figure 3.1 shows the above described principles. Good governance requires that all these nine principles are taken in to account. This study however, will mainly focus on one principle namely accountability. For the reason that, the ombudsman is often established as an external accountability mechanism.

Figure 2.1 Principles of good governance



During the years the concept of good governance has often been criticised for diverse reasons. Frequently heard critique is that the international community is requiring good governance as condition for economical assistance while international intuitions are showing deficit of good governance as well. For example, the World Bank is lacking adequate accountability mechanisms and is faced with transparency problems. Besides, the European Union recognised its deficits (i.e. accountability, transparency and coherence) and therefore published a white paper on good governance.

Another point of worry is that the concept is difficult to measure. It is not easy to find quantitative indicators for the principles of good governance and therefore these should be complemented with qualitative ones. However, there is no agreement on appropriate and legitimate indicators. Furthermore, the international community is requiring good governance principles without looking sufficient at the situation of the recipient state. Developing countries and countries in transition should make their own choices and craft their own democratic institutions according to their particular cultural, political and historical circumstances. (Santiso, 2001; Stiglitz, 2003; Woods, 2001)

2.4 Legitimacy and Democracy

Since the fall of the Berlin wall there has been a transition from communist and totalitarian regimes towards liberal democracies. Furthermore, new ways of governing (governance) are introduced. These changes within the governmental systems have led to changes in the checks and balances and consequently to a legitimacy deficit. In this section, the different models of democracy will be explored and the problems these bring with it.

Generally speaking the democracy models can be divided in two broad types: direct or participatory democracy and liberal or representative democracy. Within these two broad models diverse variants can be distinguished (see Held, 1987), however, for the purpose of this study the broader classifications will be used. Held defines in his book *Models of Democracy* the direct or participatory democracy as 'a system of decision-making about public affairs in which citizens are directly involved' (Held, 1987:4). Liberal or representative democracy is defined as 'a system of rule embracing elected 'officers' who undertake to 'represent' the interests and/or views of citizens within the framework of the 'the rule of law'' (Held, 1987:4).

Changes in the governmental system can lead to problems with the legitimacy of the government. Legitimacy means 'the degree to which states are considered just or worthy by their citizens' (Held, 1984:18). According to Locke legitimate government requires 'the consent of its citizens, and government can be dissolved if the trust of the people is violated' (in: Held, 1984:19). Besides, legitimate government means for the citizens 'a socially sanctioned obligation to comply with government policies even if these violate [their] own interests or normative preferences, and even if official sanctions could be avoided at low cost' (Scharpf, 2003). Government can derive legitimacy through religious, traditional, formal-legal, ideological or charismatic arguments. According to Scharpf (2003), however, in the Western countries legitimacy is derived from 'trust in institutional arrangements that are thought to ensure that governing processes are generally responsive to the manifest preferences of the governed (input legitimacy, "government by the people") and/or that the policies adopted will generally represent effective solutions to common problems of the governed (output legitimacy, "government for the people")'. Input legitimacy is secured by the direct participation of the citizens or the responsiveness to the wishes of the citizens. This tradition fits within the framework of direct or participatory democracy. However, due to practical problems of direct

democracy, representative government is necessary. Therefore in the modern world the input legitimacy is primarily ensured by the elections.

On the other hand, the output legitimacy depends on the checks and balances incorporated in the governmental system. Legitimacy is secured moreover by separation of the legitimate and executive powers, independent judiciaries and central banks. The output legitimacy there is at one hand fear for abuse of the power but at the other hand there is also need for effectiveness within the government in solving problems. Sharf (2003) calls this in his paper the 'tension between institutional arrangements designed to *prevent wrongdoing* on the one hand *and effective problem-solving* on the other hand'. Concluding, it can be said that in order to facilitate a legitimate government there must exist mechanisms of accountability for holding governments responsible for the abuse of governing power.

2.5 Liberal or Representative Democracy and Accountability

Democracy is built on mechanisms (such as elections) to prevent abuse or misuse of any kind of political power. Liberal democracy was seen by the first scholars of liberalism Jeremy Bentham and James Mill as the best system to protect the citizens from tyrannical use of power. The two scholars believed that democratic government is the manner to secure the accountability of the governors to those governed (Held, 1984). However, Hirst (in: Rhodes, 1997:197) stated in 1990 that liberal or representative democracy delivers 'low levels of governmental accountability and public influence on decision making'. By introduction of new ways of governing (governance) this did not improve. Traditional mechanisms of accountability have not been designed to deal with these changes in the governmental system.

2.5.1 Definition of Accountability

Accountability is important to 'ensure that political actions are predictable, non-arbitrary and procedurally fair, that decision makers are answerable for their decisions, and that rules and limits on the exercise of power are enforced' (Woods, 2001:84). Also, Joseph Stiglitz has defined accountability, in his words 'accountability requires that:

- 1 *'people are given certain objectives;*
- 2 *there is a reliable way of assessing whether they have met those objectives; and*
- 3 *consequences exist for both the case in which they have done what they were supposed to do and the case in which they have not done so'* (Stiglitz, 2003:111).

However, this definition is rather focused on how the government is supposed to act. The definition of Christopher Hood (in: Harlow, 2002:9) is more useful for this study. Hoods does not use the word accountability but he speaks of 'control', namely:

'[C]ontrol as the periodic checking and examination of the activities of public officials by external actors possessed of formal or constitutional authority to investigate, to grant quietus or to censure, and in some cases even to punish'.

2.5.2 Accountability and the National Ombudsman

The ombudsman can be considered as an external actor that can act as an accountability mechanism. As an institution of accountability the ombudsman can improve accountability of the government by:

- permitting members of the public to lodge complaints that the government has not acted legally or fairly;
- investigating the conduct of public administration;
- recommending changes of law, policy or practice when illegal or improper administration is uncovered;
- reporting to the legislature and the public;
- ability to take cases to constitutional and other courts for judicial determination; and
- the power to prosecute state officials. (Reif, 2004)

2.6 Factors influencing Effectiveness

In countries around the world the ombudsman institutions have been established to improve government administration, build good governance and protect human rights. However, the success of the ombudsman is dependent on the realisation of several factors. The UN High Commission for Human Rights (in Reif, 2004:396) has provided effectiveness factors which are relevant for all human rights institutions as well as to classical and hybrid ombudsmen. In this study it is useful to look at these factors because they are influencing the effectiveness of the ombudsman in promoting good governance. The following factors are relevant:

- *Democratic governance in the state;*
 - There is a democratic system with controls on the exercise of power of the government;
 - Democracy governed by the rule of law;
 - Strong legal protection for the institution.
- *The independence of the institution from the government;*
 - Appointed by the legislature instead by the administrative branch;
 - Freedom in budget and personnel matters;
 - Term of the office of the ombudsman should be regulated by law and should not coincide with the term of the legislature;
 - The ombudsman has to be empowered to conduct investigations, draw own conclusions and do recommendations.
 - There must not be any pressure or instructions from external bodies.
- *The extent and adequacy of the powers given to the institution;*
 - Precisely defined jurisdiction to avoid jurisdiction conflict with other state institutions;
 - Jurisdiction over the full spectrum of rights such as economic, social and cultural rights;
 - Jurisdiction over the police, security and defence forces should be included;
 - Inclusion of the jurisdiction over the judiciary.

- *The accessibility of the office to members of the public;*
 - Public knowledge of the institution;
 - Physical location;
 - Diversity of personnel;
 - Regional and local representatives;
 - Complaints must be free of charge and done directly to the office;
 - Complaint procedures must be flexible.

- *The level of cooperation of the institution with other bodies;*
 - Relationships and cooperation with non-governmental organizations (NGO's), other national human rights institutions and international organizations;

- *Operational efficiency (level of financial and human resources);*
 - Adequate financial and human resources.

- *The accountability and transparency of the institution;*
 - Reporting requirements such as annual and special reports;
 - Report to the legislature;
 - Annual and special reports are distributed widely;
 - Use of the media to inform the public.

- *The behaviour of government in not politicizing the institution and having a receptive attitude towards its activities;*
 - Responsiveness of the executive, public administration and the legislature towards ombudsman reports and recommendations.

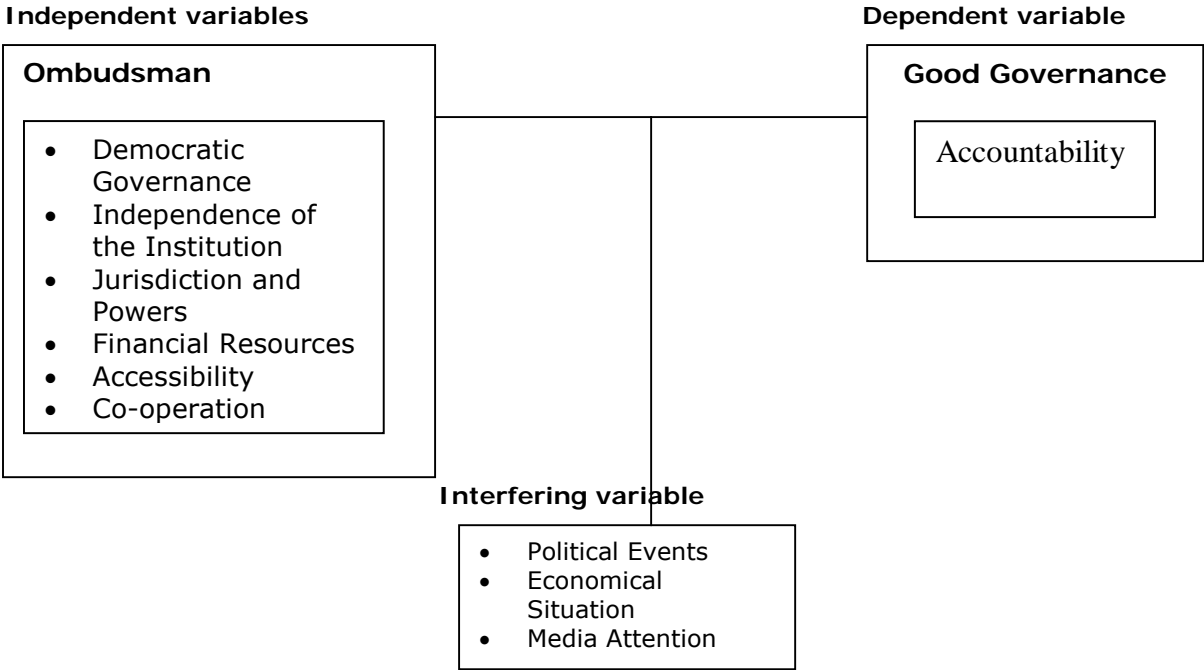
- *The credibility of the office in the eyes of the populace.*
 - The public has the perception that the ombudsman can provide them with real benefits.

2.7 Analytical Framework

Looking at the central question then the characteristics of ombudsman are the independent variables in this research and accountability as an element of good governance is the dependent variable. In figure 2.2 an illustration of the above is given. There are next to the in figure 2.2 shown independent variables also other variables (section 2.6) which influence the effectiveness.

However, for this study is chosen to look at the following variables: democratic governance, independence of the institution, jurisdiction and powers, financial resources, accessibility, and co-operation with the government and other bodies. To include the variables left out of this research another kind of study is required.

Figure 2.2: Analytical Framework



2.8 Introduction of the Cases

In order to make a selection of the cases a survey of the ombudsman institution characteristics in diverse countries at the Balkan is made. Results of this survey are provided in Annex I. The data are collected from the ombudsmen institutions themselves and concern the year 2004. In this section a short introduction of the cases used for this research will be given.

Bosnia and Herzegovina

In Bosnia and Herzegovina there exists a structure where three different ombudsman offices exist. There is a Human Rights Ombudsman who has the power to investigate alleged human rights violations and to recommend possible remedies. In addition there are two Entities ombudsmen: the Federation Ombudsman Institution and the Republika Srpska Ombudsman Institution. This study will consider the Human Rights Ombudsman as the National Ombudsman. In 2002 the *Law on the Human Rights Ombudsman* was adapted by the Parliament. And in the end of 2003 the transitional Ombudsman was replaced by domestic ombudsmen who were appointed by the legislature.

Republic of Croatia

Republic Croatia has a People's Ombudsman, who as a commissioner of the Croatian Parliament shall 'protect the constitutional and legal rights of citizens in proceedings before the state administration and bodies vested with public authority' (www.ombudsman.hr). The *People's Ombudsman Act* was adopted in 1992. The Ombudsman is elected by the Croatian Parliament for a term of eight years.

Republic of Slovenia

The Constitution of Slovenia includes an provision which states that: 'an Ombudsman, responsible for the protection of human rights and fundamental freedoms in matters involving State bodies, local government and statutory authorities, shall be appointed pursuant to an Act of Parliament' (in Reif, 2004). The Slovenian parliament passed the *Human Rights ombudsman Act* in 1993 and the first Ombudsman took office in January 1995.

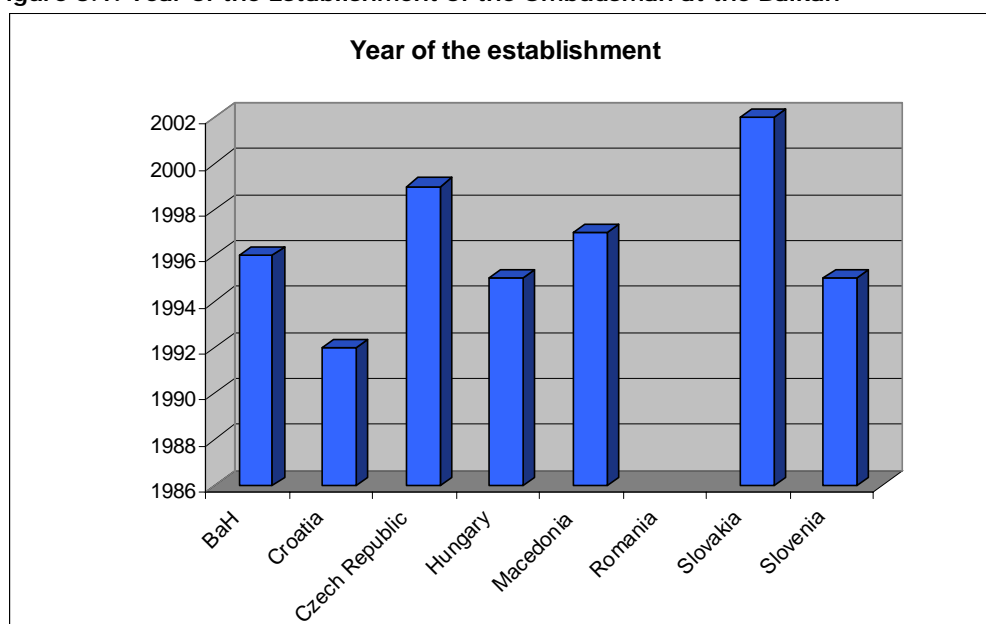
3 HISTORY OF THE NATIONAL OMBUDSMAN

The trend to establish a national ombudsman continued also in the three countries compared in this study. After the break-up of the Socialist Federal Republic of Yugoslavia the three countries became independent states. Croatia declared independence on June 25, 1991 after a referendum held under the Croatian population where 93% voted *for* independence. Not much later an armed conflict followed. Several hours after Croatian declaration, the Slovenian Assembly followed. After a very short period of armed conflict, the country successfully seceded from Yugoslavia. BaH's declaration of independence on March 6, 1992 led to protracted armed conflict and ethnic cleaning. The end of the armed conflict in Bosnia and Herzegovina and Croatia came with the signing of the *General Framework Agreement for Peace in Bosnia and Herzegovina* (hereafter Dayton Agreement) on December 14, 1995 by the Republic of BaH, the Republic of Croatia, and the Federal Republic of Yugoslavia (Reif, 2002, History of Croatia). In the following sections the history of these countries will be discussed in more detail. However, the main focus will be on the history of the national ombudsman.

3.1 History of the National Ombudsman

In the early 19th century the first ombudsman institution was established in Sweden. The institution spread outside Sweden to Finland in 1918, when Finland became independent from Russia. First ombudsman institution established outside Nordic countries was in New Zealand in 1962. The institution of the ombudsman enjoyed the greatest popularity in the 1960's, when mainly European countries established the institution. In 1980's approximately 21 countries had the Institution on national level and six countries on provincial/state or regional level. The expansion in Central and Eastern Europe started in early 1990s (figure 3.1).

Figure 3.1: Year of the Establishment of the Ombudsman at the Balkan



Nowadays, the concept of ombudsman is well established around the world. In European countries the 'European model' is relatively common. This is an ombudsman (or Parliamentary Commissioner) that is appointed by Parliament and his role is to monitor activities of public officials. He can start investigations on receipt of complaints of citizens or on own motion. National ombudsman is seen as protector of people against government. The exact mandates of ombudsmen differ between countries. In the last decade a number of countries have established an ombudsman with specialized jurisdiction such as children ombudsman, discrimination ombudsman and human rights ombudsman in general. The expansion of the ombudsman in recent years has mainly been consequence of the transition of many countries to democracy and democratic government. This transition has been observed mostly in Latin America, Central and Eastern Europe, parts of Africa and Pacific Asia. Besides, following this trend the European Ombudsman has been established under the Maastricht Treaty (Orton, 2001; Hucker, 2003; History of the Institution; Fernhout, 2000).

3.2 History of the Ombudsman for Bosnia and Herzegovina

The Dayton Agreement divided the state of BaH in two entities: the Federation of BaH and the Republika Srpska. It contains twelve annexes, two of which are relevant for this research, namely Annex 4, the *Constitution of Bosnia and Herzegovina*, and Annex 6, *Agreement on Human Rights*. The Institution started to function in 1996, in Bosnian capital Sarajevo, followed by Banja Luka, and opening of the regional office in the Brčko District in 2000. One of the conditions of the Dayton Agreement was that the Human Rights Ombudsman could not be a citizen of BaH or any of the neighbouring former Yugoslavian countries. Besides that, the ombudsman was appointed by the Chairman-in-Office of the OSCE for a non-renewable five-year term. (Dayton Agreement, Annex 6, art. IV) The first Human Rights Ombudsman for BaH was Gret Haller from Switzerland (1995-2000), and the next one was a former Swedish Ombudsman, Frank Orton (2000-2004). However, on January 3, 2001 the new Law on the Human Rights Ombudsman of BaH was introduced, following the decision of the High Representative. The new Law was accepted by both Houses of the Parliamentary Assembly respectively on June 25 and July 3, 2002. This law made it possible for the ombudsman to become a domestic institution. The transitional Ombudsman (Frank Orton) stayed in the Office until the end of 2003. At the beginning of 2004 he was replaced by three domestic Ombudsmen who were appointed by the legislature. The first three appointed domestic Ombudsmen Mr. Mariofil Ljubić, Mr. Safet Pašić and Professor Dr Snežana Savić started on January 1 with their function of the Human Rights Ombudsmen of Bosnia and Herzegovina. In March a new Ombudsman Professor Dr Vitomir Popović was appointed by the Parliamentary Assembly because of the resignation of Professor Dr Snežana Savić. (Annual Report BaH, 2004; General Framework Agreement for Peace; Reif, 2004)

In BaH there is a structure in which three ombudsman institutions co-exist. The state as well as each entity has their own ombudsman institution. Human Rights Ombudsman of BaH is the institution of the state. This office was set up to 'promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons' (Law on the Human Rights Ombudsman of BaH, art.1).

The state Ombudsman has the right to investigate cases involving the poor functioning and violations of human rights by any state or entity authority in Bosnia and Herzegovina. On the other side, there are two entity institutions, namely the Ombudsman of the Federation of BaH and the Ombudsman of the Republika Srpska. Contrary to the state Ombudsman they are only allowed to investigate cases involving the poor functioning and violations of human rights by their own entity authorities. The three institutions cooperate closely in coordination by the Human Rights Ombudsman of Bosnia and Herzegovina. (www.ohro.ba)

3.2 History of the Ombudsman for Republic of Croatia

As an independent state, Croatia included regulations of the ombudsman in the Constitution. Ombudsman is described as a commissioner of the Croatian Parliament with the mandate to protect constitutional and legal rights of citizens. The Parliament passed the *Law on the Ombudsman of Republic Croatia* in 1992. This law elaborates the authority and functions of the ombudsman. Besides, the Law also regulates the appointment of the Ombudsman and three deputies. Ombudsman is authorized to examine individual cases of the civil rights. In 2001 an amendment was made to the Constitution. In this amendment the jurisdiction of the Croatian Ombudsman was extended: armed forces, security services, local and regional governments had been included in the Ombudsman mandate. Jurica Malčić became the Ombudsman in December 2004 and his deputies are Željko Thúr, Branko Tinodi and Dejan Palić. Besides the National Ombudsman, there are also two specialized ombudsmen, Ombudsman for Children and Ombudsman for Gender Equality. (Hucker, 2003; Constitution of HR; Law on the Ombudsman)

3.3 History of the Ombudsman for Republic of Slovenia

Slovenia became an independent state in 1991. In December 1991 a new constitution was adopted, including Article 159 which states that '[i]n order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities and bearers of public authority, the office of the ombudsman for the rights of citizens shall be established by law' (The Constitution of the Republic of Slovenia). The Slovenian Parliament passed the Human Rights Ombudsman Act at the end of 1993 and the first Ombudsman took office in January 1995. The institution was designed by using the Scandinavian models as well as the institutions in different European countries, such as the Netherlands and Spain. The first elected Human Rights Ombudsman for Slovenia was Ivan Bizjak. Together with three deputy ombudsmen: Aleš Butala, France Jamnik and Jerney Rovšek. In 2001, the second Ombudsman Matjaž Hanžek was appointed. The three deputy ombudsmen were re-elected and one deputy Tone Dolčič, was added to the office. (Reif, 2004, History of the Institution)

4 EFFORTS UNDERTAKEN TO IMPROVE GOOD GOVERNANCE

This chapter will look at the efforts the ombudsmen have undertaken during the years to improve the good governance in their countries.

As in many transition democracies the practices of the public administration are often obsolete and affected by standards cultivated during the socialist era. There is among civil servants lack of understanding of the serving aspect of the public administration. Citizens experience several difficulties when they are approaching the authorities, such as problems with finding relevant information about valid practices and lacking of neutrality and accessibility of the servants. In order to solve these problems the attitude and knowledge of the civil servants have to change. The ombudsman can improve good governance in a country by acting as an accountability mechanism. The institution can improve accountability of the government by permitting members of the public to lodge complaints that the government has not acted leally or fairly. Thereby, it is the responsibility of the ombudsman to recommend changes of law, policy or practice when illegal or improper administration is uncovered.

4.1 Bosnia and Herzegovina

The Institution formally registered since 1997 an average of 2325 complaints per year. In addition, the Institution also offers appropriate legal advice in cases which are out of its mandate and jurisdiction. Consequently, the Office gave diverse legal advises to a large number of the citizens without registering this as an official complaint. Majority of cases of maladministration of the local level authority have been solved on the bases of legal argumentation already after first contact with the Institutions lawyers. In other cases it was needed that the Ombudsman personally negotiate with authorities to facilitate solutions for problems. In cases when it was not possible to reach a solution the Office was to use different types of pressures, such as threats to refer the cases to higher instances or publicly criticize the authorities (Annual Report BaH, 2001-2004). Next to the individual case handling, the ombudsman can issue Special Reports. The BaH ombudsman issued these reports: 'exclusively in situations in which activities previously initiated by the ombudsman did not result in adequate cooperation by the authority, or where ombudsman considered that Special Report should be issued for serious or mass violation of human rights' (Annual Report BaH, 2001).

Besides complains handling the ombudsman of BaH has tried to inform the public authorities on the benefits of acting in accordance with the general principles of good governance. Former Ombudsman of BaH Frank Orton stated in one of his speeches that 'the rule of law has become a political correct mantra in today's BaH, unfortunately reiterated without reflection and real commitment' (Orton, 2001a). The concept of good governance and rule of law is indeed often mentioned by the international community and local politicians. However, the concrete understanding and the practical performances of domestic authorities to improving the compliance to the rule of law and the principles of good governance was poor. Besides, to improve the situation in BaH's public administration the authorities and civil servants as well as the citizens have to understand the benefits of improved and developed high standards.

It is often the case that servants benefit from the lack of knowledge by the public and remain working by their old habits. Therefore it is needed to educate the citizens as well. They have to demand high standards for the public administration.

And if this is not the case they have to address the authorities in question and if then the issue is still not solved they should turn to the ombudsman. This education of the public and authorities fits within the mandate of the ombudsman of BaH that comprises the promotion of Human Rights, Good Governance and the Rule of Law by general measures.

In order to educate the public administration as well as the citizens the ombudsman started an awareness-raising campaign 'Land shall by Law be Built' and published a guide for public servants 'Guide to Good Practices by Civil Servants'. This campaign is directed towards public authorities and civil servants as well as ordinary people. The campaign provides a description of the principles of good governance. Besides, it gives guidelines on what citizens can expect from the civil servants as well as regulations on how the civil servants should behave. The Ombudsman and his staff addressed the campaign in practically all public appearances, including mass-media interviews, citizens' meetings and law faculty lectures, as well as in talks with individual representatives of the domestic political establishment and the international community. The BaH Ombudsman Mr. Orton stated in one of the press interviews that 'the duty of civil servants is not to badger, boss or bully the citizens, but to help and serve them (noting whenever appropriate civil *servant* being derived from to *serve* not only in English but also in domestic language and in his mother tongue) and to treat them 'Properly, Fairly and Impartially' (Annual Report BaH, 2002).

4.2 Republic of Croatia

The Croatian ombudsman received since 1998 an average of 1860 complaints a year. The Croatian ombudsman used several measures to settle cases, such as giving legal advice to the complainer as well as to the authorities, giving recommendation and warnings to the concerned bodies. Some of these cases are unjustified and the ombudsman is not in the possibility to deal with them. However, the Ombudsman and his employees try to offer informal legal advice or simply listen to the problem in such cases. Besides, the most unjustified cases are concerned with the work of the courts. The ombudsman does not have the jurisdiction to deal with cases that are subject to legal or other proceedings. However, the ombudsman several times has drawn the attention of government to this issue. The most court cases concern the excessive delays resulting from litigation and to alleged failures by the authorities to enforce court judgments' (Hucker, 2003:3). In the past the Croatian ombudsmen did not pay much attention to the education of the public and the civil servant. Due several reasons (i.e. lack of financial and human resources) the main focus was on complaint handling. However, the last two years the Institution is putting more effort in preventive measures. One of these measures is the 'Principles for ethic handling for civil servants'. The ombudsman helped the Parliament with designing this document.

4.3 Republic of Slovenia

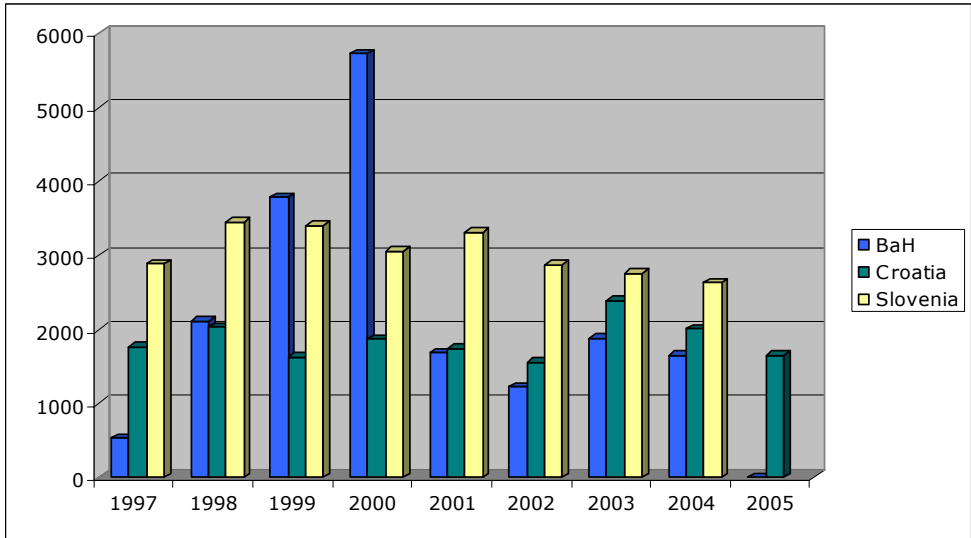
The Human Rights Ombudsman sees the handling of complaints as its central task. Slovenian ombudsman registers approximately 3045 complaints a year.

Most of these complaints are received by written complaints, by telephone or directly at interviews in or out of the office. (Annual Report SL, 2004) The institution publishes every year annual report and special reports. However, these reports are not always given the needed attention. In the past the National Assembly had an indifference attitude towards these. Assembly ignored the special reports and several series of decisions have not been fulfilled. However, the ombudsman remained communicating its recommendations, with the result that the National Assembly has promised to improve its co-operation with the institution. The Human Rights Ombudsman sees the handling of complaints as its central task. However, its task is also to promote and prevent general human rights violations. In order to facilitate this, the institution recognises the importance of public relations. Public relation is believed to be the most effective tool for 'achieving the correction of injustices, and also function preventively; they contribute to raising public awareness and education about human rights and to promoting and providing information about avenues of self-assistance' (Annual Report SL, 2004). To emphasise the importance of public relations, the ombudsman formed a public relations department in 2004.

4.4 Comparison

The ombudsmen in the three countries contribute to the good governance of the government by allowing the public to submit their complaints to the institution. Thereby the ombudsmen investigate these complaints and try to accomplish changes by doing recommendations to the concerned authorities. However, as shown in figure 4.1 there are differences in the number of complaints.

Figure 4.1: Number of Registered Complaints



The ombudsmen receive approximately 2325 complaints for the BaH ombudsman, 1860 complaints for the Croatian and 3045 complaints for the Slovenian ombudsman. This means that the BaH and the Croatian ombudsman receive approximately 5 complaints per 10,000 inhabitants, while the Slovenian ombudsmen receive on average 15 complaints per 10,000 inhabitants (figure 4.2).

Besides, when compared with the number of complains received by other countries at the Balkan (figure 4.3) the Slovenian ombudsman still receives the most complaints per 10,000 inhabitants. The BaH and the Croatian ombudsman do not show extreme differences compared to the other countries. It is now the question if the Slovenian ombudsman receives notably more complaints because the Slovenian citizens are more often victim of maladministration committed by the Slovenian government. Or, is this due to the fact that the Slovenian inhabitants have more trust in the Institution and its ability to make changes within the government and improve the good governance of the Slovenian government.

Figure 4.2: Number of Complaints per 10,000 Inhabitants

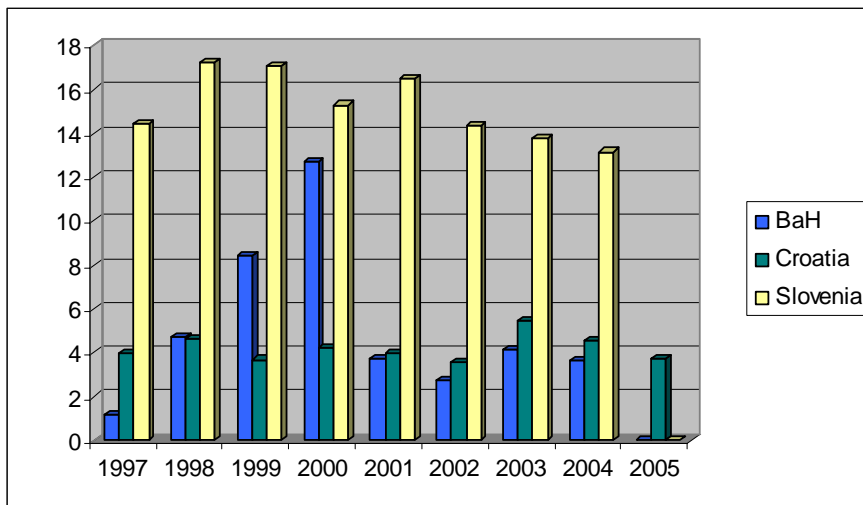
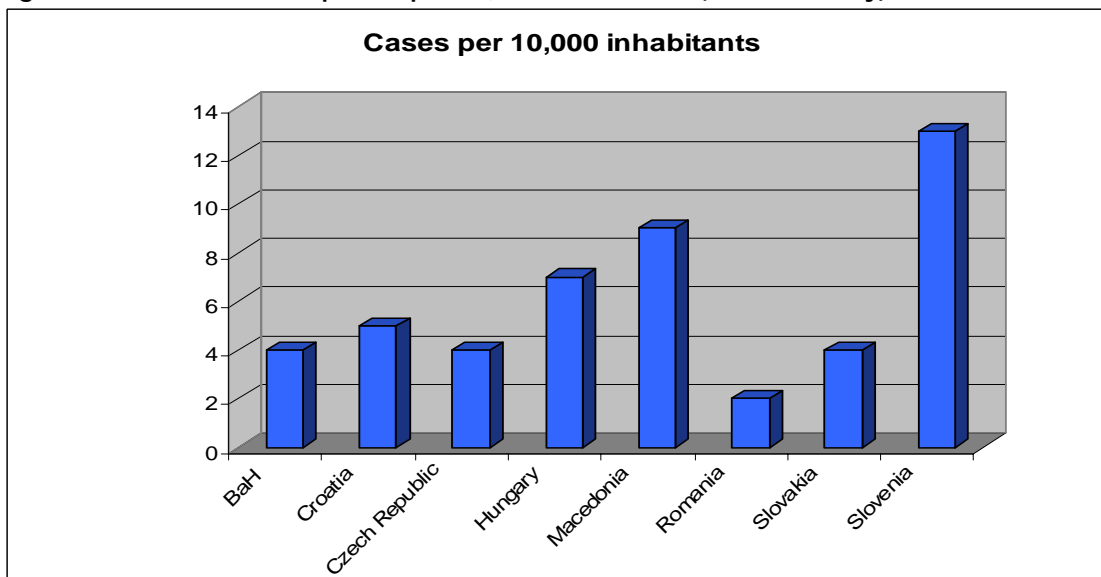


Figure 4.3: Number of Complaints per 10,000 Inhabitants (Balkan Survey)



Besides differences in the received complaints, there are also differences in dealing with the preventive function of the ombudsman. The Slovenian ombudsman is putting enormous efforts in the preventive function, it even has a public relations department dealing with this aspects. The Bosnian ombudsman has been committed to inform and educate both the public as the authorities on the principles of good governance. However, after the transitional ombudsman was replaced by the domestic ombudsmen this priority disappeared to the background. Also, the Croatian ombudsman is putting much more effort in case handling as in the education function.

This chapter discussed the work done by the ombudsmen to improve good governance. Besides it showed differences between the three countries discussed in this study. In the following chapters the factors that influenced the effectiveness of the ombudsman will be explored. The aim is to discover if these factors where of influence on functioning of the ombudsmen and in how far they were of influence on the effectiveness of the ombudsman in promoting good governance.

5 NATIONAL OMBUDSMAN AND THE NATIONAL LEGISLATION

Effectiveness of the ombudsman is dependant on several conditions that have to be met. In this chapter first three conditions for efficient functioning will be discussed. In section 5.1 the level of the democratic governance in a state will be explored. Besides the effectiveness is also dependant on the independence of the state (5.2) and the jurisdiction and powers of the institution (5.3).

5.1 Democratic Governance in the State

Existence of a certain level of democratic governance is one of the primary conditions that have to be met before the ombudsmen can function effectively. The absence of any democratic system with controls on the exercise of powers and independence from the ruling power makes it almost impossible for the ombudsman to function. In this perception the concept of rule of law is central. Rule of law means that government not only creates the law, but is itself subject to it. The ombudsman is in this system active as a component of the democratic system of checks and balances, with the primary role as 'Defender of the People' (Fernhout, 2000). Countries compared in this study are countries in transition and their conditions differ from conditions in countries with consolidated democracies. Transition means that these countries are moving from an essentially totalitarian system to a democratic system. It means the establishing of a system based on the rule of law and human rights. At the same time this process means establishment of mechanisms for the protection of the rights of the individual citizens.

Ombudsmen in countries in transition have some common characteristics. Firstly, they receive a large number of complaints and the public has great expectations of his Institution. Secondly, due to the transition the ombudsmen have to deal with incomplete, unsuitable or outdated legal order. Third characteristic is that there exists general maladministration of state bodies. Authorities are slowly adapting to new conditions of democratic governance and the state interest is still on the first place instead of the interest of the individuals. Fourth and last common problem the ombudsmen are facing are the social problems in the country caused by the numerous economic and social reforms (Bizjak, 2000b).

As already mentioned, democratic governance is central for the effectiveness of the ombudsman but it does not mean that the ombudsman can only function in a state where perfect democratic governance is present; as universally acknowledged these states do not exist. Besides, in countries in transition the role of the ombudsman is even more important than in traditional democratic conditions. The ombudsman can contribute to the development of democratic governance and strengthen the democracy in transition countries. Nevertheless, it is true that it is necessary for the fulfilment of his role that the ombudsman is fully independent of the government bodies that fall under his jurisdiction. The position and independence of the ombudsman should be granted by the Constitution and the national legislation (Reif, 2004, Fernhout, 2000; Bizjak, 2000a).

5.2 Independence of the Institution

As stated above the independence of the ombudsman institution from the government is a crucial condition for its effectiveness.

The institution has to be positioned as an independent authority and its position related to the parliament and the judiciary must be clear. Independence of the institution can be achieved through several means. One of aspect is the appointment of the ombudsman. The ombudsman should be appointed by the legislature instead by the administrative branch. Next to that, the term of the office of the ombudsman should be regulated by law and should not coincide with the term of the legislature. The ombudsman have to be empowered to conduct investigations, draw own conclusions and do recommendations. While the ombudsman is performing his function there must not be any pressure or instructions from external bodies. In addition, the ombudsman office must have freedom in budget and personnel matters (Bizjak, 1999c; Reif, 2004).

5.2.1 Bosnia and Herzegovina

The following paragraph is based on the *Law on the Human Rights Ombudsman of Bosnia and Herzegovina* and Articles used in the paragraph are referring to this law.

The Constitution of Bosnia and Herzegovina (Annex 6 of Dayton Agreement) established the Commission on Human Rights, composed of two structures: the Office of the Human Rights Ombudsman and the Human Rights Chamber (Constitution, art.1). The Law on the Human Rights Ombudsman of Bosnia and Herzegovina gives a definition of the Ombudsman institution. In this definition the independence of the institution is expressed. The Law states that the Human Rights Ombudsman is '[...] an independent institution set up in order to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons, as enshrined in particular in the Constitution of Bosnia and Herzegovina and the international treaties appended thereto, monitoring to this end the activity of the institutions of Bosnia and Herzegovina, its entities, and the District of Brčko [...]' (Art.1). The independence of the ombudsman is also secured by Article 15. This article states that '[a]n Ombudsman shall be under no orders. Within the framework of his or her constitutional and legal competences, [...] Ombudsman shall not be given instructions by any authority [...]'. Moreover, the Ombudsman cannot be prosecuted, subjected to investigation, arrested, detained or tried when he or she is acting accordance his or her duties (Art. 16.1).

Appointment of the Ombudsman

The Human Rights Ombudsman of Bosnia and Herzegovina is appointed by the Parliamentary Assembly after a joint proposal is deposited by the Presidency of Bosnia and Herzegovina. The Presidency of Bosnia and Herzegovina makes a proposal for appointment of a new Ombudsman one month after the post is vacant (Art. 12.3). In Article 9 is stated that Ombudsmen¹ are appointed by the House of Representatives and by the House of Peoples of Bosnia and Herzegovina by a two-third majority of each House. Furthermore, the Ombudsman is appointed for the period of five years, and a re-election is permitted (Art. 10.1). The dismissal of the Ombudsman is only possible by a two-thirds majority by the House of Representatives and by the House of Peoples of Bosnia and Herzegovina.

¹ The use of plural form 'Ombudsmen' is because three persons comprise the institution, from each section of the population one Ombudsman.

In addition, in the case of a final conviction for an intentional offence, the President of the House of Representatives can declare the Ombudsman's post vacant. (art.12)

Budget and Personnel

Independence of the Ombudsman institution depends on the freedom the institution has concerned with the budget and personnel matters.

A provision in the Law states that in the budget of the Presidency of Bosnia and Herzegovina 'the financial appropriation necessary to the functioning of Institution' shall be included (art.39). In addition, the appointment and dismissal of the staff, advisers and deputies is done by the Institution and without any interference of any authority (art.37). The salary of the Ombudsman is also regulated by Law: the Ombudsman salary is the same as the Chair of the Council of Ministers of Bosnia and Herzegovina (Art. 10.3).

5.2.2 Republic of Croatia

The following paragraph is based on *the Law on the Ombudsman* and Articles used in the paragraph are referring to this law.

In the Constitution of Republic Croatia is regulated that the Ombudsman shall protect the constitutional and legal rights of citizens as a commissioner of the Croatian Parliament (Constitution, art.92). The independence of the Institution is granted in Article 2. This article states that the ombudsman 'independent and self-reliant [is] in his or her work. Nobody can give him or her instructions or order in his work.'

Appointment

The appointment and dismissal of the Ombudsman is regulated as well as in the Constitution as in the Law on the Ombudsman. The Ombudsman is appointed by the Croatian Parliament for a term of eight years. There is also a provision that states that the Ombudsman can be re-elected. The reasons for dismissal of the Ombudsman are regulated by law and the Ombudsman can only be dismissed by the Parliament. (art. 3, 19; Constitution, art. 92) The Ombudsman had three deputies and there are also chosen and dismissed by the Croatian Parliament, however, after a proposal of the Ombudsman (art.3). In the law there are several criteria to which the Ombudsman must fulfil before he or she can be elected. The future Ombudsman must be 'a citizen of Croatia, a graduate lawyer, with at least 15 years working experience in the legal profession, distinguishing themselves in that profession, and known to the public for his personal commitment in the field of the protection of human rights' (art.16).

Budget and Personnel

The budget of the ombudsman is regulated by law. The work of the Ombudsman, his deputies and expert service are provided from the budget of the Republic of Croatia (art.21). In the law there is no regulation about the staff other than those for the appointment and dismissal of the deputies. However, there is a regulation that assures assistance of scientists and experts from universities, institutes and similar institutions (art.4).

5.2.3 Republic of Slovenia

The following paragraph is based on the *Human Rights Ombudsman Act* and Articles used in the paragraph are referring to this law.

The independence of the institution is clearly stated in Article 4: '[t]he Ombudsman shall be autonomous and perform his function independently'. In addition, the Ombudsman is protected from prosecution and shall not be held responsible for the opinion or given recommendations while he or she was performing his or her function (art.20).

Appointment

The Human Rights Ombudsman is elected by the Parliament after a nomination made by the President of the Republic (art.2). The term of office is six years and he or she may be re-elected only once (art.12). There is only one restriction taken in the law for the appointment of the Ombudsman and that is that he or she must be a citizen of the Republic of Slovenia (art.11). The Slovenian Ombudsman has also deputies who are appointed by the Parliament after nominations made by the Ombudsman (art. 15). The Ombudsman can only be dismissed if he is convicted of a criminal act or is he has lost permanently his ability to perform the duties of the office. The removal from the office can be started by a motion made by one third of the Parliament. The actual removal can only take place if this is decided by two-thirds of the Parliament. (art.21)

Budget and Personnel

The Parliament is allocating the budget for the ombudsman's work after a proposal made by the ombudsman. It is granted within the state budget. (art.5, 55) The salary of the Ombudsman and his deputies is regulated by law and is the same as respectively the President of the Constitutional Court and as a judge of the Constitutional Court (art.47). The Ombudsman is responsible for appointment and dismissal of his counsels and other employees (art.52, 53). In addition, the salary, and other personal incomes, allowances and rights for the employees are the same provisions as those for other employees in the state bodies (art.54).

5.3 Jurisdiction and Powers of the Institution

For adequate protection of the position of the ombudsman institution it is needed that the extent and adequacy of the powers given to the institution are regulated by law. The institution should be authorized by the Constitution. Moreover, as is stated in the past paragraph the institution must be strongly positioned as an independent institution. In addition the jurisdiction has to be precisely defined to avoid jurisdiction conflict with other state institutions. The ombudsman should have the jurisdiction over the full spectrum of rights such as economic, social and cultural rights. Furthermore, the jurisdiction over the police, security and defence forces should be included. Additionally, inclusion of the jurisdiction over the judiciary is necessary.

5.3.1 Bosnia and Herzegovina

The Human Rights Ombudsman of Bosnia and Herzegovina is authorized by the Constitution to ensure human rights and fundamental freedoms.

The Constitution makes the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols as well as fifteen additional Human Rights Agreements directly effective in Bosnia and Herzegovina. These treaties cover: civil, political, economic, social and cultural rights. The ombudsman can take complaints involving violations of any of the rights in the appended treaties. (Constitution, art.II.2, Annex I; Reif, 2004)

Under the Dayton Agreement the Human Rights Ombudsman was oriented towards the protection of human rights and did not have an express mandate over poor administration in general (Reif, 2004). However, with the establishment of national legislation and the new Law on the Human Rights Ombudsman the jurisdiction has been extended. This new law states that the Ombudsman 'shall consider cases involving the poor functioning of, or violations of human rights and liberties committed by, any governmental body' (art.2). The jurisdiction of the ombudsman involves all government bodies; this means that the ombudsman has jurisdiction over all institutions, authorities, agencies, and departments of the government(s) concerned and all individuals acting under their authority, as well as private agencies performing public services. In addition, it is competent to investigate violations of human rights and freedoms committed by the military administration, as well as complaint made about the poor functioning of the judicial system. (art.2, 3, 4) However, it is not in the competence of the ombudsman to interfere with the adjudicative functions of the court (art.5). As mentioned in earlier chapters there are three ombudsman institutions in Bosnia and Herzegovina. To resolve possible jurisdiction conflicts article 5 specifies the cases which are exclusive competence of the Human Rights Ombudsman of the State and not the two Entity Ombudsman institutions (art5).

Investigation

The ombudsman can start an investigation on receipt of a complaint or on own motion. Besides, the Institution may also undertake general investigations. (art. 2) The Government bodies are obliged to co-operate with the ombudsman Office and provide assistance in their investigations and inspections. Besides, the ombudsman may not be denied access to any file or document relating the activity or service under investigation, including those documents which are classified as confidential or secret. (art.25, 28)

Powers

After an investigation the Institution can recommend appropriate individual and/or general measures The ombudsman can recommend the adoption of new measures, laws and regulations. In addition, it is in power to make annual and special report. (art.2, 4, 29, 34, 32) Furthermore, the ombudsman is also given the specific power to refer cases alleged human rights violations to the highest judicial authority competent in human rights matters when this is necessary for effective performance of the duties of the ombudsman office (art. 6, 14). The ombudsman is also allowed to initiate court proceedings or intervene in pending proceedings (art.4). Moreover, the ombudsman may institute disciplinary proceedings or, where appropriate, bring the case before a criminal court, if a government official impedes an investigation and the government authority fails to take action (art. 31).

5.3.2 Republic of Croatia

The protection of the rights of the citizens before the bodies of local and regional self-government, as well as the protection of the right to local and regional self-government before the bodies of state is part of the framework of the institution. Furthermore, the ombudsman is given the power to protect constitutional and legal rights of citizens in the proceedings conducted by the Ministry of Defence, armed forces and security services. (Constitution, art. 92) In his work the ombudsman functions within the framework of constitutional and legal regulations and international legal acts on human rights and freedoms adopted by the Republic of Croatia (art.2). The Law on the Ombudsman states that the ombudsman 'examines individual cases of civil rights violations committed by organs of the state authorities, bodies with public authority, or officials in those organs or bodies' (art.5). The ombudsman, however, does not deal with cases under legal or other proceedings (art.6).

Investigation

The investigation of the individual violations of the constitutional and legal rights of citizens, the neglect or other regulations, can be started on ombudsman's own initiative or on the request of a citizen (art.12). The ombudsman must have access to all data, information and documentation, regardless of the level of their confidentiality. The organs and officials of the state authority are obliged to provide the access to information and documentation (art.11).

Powers

The ombudsman is allowed to warn, inform, suggest and give recommendations. The ombudsman can also recommend the initiation of criminal, misdemeanour or disciplinary proceedings when he determines that a violation of rights with elements of a criminal act, an offence or a violation of working discipline has occurred (art.7). Besides, the ombudsman can submit a special report, in addition to the annual report, to the Parliament and the authorized Ministry in cases of a violation of a higher degree (art.9). Moreover, the Institution can initiate the Parliament to bring changes to a law concerning the protection of constitutional and legal rights of the citizens (art.10).

5.3.3 Republic of Slovenia

The Human Rights Ombudsman is established to protect human rights and fundamental freedoms against the state bodies, local self-government bodies, and bodies entrusted with public authority (art.1). The ombudsman observes the provisions of the Constitution and international legal acts on human rights and fundamental freedom in performing his function. The international norms on human rights, such as the European Convention on Human Rights, are integrated in the domestic law (art.9; Reif, 2004). In addition, the principles of equity and good administration can be applied in investigation (art.3). Besides, the ombudsman can also deal with more general issues relevant to the protection of human rights and legal security of the citizens (art.9). The Institution also addresses complaints of poor administration in general, but the human rights mandate is central. However, the Institution has limited competence concerning the judiciary.

It is not allowed to interfere in the cases in which court or other legal proceedings are being conducted, except in case of 'undue delay in the proceeding or evident abuse of authority' (art.24). The ombudsman is allowed to inspect prisons or other places where persons are detained against their will and have restricted freedom of movement (art 42).

Investigation

Investigations can be launched by receipt of a complaint or the ombudsman can launch an investigation on his own motion (art.9, 26). The organs and officials of state authority are obliged to provide by ombudsman requested information, irrespective of the level of secrecy. Furthermore, they are obliged to help the ombudsman in conducting an investigation and give him adequate assistance if this is required. (art.6, 34, 35, 36)

Powers

The ombudsman can make suggestions and give recommendations, opinions and critiques to the organs and officials of state authority, and they are bound to consider them en respond within a deadline. Besides, the Institution can submit initiatives for amending laws or other legal acts. The Office generates and submits annual and special reports to the Parliament. The ombudsman reports and proposals can also be published in mass media. Furthermore, the ombudsman can propose disciplinary proceedings against state officials (art.39, (art.5, 7, 39, 40, 45, and 56).

5.4 Conclusion

For effectiveness of the ombudsman it is crucial that the institution functions independently from the state authority. Besides, it is important that the precise jurisdiction of the ombudsman is regulated by national law. In this section these two issues will be analysed and compared between the three countries.

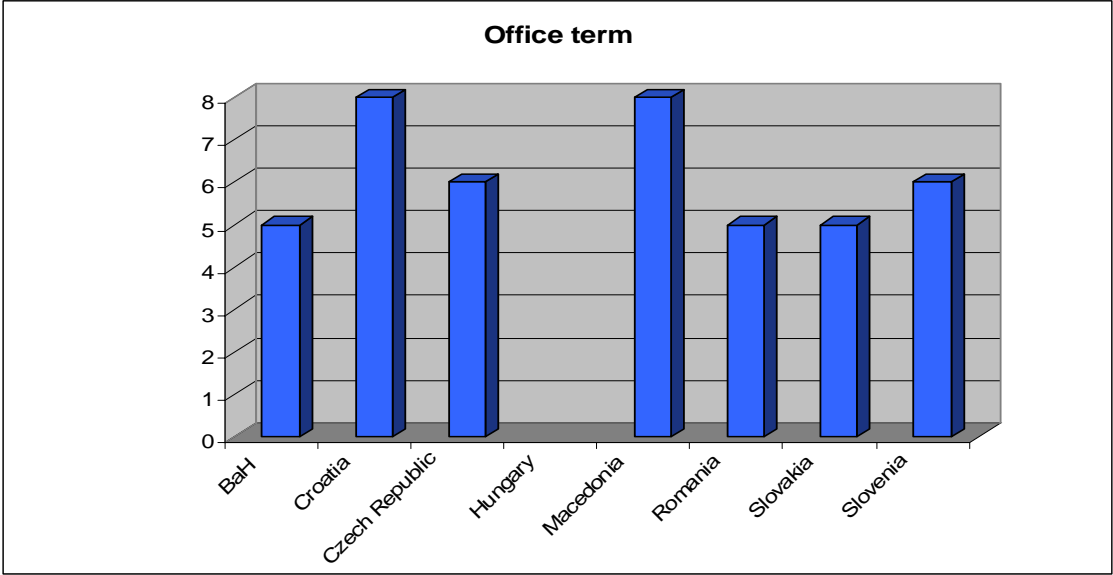
5.4.1 Independence

Looking at the independence of the three countries it could be said that their independence is secured in the national law. In the case of Bosnia and Herzegovina there is a clear definition of the ombudsman in the national law and in this definition the independence of the institution is emphasised. The same is true for Republic of Croatia. In the national law of this country the accent is put on functioning of the ombudsman as an 'independent and self-reliant' institution. Besides, the Slovenian national law stresses that the ombudsman functions 'autonomous and independently'.

Another important element that influences the independence is the appointment and dismissal of the Ombudsman. The most ideal situation is that the Ombudsman is appointed by the legislature instead by the administrative branch. In Croatia this is the case. The Ombudsman and his deputies in this country are appointed by the Croatian Parliament. In Bosnia and Herzegovina as well as in Slovenia the appointment is done by the Parliament, however after a nomination by respectively the Presidency of Bosnia and Herzegovina and by the President of the Republic. The nomination by administrative branch in these two cases does not necessarily mean that the independence of the ombudsman is affected. The Parliament in both countries is still the decision maker.

In addition, there are differences in the term of office. The Ombudsman for Bosnia and Herzegovina is appointed for a period of five year, the Ombudsman for Slovenia for six year and the Ombudsman for Croatia noticeably for a longer term, namely for eight years. Also compared to the office term of diverse countries at the Balkan (figure 5.1) the Croatian ombudsman has a notably longer term than other countries. The dismissal of the Ombudsmen in all three countries is regulated by law and can only be done by a two-thirds majority in the Parliament.

Figure 5.1: Office Term



The budget of the ombudsmen is also regulated by law. There are no significant differences in the independence concerned this issue. In all three countries the ombudsman budget is included in the state budget. The possible differences in the total of the budget will be discussed in a later chapter in this report. Further, the personnel matters are differently regulated for the three countries. In Bosnia and Herzegovina the responsibility for personnel matters is clearly laid by the Ombudsman; interference from any other authority is excluded by law. The same is true for the Slovenian Ombudsman. However, the national law of Croatia does not say anything about the ombudsman personnel other than scientists and experts from universities and institutes. Besides, in the Croatian law there are also no regulations concerning the salary of the Ombudsman and his personnel. The Slovenian law is the most comprehensive in this matter, followed by the Bosnian law, where only the salary of the Ombudsman is regulated. *This section is summarized in figure 5.2.*

Figure 5.2: Independence of the Institution

	BaH	Croatia	Slovenia
Independence expressed in the law	Art. 1 and art. 15 are emphasising the independence of the Institution.	Independence is regulated in art.2 and art.92 of the Constitution.	Ombudsman shall be 'autonomous and independent' (art.4).
Pressure or instructions from external bodies	In art. 15 is stated that Ombudsman 'shall be under no orders'.	Art.2 emphasis that nobody can give the ombudsman instructions or orders.	
Protection from prosecution	Art. 16.1 protect the Ombudsman from prosecution.		Art.20 stresses that the ombudsman can not be prosecuted.
Appointment by:	Parliamentary Assembly after a joint proposal by the Presidency of BaH (art.9).	Croatian Parliament appoints the Ombudsman (art.3, 19 and Constitution art.92).	Election by Parliament after a nomination made by the President (art.2).
Term of the office regulated by law	Five years and re-election is permitted (art.10.1).	Appointed for a term of eight years with possibilities for re-election (art.3, 19 and Con. art.92).	Term of office is six years, re-election possible once (art.12).
Freedom in budget	'Financial appropriation necessary to the functioning' is provided from the budget of the Presidency of BaH art.39).	Budget provided from the Budget of the state (art.21).	Budget is allocated after a proposal made by the Ombudsman (art.5. 55).
Freedom in personnel matters	Ombudsman has full freedom in personnel matters (art.37).	There are no regulations concerned the personnel, except those for the Ombudsman and his deputies.	Ombudsman is responsible for appointment and dismissal of his counsels and other employees (art.52, 53)

5.4.2 Jurisdiction and Powers

To protect the role of the ombudsman the jurisdiction of the ombudsman should be regulated by law. The ombudsman of Bosnia and Herzegovina is established to ensure human rights and fundamental freedoms. Furthermore, the recently approved law on Human Rights Ombudsman extended the jurisdiction of the ombudsman with a mandate over poor administration in general. The jurisdiction involves all government bodies, including military administration as well as poor functioning of the judicial system. However, interference with adjunctive function of the court is not included in the mandate of the ombudsman. The Slovenian ombudsman has almost the same jurisdiction as the ombudsman of Bosnia and Herzegovina. The main difference is the competence concerned the judiciary.

Compared to the Bosnian and Slovenian ombudsmen the ombudsman of Republic Croatia has a less comprehensive jurisdiction. The ombudsman has no authority to deal with cases under legal or other proceedings at all. The human rights mandate is central for the ombudsmen for Bosnia and Herzegovina and Slovenia. However, even if the Croatian ombudsman is not explicitly a 'Human Rights Ombudsman' looking at his jurisdiction on human rights and the international agreements on this subject that are part of his framework, it could be said that he also is a human rights ombudsman. *This section is summarized in figure 5.3.*

Figure 5.3: Jurisdiction of the Institution

	BaH	Croatia	Slovenia
Authorization by the Constitution to:	Ensure human rights and fundamental freedoms	Protect the rights of the citizens Constitution art.92	Protect human rights and fundamental freedoms
European Convention for the Protection of Human Rights and Fundamental Freedoms	Directly effective in BaH (Constitution art. II.2, Annex I)		Integrated in the domestic law (art.9)
Mandate over poor administration in general	Yes, poor functioning of governmental bodies is included (art.2)		Principles of equity and good administration are included (art. 3)
Military administration	Included in art. 3	Included in Constitution art.92	
Judicial system (courts)	Included in art. 4		Included art.24

The investigation in all three countries can be started on receipt of a complaint or on own motion. In addition, the ombudsmen of Bosnia and Herzegovina and Slovenia may also undertake general investigation. The powers of the ombudsmen to act after an investigation differ between the institutions. All the three ombudsman institutions can recommend appropriate individual and/or general measures; recommend adoption of new measures, laws and regulations. Furthermore, they can institute disciplinary proceedings or bring case before criminal court if government officials impede an investigation. The Bosnian ombudsman is allowed to initiate court proceeding or intervene in pending proceedings. Moreover, he is given specific power to refer cases to the highest judicial authority competent in human rights matters.

6 FINANCIAL RESOURCES AVAILABLE TO THE OMBUDSMAN

The core element of an ombudsman is independence from any external influence, therefore it is necessary to ensure judicial safeguards against political interference as well as guarantees in terms of financial independence. The task of the ombudsman is to monitor state authority. For that reason certain safeguards must be established against potential countermeasures of an economic nature against the Institution. To function efficiently the ombudsman must have adequate financial resources to be able to perform functions given him by the law (Annual Report BaH, 2002; Reif, 2004). The ombudsman cannot function efficiently without necessary level of financial resources. In this paragraph the financial resources of BaH (6.1), Croatia (6.2) and Slovenia (6.3) will be analysed and compared.

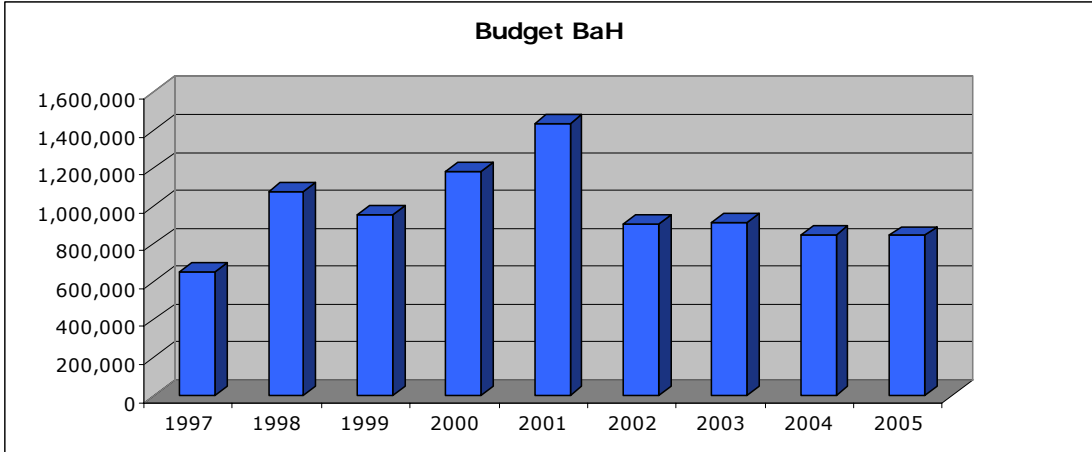
6.1 Bosnia and Herzegovina

In the first years of the ombudsman the budget was not allocated individually by the government of Bosnia and Herzegovina. The Institution was a semi-international organization and because of that the Ministry of Treasury allocated one third of the budget, while the remainder was contributed mainly by the US, Canada and the EU. In 2004, the transition of the ombudsman from a semi-international organisation to a domestic one was a complicated issue. The financing of the ombudsman was since then the responsibility of the government. The Institution and the BaH government had to find an acceptable solution to safeguard the financial independence of the Office (Annual Report BaH, 2002 and 2004; Special Report). However, the financial resources did not remain consistent after the transition; they even decreased as shown in figure 6.1. It appears that the resources significantly differ every year. By looking at the proposed budget by the ombudsman and the eventually provided budget by the government, it can be said that the BaH government is not willing to provide requested resources to the ombudsman. The Office proposed a budget of €928,293 for 2004. However, the approved budget for 2004 was €849,197, almost €80,000 less than needed according to the ombudsman. For the year 2005 the difference between the requested resources and the approved budget got even bigger. The ombudsman proposed a budget of €1,171,161. However, the approved budget for 2005 was €844,647; s difference of more than €300.000 (Annual Report BaH, 2003 and 2004). The budget significantly decreased after the inclusion of the Institution in the domestic legislation in 2001 (Figure 6.1). The main reason is the reduced contribution from the international community.

Moreover, after the ombudsman became a domestic Institution it was faced with an inadequate and irregular financing. The requested financial resources have not been provided. In 2004, the Ministry of Finances for example had not fulfilled complete demands for salaries and remunerations; although the funds for that have been planned and provided in the budget. The ombudsman pointed the same issue in the Special Report (2004) '*Regarding non compliance of the BaH Council of Ministers and Cooperation of the BaH Council of Ministers with the recommendations of the Ombudsman of BaH*'. This report states that the Council totally ignores requests for salaries for the staff as well as for the Ombudsman.

Due to this ignorance ombudsman concluded that one part of the BaH executive power has been trying to make a 'successful functioning and existence of the [Ombudsman] Institution impossible' (Special Report1184/03, 2004:4).

Figure 6.1 Financial Resources BaH² in €



Source: Annual report BaH, 2000-2004

The inadequate and irregular financing does not only jeopardize the independence of the institution but it also influences its efficient functioning. Due to the lack of resources several trained employees have left the Institution for a better paid job elsewhere. For example the salaries in the two entity ombudsman institutions are considerably higher than those at the state Institution (Annual Report BaH, 2003).

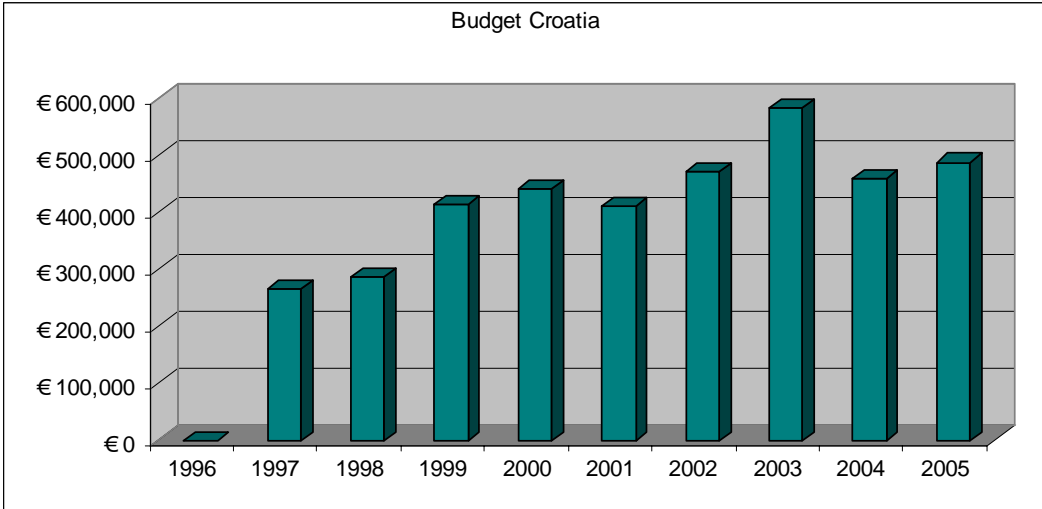
6.2 Croatia

In 2003, the Organisation for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the OSCE Mission to Croatia analysed the ombudsman institution in Croatia. The aim of this analysis among others was to identify the financial limitations affecting the work of the ombudsman. The result of this analysis was that the office of the ombudsman is significantly under-resourced for the responsibilities it has according to the law (Hucker, 2003, Annual Report HR, 2003). The Ombudsman stated in an interview that his office is 'under-funded for the work it has to do' (Hucker, 2003:6). Due to the lack of financial resources and as a consequence of this a lack of personnel resources the Croatian ombudsman had to limit the intake of new complains since 2002. It was impossible to continue working without such limit. In 2005 for example, the total of provided resources for ombudsman's work (figure 6.2) has been €487,434, of which €413,000 go to those employed in the office, and only about €70,000 for other expenditures (Hucker, 2003; Annual Report HR, 2002, 2005). In addition, it is important to note that due to the lack of financial resources the Ombudsman is not in the possibility to do his fieldwork. Until 2004, the resources necessary for visiting the diverse cities were provided by the donation of the OESS Mission in Croatia.

² The amount of money in this figure is in Euros and is based on the currency rate (BAM - EURO) of 22 May 2004. The money converter is found on the following website: www.oanda.com/convert/classic.

The necessary funds for computers and office equipment, and professional literature were also provided by the same OESS Mission. In the Annual Report for 2004 the Croatian ombudsman proposed a programme for additional resources needed for strengthening the institution. Additional resources are primarily needed for field work, a new premise and employment of new employees (Annual Report HR, 2004).

Figure 6.2: Financial Resources Croatia³ in €



Source: Annual Reports HR, 2001-2005

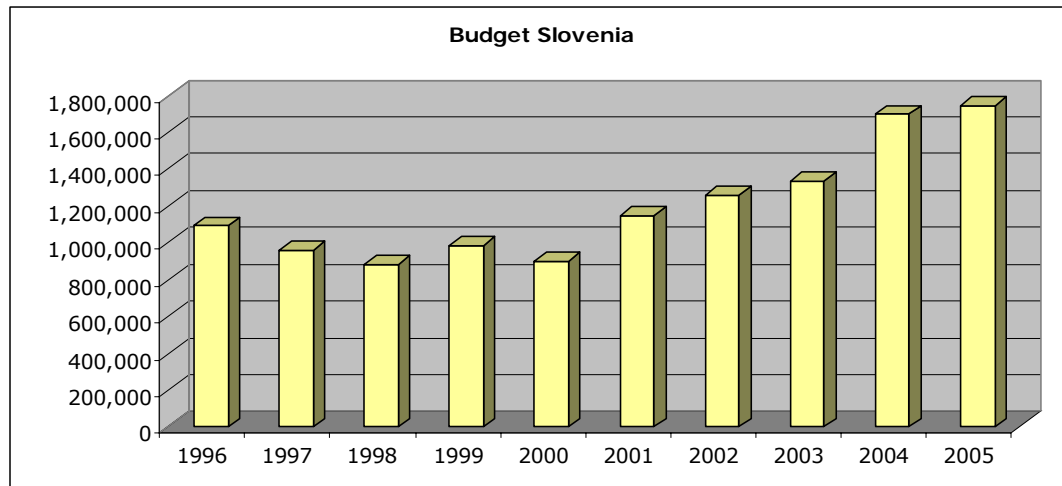
Although the office of the ombudsman is significantly under-resourced for their responsibilities, it is not the only problem concerning the ombudsman budget. In the Annual Report for 2005, the Ombudsman expressed his concerns about the process of budgeting. The budget for 2006 is designed and presented by the Ministry of Finance, without any consultation with the Ombudsman or the Parliament. Besides, the fact that the Ministry of Finance does not have a proper insight in the resources needed to the ombudsman, this way it also jeopardizes the independence of the Institution (Annual Report, 2005).

6.3 Slovenia

The Slovenian executive and legislative branch respects the Human Rights Ombudsman as an autonomous budget user. The ombudsman is seen as an autonomous proposer of the funds to be set aside for the work of the Human Rights Ombudsman. In the last couple of years the National Assembly approved the budget as proposed by the Institution. In 2004, the Office proposed the total fund of €1,696,364 which was approved. However, the expenditure was amounted to €1,590,474 euros. This means that over €100,000 was returned to the national budget (Annual Report SL, 2004). Figure 6.3 shows that the budget of the Human Rights Ombudsman of Slovenia is increasing every year.

³ The amount of money in this table is in Euros and is based on the currency rate (HRK - EURO) of 22 May 2004. The money converter is found on the following website: <http://www.oanda.com/convert/classic>.

Figure 6.3: Financial Resources Slovenia⁴ in €



Source: Annual Report SL, 1997-2004

6.4 Conclusion

By looking at the financial resources in the three countries shown in figure 6.4 it can be concluded that there are significant differences between them. Data shown in figure 6.4 suggest that the financial resources of the ombudsman for Croatia compares unfavourably with institutions in Slovenia and Bosnia-Herzegovina. In addition, when the budget is compared to the number of registered cases the Institution has to deal every year the same impression remains. Figure 6.5 shows that the BaH and Slovenian ombudsmen financial resources are almost as twice as those of the Croatian ombudsman. The differences are even clearer when looking at the resources per population. The population of the three countries is divided as follows: BaH: 4.500.000; Croatia: 4.400.000; and Slovenia 2.000.000 citizens. Figure 6.6 shows an enormous difference between the Slovenian ombudsman and the other two. Financial resources of the Slovenian ombudsman are four times higher per 1000 citizens compared to the Bosnian Institution and almost eight times higher as those of the Croatian ombudsman. Financial resources of the Ombudsman of BaH have decreased significantly since the domestication of the Institution. The main danger of this decrease in the budget is that the Institution is facing problems with paying salaries of the employees and as a consequence of this is losing its trained staff.

Next to the differences in budget, illustrated above, there are also some differences within the design of the budget. While the BaH and Slovenian budget is provided by a proposal of the Ombudsman, the Croatian budget is designed without any consultation with the Ombudsman. This course of action seriously jeopardized the independence of the Croatian ombudsman. In addition, it is important to note that due to the lack of financial resources the Croatian Ombudsman is not in the possibility to do his fieldwork. In contrast, the Ombudsmen for BaH and Slovenia are able to maintain a network of regional offices. This feature is quite important for ensuring the Office's accessibility to all citizens.

⁴ The amount of money in this table is in Euros and is based on the currency rate (HRK - EURO) of 22 May 2004. The money converter is found on the following website: <http://www.oanda.com/convert/classic>.

Figure 6.4: Financial Resources Compared in €

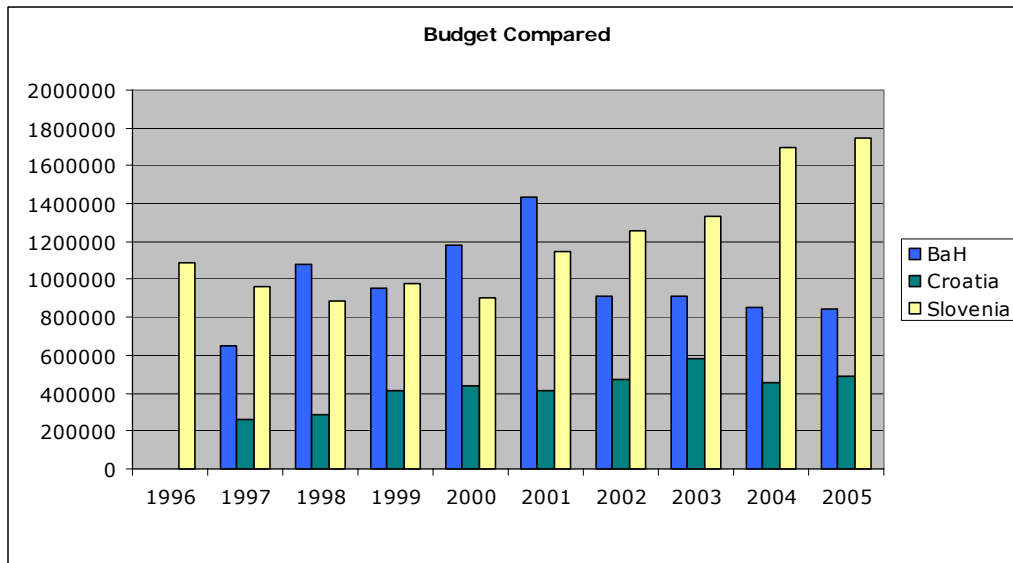


Figure 6.5: Amount in € per case

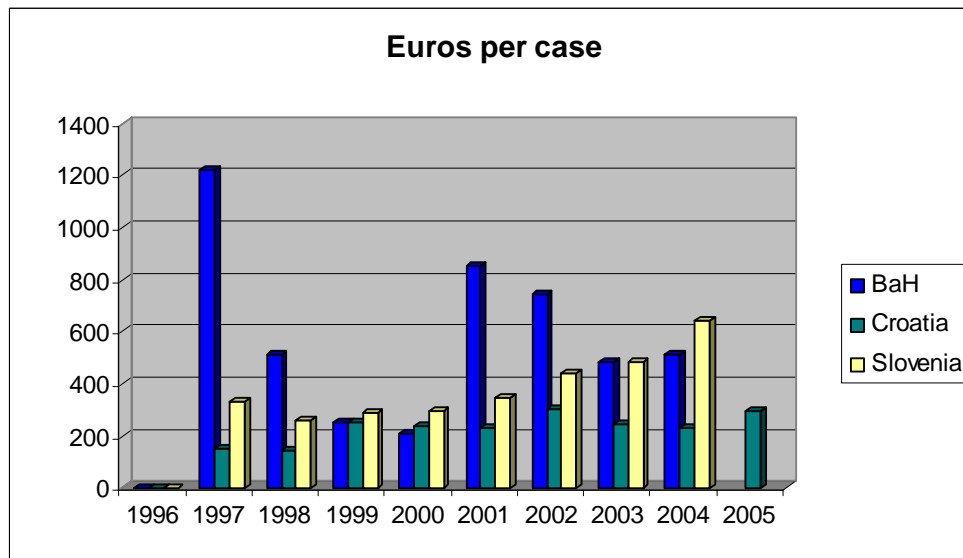
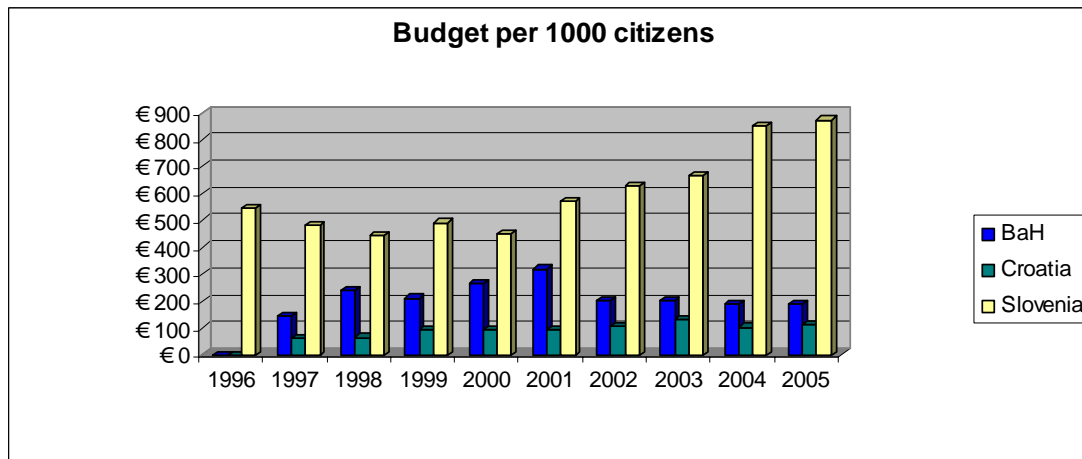


Figure 6.6: Amount in € per 1000 citizens



7 ACCESSIBILITY OF THE OFFICE

Ombudsman institutions must be accessible for the citizens in order to fulfil their tasks, namely the protection of the public against maladministration. The accessibility of the office can be measured by looking at different factors. The first element that plays a role in the accessibility is the accommodation. Besides, the physical location, regional and local representatives are important for the contact with the society the ombudsman serves. It is necessary that the ombudsman office is located separated from the official government buildings. The building should be situated in the centre of the capital with branch offices through the country. The accessibility of the office is measured by the public knowledge of the institution. The number of unjustified cases is one of the indicators of the understanding of the role of the institution by the public. Unfortunately, this information could not be provided for BaH. Flexible complaint procedure is also crucial for the accessibility of the ombudsman office. In addition, the complaints must be free of charge and done directly to the office (Reif, 2004; Fernhout, 2000).

7.1 Bosnia and Herzegovina

Accommodation

The Bosnian head ombudsman office institution is located in Sarajevo with additional offices in Banja Luka and Brčko. The offices in Sarajevo and Banja Luka were inaugurated respectively in February and June 1996. A permanent office in Brčko District was opened in October 2004. The authorities of this district provided a new accommodation which was free of charge. Making it possible for the ombudsman to be available to the citizens of the Brčko District, not only once a week like it used to be the case, but every working day. The opening of the new office was a step towards a better accessibility of the Institution. However, according to the Ombudsmen a lot of changes had to be made regarding the premises of the Institution. The Ombudsman stated that: 'for normal functioning of the Institution (by location of its office) for it being accessible to all categories of people (also to disabled people), the issue of adequate work premises presents a great problem' (Special Report 1184/03, 2004:4). Changes are very important for the future work of the Institution. Adequate premises are also an obligation of the BaH government in accordance with the '*Program of activities for realization of priorities in 2004 from the report of the European Commission to the Council of Ministers on the preparedness of Bosnia and Herzegovina for negotiations of SAA with EU*'. Nevertheless, the Council of Ministers refuses to even discuss the possibilities for new accommodations, even the time limit for fulfilment of this obligation given by the European Commission was May 31, 2004 (Annual Report BaH, 2004).

Public Knowledge of the Institution

The Ombudsman of BaH has recognised the importance of the accessibility and visibility of the Institution and has therefore undertaken diverse actions to improve this. In order to do this the Ombudsman started frequent visits to medium and small size cities, which normally do not have any ombudsman presence. During these visits around the country, citizens meetings were arranged at which citizens were able to discuss relevant issues, file complaints and obtain information about the Institution. Besides this, meetings with local authorities and local NGOs were scheduled during these visits.

The goal of these visits around the country was to bring the ombudsman institution closer to the citizens but also to take a closer look at the state of respect for human rights in BaH. During those visits the ombudsman was also in the opportunity to organize meetings with authority representatives of those municipalities, to whom complaints of the citizens were presented. Besides the city visits, the representatives of the Institution also visited prisons in BaH. The institution of the Human Rights Ombudsmen of BaH was also represented outside of the country. They actively participated on several international conferences devoted to human rights (Annual Report BaH, 2000-2004).

In 2003 the ombudsman launched a nationwide public awareness campaign, promoting Human Rights, Good Governance and the Rule of Law. To promote the Institution, different TV-spots were transmitted over the public broadcasting TV-stations, full-page ads were published in all the major daily newspapers, informing the citizens about good governance. Besides this, minor size ads were published in all major newspapers in order to illuminate the role of the ombudsman. In addition to this, in 2003 the ombudsman issued a leaflet on the theme "*Because it is my Right*", describing general guidelines on what a citizen could expect from the public administration and its civil servants. This leaflet was distributed to approximately 900 public bodies about which citizens can complain to the Institution.

In order to improve the communication with the public authorities and to spread the knowledge about the ombudsman among the civil servants the ombudsman has established a liaison officer network in all state authorities. The Office informed the contact officers about the role of the Institution. Moreover, the Institution organized meetings with the non-political state institutions and provided them also with the information about the work of the ombudsman (Annual Report BaH, 2002 and 2003).

Accessibility of the Complaint Procedure

The procedure of the complaint is regulated in detail by the 'Rules of Procedure' (2001). This document describes the procedure stressing that the complaint shall be submitted in writing and signed by the complainant or an authorized representative of the complainant (Rule 3). The Institution has a complaint form that can be used. However, this is not obligatory. The Rules of procedure explicitly say that the staff shall assist in drafting a complaint where necessary (Rule 4). To improve the accessibility for all citizens, including foreigners, the working languages of the Institution are BaH languages as well as English (Rule 9). The description of the procedure after a complaint has been submitted is illustrated in the '*Table of Proceedings*'. This table shows that a complaint after its submittance can be declared 'admissible', or 'inadmissible' by the Office, which also can decide not to take any further action. The accessibility of the Institution has greatly been improved by opening the very first toll-free line in BaH ever. The ombudsman opened a line which people all over the country could call free of charge. The toll-free line was started in 2003 as an initiative to make the ombudsman service more accessible for the citizens. The toll-free line has enabled an increased number of complainants to reach the Institution for advice or legal remedy (Annual Report BaH, 2003). On the other hand, the accessibility through the internet is lagging behind.

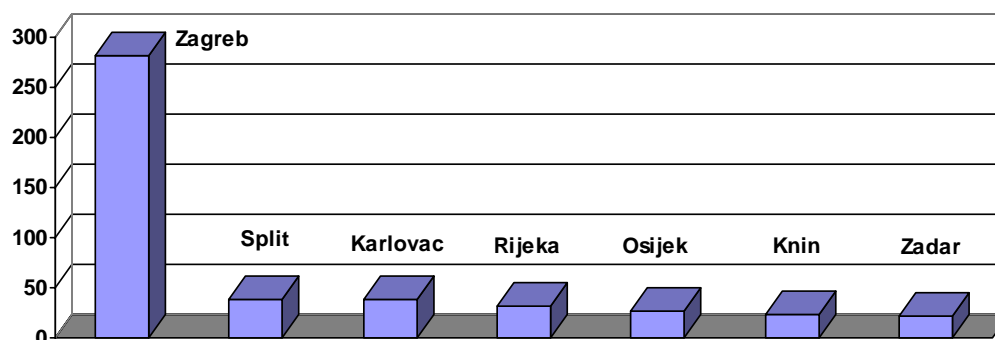
The website of the Institution is already more than one year under-construction. There are no possibilities to submit complaints through e-mail or digital complaint forms.

7.2 Republic of Croatia

Accommodation

The institution has only one office in the capital, in Zagreb and no regional offices. Figure 7.1 shows that the complaints are mainly coming from the capital where the Institution is located. Besides, the building in the capital is also too small and inappropriate. Furthermore, the institution lacks adequate equipment. These circumstances are considered as one of the biggest obstacles for normal functioning of the Croatian ombudsman. Due to the small premises it is not possible to employ 3 or 4 servants that are needed to deal with the needs of the citizens and to perform the tasks of the Office. In the annual report for 2004 the Ombudsman emphasised this problem and made an explicit request for a new location. He requested for another 150 m² of offices near the existing Office in Zagreb by the end of the year 2005. And, he made clear to the government that from the year 2006 new premises, with the surface of 500 – 600 m², should be provided. The government had promised to look for the possibilities for new accommodations. However, the Croatian ombudsman is still performing his task from the same office as 5 years ago (Annual Report HR, 2005).

Figure 7.1 Cities from which the ombudsman received complaints in 2005



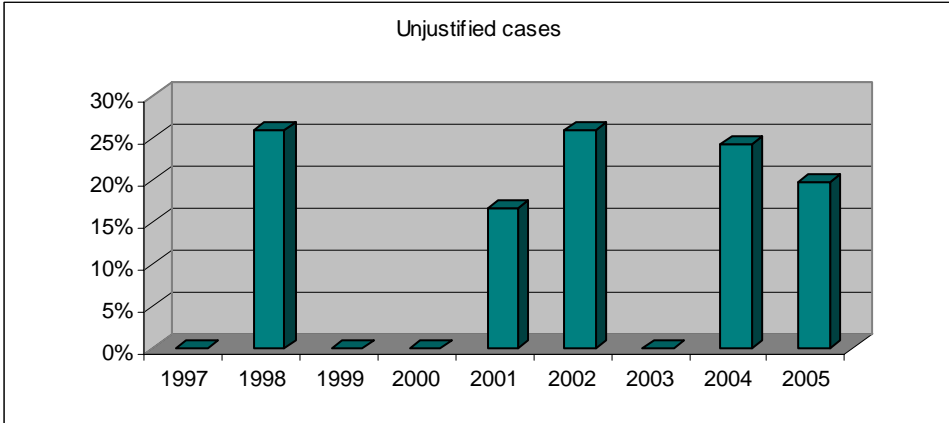
Source: Annual Report HR, 2005

Public Knowledge of the Institution

The budget constraints have limited the Croatian Ombudsman to travel to other regions and improve the public knowledge around the country. At the end of 2002, the Institution in co-operation with the OESS Mission for Croatia and Norway started a project to strengthen the Institution. This project with the name 'Activities of the Ombudsman Institution/ Scheme of Support to the Ombudsman Institution' helped the ombudsman to improve the knowledge of the public and improved the accessibility of the institution. The project consisted of four main activities, namely: financial support for the field work, financial support for a half year programme for internships for one law student, the preparation and distribution of a brochure about the Institution, and creation and maintenance of the ombudsman website. This project facilitated access to the ombudsman for local communities and mainly for refugees and dislocated persons, which are in general not familiar with their rights and Croatian laws.

The visits around the country made it possible for the citizens to address their problems and issues without coming to the Institutions office in the capital. In 2003 the Ombudsman visited 10 counties in order to promote his activities and to make it possible for the citizens living in these counties to address their complaints. However, due to the lack of financial resources the Ombudsman visited only 5 counties in 2004. Consequently, the number of new complaints in 2004 got significantly smaller than it was in 2003. However, even though the number of complains has been decreased figure 7.2 shows that the number of unjustified cases has increased. This means that citizens address complaints to the ombudsman that do not fall under his competences, meaning that the knowledge of the Institutions jurisdictions is not well known by the public. The Ombudsman recognized this problem and requested the Croatian government for additional resources to purchase two personal vehicles for the field work. The Ombudsman believes that it is essential to continue the fieldwork and allocate the funds in the state budget for this purpose.

Figure 7.2: Unjustified cases as percentage of registered complaints



Source: Annual Reports HR, 2002-2005

During the years the ombudsman has received numerous invitations to participate on diverse international meetings devoted to human rights. Diverse conferences had been devoted to the work of the ombudsmen and their experiences and problems regarding protection of the human rights. The Ombudsman and his deputies tried to make a selection and participate in those seminars that would help them improve their way of functioning. Unfortunately, the Office was not able to participate on all these meetings, partly due other obligations and partly due to the lack of financial resources (Annual Report HR, 2002-2005; Hucker, 2003).

Accessibility of the Complaint Procedure

In the *Law on the Ombudsman of Republic of Croatia* there are no regulations about the way a complaint has to be submitted. The Law states that everybody has a right to file a grievance (art. 12). In addition, the Law does mention that submitting a complaint is free of charge (art. 13). On the website of the ombudsman is stated that complaints can be addressed in writing or personal at the Office. Also the minimum conditions that have to be met by the complainer are mentioned. In 2002 the Institution obtained modern computer equipment and a web page with help of the Norwegian donation.

Since then the office is using e-mail for quicker communication and more rapid response to those with questions and/or complaints. According to the website of the ombudsman citizens can personally address their complaints within office-hours: Tuesday, Wednesday and Thursday from 10.00 till 13.00 o'clock (Annual Report HR, 2002; www.ombudsman.hr).

7.3 Republic of Slovenia

Accommodation

Office of the Human Rights Ombudsman for Slovenia is located in the capital, Ljubljana. The Institution does not have permanent regional premises. However, the ombudsman is organizing office talks several times a year in various cities. This has been introduced with the aim to be more accessible to people who live in more remote parts of Slovenia. These sessions with the citizens take place in municipal centres in premises that are made available free of charge by the municipalities (Annual Report SL, 2004; OMBUDSMAN, 2004).

Public Knowledge of the Institution

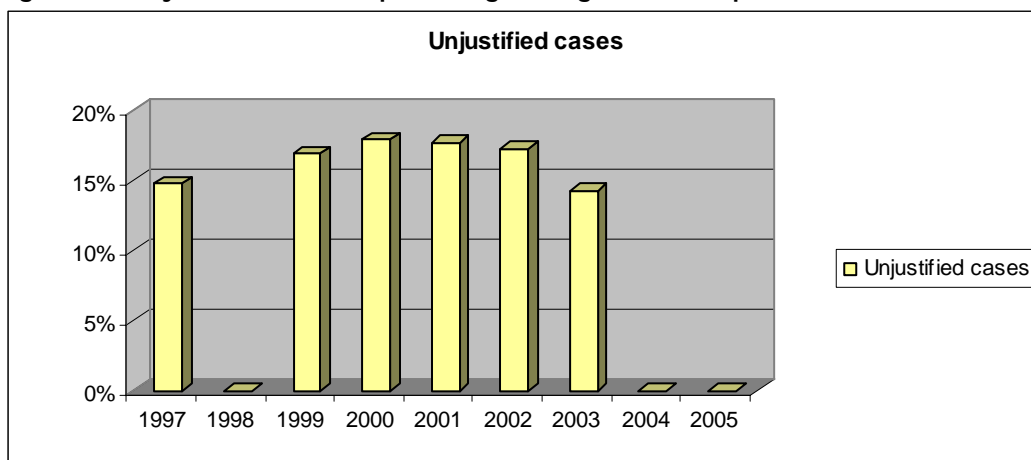
In order to promote the work of the ombudsman and make it possible for people all over Slovenia to meet with the ombudsman and to submit their complaints, the ombudsman is visiting different parts of Slovenia. The support of the public is an important condition for the work of the Institution. For this reason the Office employed one person to deal with this issue in 1997. Nowadays, the Institution has a two staff members department for public relations. In 2004, for the same aim, the Institution published a new leaflet with a form for submitting complaints. This brochure provides basic information about the ombudsman. It describes its competences and how to contact the Office. The leaflet has been published in both Slovenian and English. This English version has been distributed to diverse organizations which are in contact with foreigners. Besides this, the Institution is publishing a free newsletter 'The Ombudsman-How to Protect your Rights'. The aim of this newsletter is to point out citizen's rights and to explain why and how to consult the ombudsman. It is being distributed throughout Slovenia at administrative units, hospitals, clinics, libraries, employment offices, universities and secondary schools, faculties, old people's homes, non-governmental organisations, social services centres, prisons, police stations, etc. This newsletter is being published three times a year in Slovenian language and special issues are also published in English. In 2004, the ombudsman designed a new website, with new contents and format adapted to the needs of individual target groups. The Institution distinguished four main target groups which are important to the work of the ombudsman. These are: potential complainants, professionals or interested parties among the general public, the media, and children and young people.

By visiting towns around the country and other actions of the Office, the understanding of the role of the institution was improved. This is also reflected decrease of complaints falling outside the ombudsman's jurisdiction (figure 7.3). The actions and accomplishments of the ombudsman have been recognized by both the public and the media.

The institution is also being appreciated for the fact that no careless or unprofessional decisions have been made in the past. This is also reflected in public opinion polls.

The Slovenian Ombudsman is committed to share his experiences with other ombudsman institutions, as well as with other institutions in the area of protection of the human rights. In 2004, for example the office offered expert assistance to the delegation of the Complaints Office from the Brčko district in Bosnia and Herzegovina, the nine-member delegation of the ombudsman of Kosovo, and the Ombudsman of the Autonomous Region of Vojvodina and his deputies (Annual Report SL, 2004; Bizjak, 2000b; OMBUDMAN, 2004; www.varuh-rs.si).

Figure 7.3: unjustified cases as percentage of registered complaints



Source: Annual Report SL, 1997-2004

Accessibility of the Complaint Procedure

Anyone who thinks that his human rights or basic freedoms have been violated by an act or action of a government body, local government body or statutory authority can submit a complaint to the ombudsman. According to the Ombudsman Act the complaints submitted to the ombudsman are confidential and free of charge for the parties (art. 9). Complaints to the ombudsman can be sent by post or by e-mail. It is also possible to approach the office via the free telephone or in person by making an appointment for an interview. The introduction of the free telephone significantly improved the accessibility of the Institution. Through the telephone the public can obtain basic information and basic legal advice on their specific case. On the website a digital form can be found for submitting complaints. Besides this, it is also obligatory to send a signed hard copy via regular post. The same form is also distributed with the brochure which the Office published in 2004. The official language of the Office is the Slovenian language. However, if the complainer does not speak this language it is possible to submit the complaint in his own language (Annual Report SL, 2004; Bizjak, 2000b; www.varuh-rs.si). After the complaint has been accepted by the Institution, the ombudsman decides on the request in a short procedure. Ombudsman can decide to: reject the initiative; not to accept the initiative; or to begin the investigation. Starting the investigation means making a report based on the complaint and describing the further mode of actions (Mavčič, 2004).

7.4 Conclusion

Accessibility of the Institution is one of the primarily conditions for efficient functioning of the ombudsman institutions. The public knowledge of the institutions is an important indicator for the accessibility. An important condition for improving the accessibility of the office is making the complaint procedure flexible and free of charge. In this section the ombudsmen institutions in the three countries will be compared based on accessibility criteria mentioned above.

Accommodation

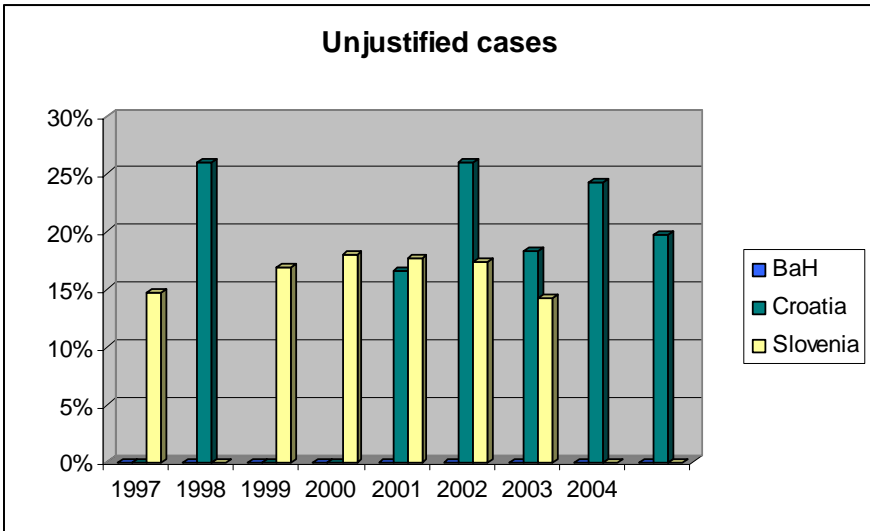
Looking at the premises of the ombudsmen in the three countries it can be said that there are significant differences between them. The BaH Ombudsman has three different premises in different cities through the country. Croatian Ombudsman however, has only one accommodation, located in the capital. Both ombudsmen institutions believe that they have inadequate premises for efficient functioning. However, their reasoning is different. In the case of BaH Ombudsman the largest problem is the location and accessibility of the office (i.e. for disabled persons). On the other hand the problem of the Croatian Ombudsman is the lack of space and the size of the office. For this Institution it impossible to employ 3 or more servants, needed to deal with the incoming complaints of the citizens, to perform the main task of the Office. In addition to this, the Institution does not have resources for regular visits to other parts of the country. The consequence of this is that the ombudsman of Croatia is less accessible to people living far from the capital. The Slovenian Institution however, does not seem to have any problems with the premises they are located in. It has only one premise in the capital. However, the Institution introduced field work as a regular form of work with the aim to be more accessible to people living in more remote parts of Slovenia. These visits take place in premises which have been made available free of charge by the municipalities.

Public Knowledge of the Institution

Ombudsman of Bosnia and Herzegovina has recognized the importance of the accessibility and visibility of the Institution and has therefore undertaken diverse actions to improve this. The ombudsman has undertaken frequent visits to medium and small size cities which normally do not have any ombudsman presence. The office has also launched a nationwide public awareness campaign, promoting Human Rights, Good Governance and the Rule of Law. In addition to this, the ombudsman has established a liaison officer network in all state authorities to facilitate good contacts with the public authorities and to spread the knowledge about the ombudsman among the civil servants. Thanks to these actions and promotion campaigns the ombudsman is becoming a well known domestic institution. The Croatian Ombudsman on the other hand has difficulties with reaching the public mainly due to the lack of financial resources. With help of the international community the Office had the possibility to visit towns around the country. However, because of the lack of financial resources the ombudsman visited only 5 counties in 2004. Consequently, the number of new complaints in 2004 was significantly smaller than it was in 2003 when the funding by international community was higher. The Ombudsman recognized this problem and requested the Croatian government for additional resources to purchase two personal vehicles for the field work.

Slovenian Ombudsman believes that the support of the public is an important condition for the work of the Institution. To increase of this support the Institution has a two staff members department responsible for public relations. The accomplishments of the ombudsman have been recognised by both public and media. This is also reflected in public opinion polls. The effort to improve the knowledge of the public has improved the understanding of the role of the institution. This is also reflected in the decrease of complaints received falling outside the ombudsman's jurisdiction. Unfortunately, the Bosnian ombudsman was not able to provide this information, therefore only the information concerning the Croatian and the Slovenian ombudsmen will be compared. Figure 7.4 shows that there are significant differences in received unjustified complaints between the countries.

Figure 7.4: Percentage of unjustified cases in different countries



Accessibility of the Complaint Procedure

There are no major differences in the complaint procedure of the three countries. In all three submitting of a complaint is free of charge. Further, it is possible to address a complaint by phone, e-mail, or in person. However, in BaH and Slovenia the Institution has a toll-free line. The introduction of this free telephone significantly improved the accessibility of both Institutions. Another difference is the accessibility through the internet where the BaH ombudsman is staying behind. The website of the Institution is already more than a year under-construction and it is not possible to submit complaints through e-mail or digital complaint forms. There are also differences in the possibilities to address complaints personally. In BaH and Slovenian Offices citizens need to make an appointment but the office is open every day, while the Croatian Ombudsman has office-hours (Tuesday, Wednesday and Thursday from 10.00 till 13.00 o'clock) during which complaint can be submitted. Restricted office-hours decrease the accessibility of the Croatian ombudsman.

8 CO-OPERATION WITH THE AUTHORITIES AND OTHER INSTITUTIONS

Co-operation with governmental bodies (8.1) and with other institutions (8.2) is of crucial importance for the effectiveness of the ombudsman institution.

8.1 Co-operation with Government Bodies

The effectiveness of the ombudsman is seriously jeopardised if the institution is not given the full support by the government and the politics. The work of the ombudsman is seriously hindered if the government bodies do not co-operate with the institution. Positive attitude towards opinion and recommendation of the ombudsman are crucial for the effectiveness of the institution. Besides this, not only executive branch should co-operate, but a supportive legislative branch is also essential for successful functioning of the office. Appropriate co-operation is visible when there is a response to the ombudsman inquiries and a clear willingness on the part of responsible authorities to discuss problems from the sphere of the protection of human rights. In addition, the state authorities must properly consider the ombudsman's proposals, opinions and findings regarding the resolution of problems (Fernhout, 2000; Reif, 2004; OMBUDSMAN, 2004).

8.1.1 Bosnia and Herzegovina

In the Annual Report for 2004 the Bosnian Ombudsman speaks of a significant improvement of the understanding of the concept of the Ombudsman and its role by the authorities. The fact is that most authorities provided answers as well as documents requested by the Ombudsmen, even without a formal written request. The cases of maladministration such as those of failure of providing certain public services like water or electricity, issuing documents and certificates, registration, requesting undue fees etc., were solved on the first contact with the relevant authority, based on the legal argumentation of the lawyers of the Institution. In other, more difficult cases, several forms of pressure have been used, such as cajoling or negotiating with the authorities, including threats of bringing cases to higher instances or public criticism etc. These methods have generally given satisfactory results. The ombudsman has also seen an improvement in the general compliance with the recommendations issued by the Institution. The Office issued 29 recommendations in 2004 and competent authorities have taken measures for almost all these recommendations in time limits given by the ombudsman. Only 3 recommendations have not been fulfilled. (Annual Report, 2002, 2004) However, this improvement in dealing with the recommendations of the ombudsman by authorities is not visible everywhere.

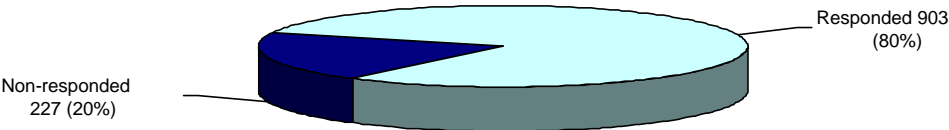
Unfortunately, the cooperation with the highest authorities, concretely some BaH ministries and the BaH Council of Ministers is lacking behind. All procedures carried out in 2004 resulted in complete lack of cooperation by the organ responsible, namely the Council of Ministers. The Ombudsman therefore issued a Special Report '*Regarding non compliance of the Council of Ministers of BaH with the Recommendations of the Ombudsmen of BaH*'. The Special Report also raises questions about the unacceptable attitude of the Council of Ministers towards independent work and functioning of the Institution.

This report was addressed to the Parliamentary Assembly and the Presidency of BaH expecting that the BaH authorities would realize need for a full cooperation with the Institution. The BaH authorities, just like all other authorities, need to respect the human rights and fundamental freedoms of citizens on all levels of authority (Annual Report, 2004; Special Report 1184/03, 2004).

8.1.2 Republic of Croatia

Authorities that have received a recommendation of the ombudsman have to react within 30 days. They have to inform the ombudsman which measures they propose to take. However, the annual reports of the Croatian ombudsman show a different picture. The overall response takes much longer or does not come at all. The request of the ombudsman are often seen as 'just one more intervention on behalf of individuals seeking preferential treatment' (Hucker, 2003:5). In the annual report for 2002 a significant improvement in overall response rate from 58% to 76% can be seen. However, this is still tremendously low and it does not say anything about the responses received within the 30 days limit. The normal procedure is that when the ombudsman decides to start an investigation, the authorities must deliver the requested responses to the Institution. However, this has not always been the case as shown in figure 8.1.

Figure 8.1: Investigation procedures carried out – responses to the request of the Office



Source: Annual Report HR, 2004

In 2004, the ombudsman started 1120 investigation procedures of which he only got 80 percent official responses from the authorities. This means that 20 percent of the requests of the Office had been totally ignored. (Annual Report, 2002-2004; Hucker, 2003)

8.1.3 Republic of Slovenia

Co-operation with the governmental bodies has improved in the last ten years of the existence of the Slovenian ombudsman. The Institution works with a deadline that depends on the urgency and complexity of the case but is never longer than 30 days. When the deadline is not respected and in the case of communicational breakdowns, the Office is taking more drastic measures (exerting pressure), involving the public if needed. In the past the Annual Report of the Human Rights Ombudsman had not always been considered in the Parliament. However, in 2003 the Ombudsman and the president of the National Assembly reached an agreement on the prompter consideration of the Annual Report. The purpose of this agreement is to make it possible for problems to be dealt more rapidly and effectively. Moreover, the attention is drawn to current violations rather than to old ones. Nowadays, the greatest problem the Office has to deal with is the indifferent attitude towards people's problems.

The Ombudsman states that certain authorities spend more time looking for excuses to explain why they are not competent for solving a problem than they would spend actually solving the problem. Additional problems are caused by the lack of respect for the Constitutional Court by the National Assembly. For years the Office has been warning that the National Assembly frequently fails to observe the decisions of the Constitutional Court. The attitude of the Assembly is unacceptable and as long as this institution is not showing the respect for the Constitutional Court it can not be expected that other institutions and individuals will behave differently (Annual Report SL, 2003-2004; OMBUDSMAN, 2004).

8.2 Co-operation with Other Institutions

In most countries there are no similar institutions as the ombudsman which work on completely comparable assignments. Therefore, an important characteristic of the ombudsman should be networking with the similar institutions from different countries. There are several ways of co-operation between ombudsmen, such as:

- bilateral contacts: fact-finding visits, staff training;
- publications;
- conferences, seminars, round tables, workshops; and
- associations of ombudsmen

Associations of the ombudsman is one of the most important ways of co-operation between different ombudsmen. For the ombudsmen of the countries compared in this study two associations are of great importance, namely the International Ombudsman Institute (IOI) and the European Ombudsman Institute (EOI). The IOI is a worldwide organization of ombudsman offices, established in 1978. Its voting members are public sector independent ombudsman offices located around the world. And the other association, the European Ombudsman Institute is an association under Austrian law, founded in 1988. The purpose of the association is 'to adopt a scientific approach in addressing issues relating to human rights, civil protection and the institution of ombudsman; to conduct research in those areas; to promote and disseminate the ombudsman concept; to support Austrian and foreign ombudsman structures from a scientific viewpoint; and to co-operate with institutions advocating similar objective'. Besides these memberships of different associations, the ombudsmen should develop relationships with other institutions that are concerned with human rights issues. Co-operation with non-governmental organizations (NGO's), international organizations and human rights institutions is needful. Collaboration with these organizations provides the ombudsman with information, feedback and partners for joint activities. Other national human rights institution, international and regional associations support ombudsmen with education, training and support service (Bizjak, 1999b; Reif, 2004).

8.2.1 Bosnia and Herzegovina

The Ombudsman of Bosnia and Herzegovina is an equal member of the EIO as well as of the IOI. This membership imposes high working standards which the Institution is trying to accomplish. The Ombudsman visited ombudsmen institutions in the western Balkan in order to contribute and support the work of his colleagues. Moreover, the Institution organised a Conference in BaH.

The '*Balkan Ombudsman Conference*' was held in 2003 and all the National Ombudsmen of Western Balkans were invited to a common meeting in Sarajevo. The countries represented were Albania, BaH, Croatia, Macedonia and Slovenia. At the conference the Ombudsmen discussed the most useful methods to combat old style bureaucracy and maladministration, and how to best promote Good Governance and the Rule of Law. The Ombudsmen also discussed and compared the way the ombudsman work should be organised in these countries to serve society and its citizens most efficiently and economically.

Nationally the Human Right Ombudsman organises and maintains regular coordination meetings of the BaH Ombudsman institutions according to its legal obligation. The aim of these meetings is to discuss issues of interest for functioning of all three Ombudsman institutions. Unfortunately, it is difficult to co-ordinate these institutions since the institutions are independent from each other. Another difficulty is the fact that none of these institutions is able to monitor all authorities and all relevant human rights issues. This would be possible in the case of one strong institution with an all-embracing mandate. Besides, the system of three institutions creates unnecessary duplications and confusion among the public (Annual Report, 2002). The BaH Ombudsman is also a member of the National Institution for Promoting Human Rights Protection (NHRI). In addition, the Institution is meeting with number of domestic and international officials and representatives, such as the Council of Europe representatives, the Head of OSCE Mission in BaH, Director of the Human Rights Department of OSCE, diverse ambassadors and representatives of EU (Annual Report, 2003-2004; Special Report 1184/03, 2004).

8.2.2 Republic of Croatia

Croatian ombudsman has the international co-operation with other ombudsmen and human rights institutions high on his agenda. The Institution is a member of both the IOI and the EIO. As a member of these two associations the Office was able to participate in relevant conferences. These conferences helped the Ombudsman gaining new experiences and developing new idea's that can efficiently be applied for the benefit of all citizens of Croatia. Next to the co-operation through diverse seminars organized by IOI and EIO the Office is co-operating with the Council of Europe and with the United Nations Office of the High Commissioner for Human Rights.

Furthermore, besides the ombudsman Croatia has a Government Office for Human Rights. This Office has been established to serve as an expert service of the government to ensure protection and promotion of the human rights in Croatia. This Office has a more co-ordination role between different departments within the government, rather than solving problems of the citizens who are encountering difficulties with the government. However, this office receives annually around 700-800 individual complaints. Due to the fact that there is no communication at all between the ombudsman and the Government Office, it is possible that certain amount of these complaints are at the same time being handled by the ombudsman and that there is a potential duplication of time and effort needed to handle these complaints. Croatian ombudsman is also intensively co-operating with many non-governmental organizations in the promotion and protection of human rights.

This co-operation helps the Institution to get a better view on the human rights situation in certain Croatian regions. Mainly due the lack of employees and inadequate funds it would not be possible for the ombudsman to deal with so many individual cases a without sufficient co-operation (Annual Report HR, 2003-2004; Croatian Ombudsman, 2000; Hucker, 2003:6).

8.2.3 Republic of Slovenia

Due to the fact that the Human Rights Ombudsman is the only organization of this kind in Slovenia, cooperation with international human rights institutions is particularly important. Therefore, the ombudsman joined the EIO and IOI in 1995. The aim was to gain experience from other ombudsmen. Not much later the Slovenian Ombudsman became vice president of the EIO and was elected to the IOI Board of Directors. In the period between 1999 and 2003 the Ombudsman was the editor of the European Ombudsman Newsletter and played an important role in the communication between European ombudsmen. In 2000, after five years of work experience the Slovenian Institution started to pass its experience to the countries in transition, mainly in eastern and south-eastern Europe. Until 2004, the ombudsman has participated on the establishment of the Ombudsman Institution in Albania, Armenia, Bosnia and Herzegovina, Greece, Macedonia, Montenegro and Turkey. At the same time diverse important conferences, such as 'The Relations between Ombudsman and Judicial Boedies' in 2001, and 'Annual Meeting of the Voting Members of the European Section of the IOI' in 2002, were held in Ljubljana.

Co-operation with representatives of civil society takes an important place in the ombudsman relations with diverse sectors of the public. Civil organizations are considered an effective source of information and experience. Via these non-governmental organizations the ombudsman tries to reach the groups or individuals from vulnerable sectors of society. These underprivileged or marginalized citizens face violations of their rights; they are unaware how the Ombudsman could help them dealing with these violations (Annual Report SL, 2003-2004; OMBUDSMAN, 2004).

8.3 Conclusion

The effectiveness of the ombudsman is seriously hindered if there is no adequate co-operation between the government bodies and other institutions concerned with human rights and improvement of good governance. This chapter focused on the co-operation of the ombudsmen institutions in BaH, Republic of Croatia and Republic of Slovenia with the above mentioned organizations.

8.3.1 Co-operation with Government Bodies

Positive attitude towards opinion and recommendation of the Office of the Ombudsman is crucial for its effectiveness. Comparing the three countries it could be said that different governments have different points of view concerning the ombudsmen institutions. The BaH ombudsman has experienced huge opposition from the side of BaH ministries and the BaH Council of Ministers. A complete lack of assistance was the result of all procedures carried out in the past. On the other hand, there have been enormous improvements in co-operation with other authorities.

Most authorities provided answers as well as documents requested by the ombudsman, very often even without a formal written request. In the case of the Croatian ombudsman the response of the government is tremendously low. In 2004 for example, 20 percent of the requests of the Office had been totally ignored by the authorities. Slovenian ombudsman however experiences a significant improvement in the co-operation with the government in the last ten years of its existence. However, there are still authorities which put more effort into looking for excuses to explain why they are not competent for solving a problem than to actually solve the problem. Finally, it can be concluded there are differences in the attitude of the government towards the ombudsman institutions. But on the other hand in all three the countries several changes have to take place before it can be said that there is an efficient co-operation between the Institution and the government.

8.3.2 Co-operation with Other Institutions

Important for good functioning of the ombudsman is networking with the similar institutions from different countries. Two important associations for networking are the IOI and EOI. In all three countries the ombudsmen are member of both mentioned associations. In the past the Slovenian Ombudsman has even been the vice president of the EIO and has been elected to the IOI Board of Directors. Furthermore, the three institutions also organized and visited different conferences. The co-operation with domestic human rights institutions is satisfactory except in Croatia where there is a total lack of co-operation between the ombudsman and Government Office for Human Rights.

9 GENERAL CONCLUSIONS AND RECOMMENDATIONS

In the previous chapters the efforts undertaken by the ombudsmen were discussed (Ch.4). Besides, the factors that influences the effectiveness of the ombudsman have been analysed (Ch.5-8). This chapter is looking back at the outcomes of the research and is giving general conclusions about the effectiveness or ineffectiveness of the ombudsmen. The first section (9.1) is reflecting on the theory used for this study. The following section (9.2) contains conclusions about the contribution of the ombudsman to good governance. In section 9.3 the explanation for the effectiveness of the ineffectiveness is given. Moreover, the central question as formulated in the first chapter is being answered in section 9.4.

9.1 Governance and accountability

Governments in countries around the world have significantly expanded in the past century. Simultaneously, the role of the government changed from government towards governance. Governance implies a change in the meaning of government, a 'new process of governing' (Rhodes, 1997:15). The government is just one of the actors in governance. These changes did not resolve the already existing problems with the performance of the government, they also added new problems. Shift from government towards governance caused problems of governability, accountability, responsiveness and legitimacy. These are principles of so called 'good governance'. Nowadays, the governments around the world are experiencing a widening gulf between themselves and the people they serve. Besides, the traditional institutions of checks and balances on power and accountability have become less effective. (Van Kersbergen & Van Waarden, 2004) To deal with these problems new mechanisms of checks and balances have been established, one of them is the Ombudsman. The ombudsman is considered as an external actor that is supposed to act as an accountability mechanism. The ombudsman can improve the accountability of governments by: permitting members of the public to lodge complaints that the government has not acted legally or fairly; investigating the conduct of public administration; recommending changes of law, policy or practice when illegal or improper administration is uncovered; reporting to the legislature and the public; ability to take cases to constitutional and other courts for judicial determination; and the power to prosecute state officials. By holding governments responsible for the abuse of governing power the ombudsman also facilitate a legitimate government. However, a condition for successfully functioning of the ombudsman is that there exists some form of democratic governance.

In countries in transition there are special circumstances that influence the work of the ombudsman. Transitional circumstances are characterized by an unstable and due to the changes relatively inconsistent legal order. Besides, the state bodies are rather slow and ineffective in reaching decisions. Moreover, the lack of democratic experience in the past imposes even more difficulties. Yet, at the same time the people are experiencing problems that were unknown in the past, such as unemployment and the ensuing social hardships. And they have huge expectations because they hoped for rapid changes after the transition. In these circumstances the role of the ombudsman is even more important than in countries with consolidated democracies.

After the transition, the role of the state as all-powerful did not change, as it is strongly rooted in the minds of civil servants. Ombudsman's role is primarily important to change the relationship of these officials with the citizens. The attitude of these officials has to be changed and the ombudsman can help establish the standard that the state exists to serve the citizens, not the other way around. The fact that someone is watching over these bodies urges them to act properly (Bizjak, 1999; Bizjak, 2000a; Rovšek, 1999). The ombudsman can improve accountability of the government by permitting members of the public to lodge complaints that the government has not acted legally or fairly. Besides, the Office can investigate the conduct of public administration, and recommending changes of law, policy or practice when illegal or improper administration is uncovered. In addition, the Institution has the ability to take cases to constitutional and other courts for judicial determination. As well as by reporting to the legislature and the public and prosecute state officials if they are not co-operating (Reif, 2004).

9.2 Effectiveness of the Ombudsman

In this section an overall conclusion will be given on the effectiveness of the ombudsman in promoting the good governance. In how far has the ombudsman been successful in contributing to an improvement of the good governance in the three countries analysed in this study.

9.2.1 Bosnia and Herzegovina

The Human Rights Ombudsman for BaH has contributed to good governance in the country by several ways. The Institution has been involved in individual case handling and promotion of the general improvement of the human rights in BaH. It has also been successful in improving the knowledge of the Institution. The knowledge has increased by public as well as by the authorities. The Institution has become acknowledged by them as promoter of the higher level of the human rights protection. This is visible through the number of complaints as well as the level of compliance with the Ombudsman's recommendations by BaH authorities. In the Annual report for 2004 the Ombudsman stated that compared to the experiences from the previous years it could be concluded that 'the state of human rights in BaH is improved in relation to previous period, but it is not satisfactory, and in some territories even disturbing' (Annual Report, 2004). However, the transitional ombudsman has been much more involved in the promotion of good governance and recommendations of the general changes in the rules and regulation. This course of action leads to a more systematic solution for problems, instead of solutions for individual problems. After the changes in 2004 and the Institution became a domestic institution, the compliance with the institution by the authorities minimized. This seems to be mainly due to the fact, that the institution became independent from the international community and lost its political and financial support.

9.2.2 Republic of Croatia

The contribution of the Croatian ombudsman to the good governance in the Croatian government is being less effective as it is wanted by the Institution. The main focus of the Office is on individual case handling. The ombudsman used several measures to settle cases, such as giving legal advice to the complainer as well as to the authorities, giving recommendation and warnings to the concerned bodies.

However, as already mentioned, individual case handling without changes in the rule or regulations is not effective, because it does not prevent violations in the future. On the other hand, the ombudsman did draw the attention of the government on the problems with the courts. Although the ombudsman does not have the mandate to deal with cases concerning the court, the institution does receive complaints concerning the work of the courts. The institution recommended changes and asked for an extension of its mandate, but no changes have been implemented yet. Besides, the institution is trying to focus more on preventive measures, but due to several reasons the main focus is still on complaint handling.

9.2.3 Republic of Slovenia

The Human Rights ombudsman is giving attention too to the individual case handling. However, compared to the two ombudsman institutions in BaH and Croatia the Slovenian ombudsman is far more focused on the promotion and prevention of repeated violations. The ombudsman has tried to draw public attention to inconsistencies in the legislation and by doing this to remove inadequacies in the legal system. In an analysis of the E.U. it was concluded that the 'institution of the human rights ombudsman in Slovenia has been implemented very effectively and its work has contributed to the improvement of conditions and the functioning of democracy and the rule of law in the country' (CFR-CDF, 2004). Besides, there have been changes in response to the interventions of the ombudsman. The Slovenian authorities are responding more seriously and rapidly to the recommendations of the ombudsman. However, there are still authorities that believe that the complaints from individuals or the work of the ombudsman is unnecessary and a disruption of their established operation.

9.3 Factors that Influence Effectiveness

In the previous chapter the effectiveness of the ombudsman institution has been judged. This section is exploring the most important factors that have influenced the work of the ombudsman in the past. Ombudsman as an independent institution that reports to the Parliament is in a unique position to ensure a degree of accountability in the administration of public services. However, the degree of influence an ombudsman has is dependant on several factors.

Democratic Governance

First factor is the existence of democratic governance in the state. It is for the ombudsman impossible to function effectively by the absence of any democratic system. Countries compared in this research are countries in transition; they are moving from a totalitarian system to a democratic system. During this process they have established mechanisms for protection of the rights of the individual citizens. The authorities in these countries are slowly adapting to new conditions of democratic governance and the state interest is still on the first place instead of the interest of the individuals. In Slovenia the transition process is far more progressed as in BaH and Croatia. The rule of law is respected more by the government than in the other two countries. Slovenia accessed in 2004 the European Union, while the other two countries are trying to do so. Countries in transition are also facing economical and social problems caused by the numerous economic and social reforms.

However, figure 9.1 shows enormous differences between the three countries of this study. These facts confirm the conclusion that Slovenian transition is more advanced as in other two countries. The economical and social problems are largest in BaH.

It is true that the social and economical problems put additional pressure on the effectiveness of the ombudsman. Besides, the position of the ombudsman is secured by strong legal protection of the Institution. This is the case in all three the countries.

The establishment of the ombudsman is stated in their constitutions and at the same time the constitution provides regulations about the independence of the ombudsman. However, the legal position of the Croatian Ombudsman can somewhat improved. While the other two ombudsman institutions have a clear expressed human rights mandate, this is not the case for the Croatian ombudsman. But looking at his jurisdiction on human rights and the international agreements on this subject that are part of his framework, it could be said that he is a human rights ombudsman.

Figure 9.1: Economical Facts

	BaH	Croatia	Slovenia
GDP per capita:	\$ 6,800	\$ 11,600	\$ 21,600
Population below poverty line:	25%	11%	-
Unemployment rate:	45,5%	18,7%	9,8%

Source: <http://www.cia.gov/cia/publications/factbook/geos/bk.html>

Independence of the Institution

Second factor that influences the effectiveness of the ombudsman is the independence of the institution. The ombudsman has the task to scrutinize the government. And by investigating and giving recommendations for improvement the Institution is acting as an accountability mechanism of the government. To be able to perform this function it is utmost important that the independence of the Office is secured by diverse aspects.

The main aspect is the appointment of the Ombudsman. The ideal appointment is by legislative branch instead of appointment by the administrative branch. This point does not give any problems for the three countries compared. Although, in BaH and Slovenia appointment is done by the Parliament after a nomination by respectively the Presidency of Bosnia and Herzegovina and by the President of the Republic, the legislative branch still has the last decision in the appointment. Besides, the term of office is regulated by law. However, there are differences between the countries. While the BaH and Slovenian Ombudsmen are appointed for a term of respectively five and six years, the Croatian Ombudsman is appointed for an obviously longer term of eight years. In an Analyse of the Croatian Ombudsman (Hucker, 2003) was also concluded that the eight years term is excessive compared by commonly found term in other countries. The danger of a long term is that a degree of organisational tiredness can occur.

Financial Resources

Another factor of influence is the freedom in budget and personnel matters. Although in the law of all three countries is stated that this freedom exists and that needed resources will be provided from the state budget, in reality this is not always the case. It seems that the freedom of budget in BaH and Croatia only exists on paper. The budget of the Bosnian ombudsman is provided after a proposal done by the Ombudsman. Nevertheless, looking at the eventually approved budget, that is significantly lower than the proposed budget, it is the question if the Ombudsman has any influence in the budget process. The case of the Croatian Ombudsman is even worse. The Croatian budget is designed without any consultation with the Ombudsman. This course of actions seriously jeopardized the independence of these ombudsmen institutions. They can not be expected to hold governments (i.e. Ministry of Finance) accountable on who their existence strongly depends.

Next to the process of budgeting, there are also major differences in the amount of financial resources available to the ombudsmen. The financial resources available to the Croatian and BaH ombudsmen compare unfavourably with resources of the Slovenian ombudsman. The Slovenian ombudsman receives four times more per 1000 citizens compared to the Bosnian Institution and almost eight times more as the Croatian ombudsman. The lack of resources for these ombudsmen has significant influence on the effectiveness of their work. The Bosnian ombudsman is facing difficulties with paying salaries of the employees. As a consequence of this is the Institution already has lost some of its trained staff. Loosing trained staff means that the Office is loosing the experiences and with that the network that it has built for years and that has remarkable effects on the effectiveness of the Institution. Besides, the Croatian ombudsman is facing the same problems as well as other difficulties. In 2001 the jurisdiction of the Croatian Ombudsman has been extended: armed forces, security services, local and regional governments had been included in the Ombudsman mandate. However, due to the lack of resources the Office was not able to employ new employees and had even to limit the intake of new complains. Moreover, the ombudsmen for BaH and Slovenia are able to maintain a network of regional offices contrary to the Croatian ombudsman. This feature is quite important for ensuring the Office's accessibility to all citizens.

Accessibility

Accessibility of the office is another factor that is important for the effectiveness of the institution. The Croatian Ombudsman believes that the lack of adequate premises is the prime obstacle for effective functioning. In the current location it is for this institution impossible to employ servants, needed to deal with the incoming complaints of the citizens. Besides, the Institution has only one office located in the capital. In combination with lack of resources needed to do fieldwork this means that the ombudsman is not satisfactorily accessible to people living in more remote parts of Croatia. The BaH and Slovenian ombudsmen on the other hand are better accessible to the citizens living outside the capitals of these two countries. The Bosnian ombudsman has next to the office in the capital, two other offices. Besides, the institution regularly organizes visits to cities through the country. On the other hand, the Slovenian ombudsman has only an office in the capital, but the institution introduced field work as a regular form of work.

The accessibility of the institution is not only influenced by the accessible premises but also by the way citizens are made able to submit their complaints. In the first place, submitting a complaint must be free of charge, and this is the case for all three ombudsmen institutions. Nevertheless, there are other differences that influence the accessibility of the complaint procedure. One of them is the introduction of a toll-free line by the BaH and Slovenian Institution. This initiative is threshold reducing for underprivileged citizens that already are more often subject to maladministration, due to the fact that they in general are less familiar with their legal rights.

Besides, internet offers great opportunities for improving the accessibility of the institution. The websites of the institutions can be used as information source and/or of handling in digital complains. Besides, the annual and special reports can be made available to the large public. Moreover, sufficient use of the website by the institution improves the accountability and transparency of the institution which are important conditions for effectiveness of the ombudsman institution (Reif, 2004). In this context, it is important to mention that the website of the Bosnian ombudsman is already more than a year under-construction. The situation in Croatia is to some extent better. However, most documents published on this website are only available in the national language, what makes the website less accessible for foreigners. Slovenian Office reconstructed their website in 2004. The current website is quite clear and useful for different target groups; for potential complainants, professionals or interested parties among the general public, the media, as well as for children and young people. Next to the fact that internet improve the accessibility of the Office, it also improve the knowledge of the institution among the general public.

Knowledge of the Institution by the Public

It is difficult to measure the knowledge of the public, and an account of the exact numbers about this fall outside this research. However, some conclusion can be inferred by looking at the number of unjustified cases received by the ombudsmen. Unfortunately, the information about the Bosnian ombudsman was not available, therefore only the Croatian and the Slovenian Ombudsman will be looked at. In spite of the actions undertaken by the Slovenian Ombudsman to improve the public knowledge, the institution still receives around 12 percent unjustified cases. However, the number of unjustified cases has decreased during the years. Nevertheless, special attention deserves the Croatian ombudsman where approximately 20% of received cases fall outside the mandate of the Ombudsman. Of those cases the majority concerns the work of courts (76% in 2005) which falls outside of the mandate of the Croatian Ombudsman (Annual Report HR, 2005). The fact that the ombudsman does not have the jurisdiction to investigate these complaints expands the problem. It seems that citizens do not have adequate protection against maladministration of the court.

Jurisdiction and Power of the Ombudsman

As shown above for adequate protection of the citizens it is needed that the ombudsman has extended and adequate powers. These jurisdictions should be precisely defined to avoid jurisdiction conflict with other state institutions. Besides, the jurisdiction must include the judiciary.

The ombudsmen institutions compared in this study have extended jurisdiction, including all government bodies and including military administration. Besides, the jurisdiction of the Bosnian and Slovenian ombudsman includes poor functioning of the judicial system. As seen in the above paragraph the Croatian ombudsman does not have the mandate to examine complaints concerning the work of the courts. This means that the Croatian citizens are not adequately protected.

Co-operation with the government

Besides the extended and adequate jurisdiction, it is for the effectiveness of the ombudsman necessary that the government and the politics give their full support to the institution. The work of the ombudsman is seriously hindered if not impossible if the government bodies do not co-operate with the institution. The authorities have to accept that they need the trust of the governed and that co-operating with the ombudsman is one of the ways to ensure that. By allowing the ombudsman to monitor all authorities and hold them accountable for their actions, the government is improving its legitimacy. Besides, ombudsman as an independent institution that directly reports to the parliament is in the position to insure a degree of transparency and accountability.

In the case of the countries compared in this study the government is still not satisfactory co-operating with the ombudsman. The BaH Ombudsman has experienced huge opposition from the side of BaH ministries and the BaH Council of Ministers. In the case of the Croatian Ombudsman the response of the government is tremendously low. The Slovenian Ombudsman experiences a significant improvement in the co-operation with the government in the last ten years of its existence. However, there are still authorities which put more effort into looking for excuses to explain why they are not competent for solving a problem than to actually solve the problem.

9.4 Improvement of the Performance

In the beginning of this study the following central question has been formulated: *How can the performance of the National Ombudsman as promoter of good governance be improved?* In the previous sections the effectiveness of the ombudsman and the factors influencing the effectiveness has been discussed. This section gives an answer to the central question.

9.4.1 Primary Conditions

In order to improve the performance of the ombudsman several conditions have to change. The primary condition for effective work of the ombudsman is the existence of democracy. The state has to have established and functioning mechanisms of a state based on the rule of law. This is of course not always the case, and therefore there must be at least a sufficient level of responsibility from those elected to power. If these conditions are not present in the country, then it is for the ombudsman impossible to do his work. The ombudsman can only contribute to those circumstances where the functioning of law is weak (i.e. transition or new established countries).

In countries in transition the ombudsman has to deal with more 'systematic errors' than the ombudsmen in countries with consolidated democracies (Bizjak, 2000b).

Therefore the ombudsman has to focus more on changing the regulations instead of only intervening in an individual case. Solving an individual case without making any changes to the rules is not effective, because then in the future the same violations are likely. But if the authorities are committed to act according to good governance and are willing to change the way they act, there is an effective role for the ombudsmen in helping them to do so. In such cases the institution can contribute by addressing important problems such as 'modernization of legislation, transformation of public administration, improvement of the practice of state bodies' (Bizjak, 1999c). However, even in those countries where there exists a minimum of ruling of law it is still not guaranteed that the ombudsman can work effectively. If the authorities can ignore the recommendations of the ombudsman without any (electoral) consequences, the contribution of the institution to good governance is diminished.

Besides, for the functioning of the ombudsman it is necessary that appropriate financial resources are provided. The ombudsman institutions must be in the possibility to employ the needed human resources for the effective case handling and more general investigations and recommendations on the violations of the side of the authorities. In addition, it is necessary that the resources are provided for adequate accessibility of the institution. The ombudsman institutions must be in the possibility to employ the needed human resources for the effective case handling and more general investigations and recommendations on the violations of the side of the authorities. In addition, it is necessary that the resources are provided for adequate accessibility of the institution. When this is not the case and the institution is totally dependant on the governments will to provide a budget they believe is necessary, this seriously jeopardize the independence of the institution. The office can not be expected to act as an accountability mechanism for authorities on whom it is fully dependant. This section is also summarized in figure 9.2. It is true of course that the following conclusions are quite subjective. However, it can be worthy to try to link the independent variables with the dependant variable accountability and test it on the cases discussed in this study.

As shown in the figure 9.2 and already discussed in the previous sections the contribution of the ombudsmen to accountability is most effective in the cases where sufficient co-operation exists between the ombudsmen and the government. Besides, co-operation is of course also linked with the other important condition for the effectiveness, namely the existence of democratic governance. In countries with democratic governance the government is more likely to be willing to co-operate with control mechanisms such as the ombudsman. The importance of such mechanisms for the legitimacy of the government is recognised and valued.

Figure 9.2: Independent and dependant variables linked

	BaH	Croatia	Slovenia
Democratic Governance	-	-	+
Independence of the Institution	+/-	+/-	++
Jurisdiction and Powers	++	+	++
Financial Resources	+	--	++
Accessibility	+	--	++
Co-operation	-	--	+
Contribution to Good Governance (Accountability)	-	--	+

9.4.2 Recommendations to the Cases

Looking back at the factors that influence the effectiveness of the ombudsman it can be said that those factors that negatively influence the effectiveness of the institution are often those factors which the ombudsman can not change. However, the ombudsman can try to change these circumstances in order to improve its effectiveness. For the countries discussed in this report this is also the case. Therefore in this chapter some recommendations will be given, that can make a change to the effectiveness of the ombudsmen in these countries. There is one problem that all the three institutions are facing: the lack of co-operation with the governmental institutions. This is a problem that is hard to resolve, if the government authorities are not willing to accept that in order to win trust of the citizens and improve legitimacy it is needed to co-operate with the ombudsman and other control mechanisms. The solution for this problem would be to persuade the authorities to co-operate with the institution. However, as already mentioned this is very hard to accomplish. Therefore it would be wise to make more use of the media and make the non-compliance of the authorities public. The ombudsmen are already following this approach, but they should do it more often and by doing it try to enforce better co-operation. The ombudsman institutions of BaH and Croatia are contrary to the Slovenian institution also facing other problems.

Bosnia and Herzegovina

In BaH the lack of financial resources is the biggest problem. However, this is not only due the fact that the government is not willing to finance an independent ombudsman institution.

One of the problems is that there are in BaH three independent ombudsmen institutions, with each three different ombudsman. Meaning that, in the country there are in total nine Ombudsmen with overlapping mandate. This system is unreasonably expensive in comparison to the size of the country. Besides, because of the overlap in the mandate and the independence of the institutions it is almost impossible to monitor the situation in the whole country and be effective in improving the good governance of all authorities. In order to improve this it is necessary to merge the three institutions to one all-embracing ombudsman institution. Besides, in the last years the institution has lost several trained employees. For example the ICT department had to be shut down because all the personnel have left the institution. Main reason was the irregular and low salaries. This means that due the lack of financial resources, the institutions lost experiences and with that the network that it has built for years. This has remarkable effects on the effectiveness of the Institution. The government has to see the importance of experienced staff and provide the resources for keeping them with the institution.

The institution must realize the importance of an ICT department and do everything in its power to re-open this department. Not only does the institution miss important data about received cases, effectiveness etc., at the same time it is becoming a less transparent and accessible organization. Institution's website is already more than a year under-construction.

Republic of Croatia

The Croatian ombudsman has also problems with the financial resources. Due to the lack of adequate resources the ombudsman is facing serious problems with regard to both accessibility as well as effectiveness. With the current resources the institution is not able to reach the public outside the capital. The government of Republic of Croatia should review the budget of the institution and increase it to an adequate level. There must be a component in the budget that foresees the improvement of the accessibility of the institution by field work or by regional premises through the country. Besides, the government has to be prepared to determine the budget at least in co-operation with the Institution, in order to safeguard the independence of the institution. Besides, in the past the jurisdiction of the Croatian Ombudsman has been extended, but the institutions was not able to employ new personnel and had even to limit the intake of new complains.

Another point of improvement is the strengthening of the human rights mandate of the ombudsman in Croatia. In the other two countries discussed in this study this mandate is explicitly stated both in the constitution as well as in the Ombudsman Act. Because the Croatian ombudsman is already functioning as a human rights ombudsman this should also be regulated by law. At the same time the name of the ombudsman should be changed in 'Human Rights Ombudsman for Republic of Croatia'.

Besides, looking at the complaints the ombudsman receives it is also necessary to extend the jurisdiction and include the power to investigate the work of the courts. The fact that the ombudsman does not have the jurisdiction to investigate these complaints; it seems that citizens do not have adequate protection against maladministration of the court.

9.5.2 Research Relevance to Other Countries

In this study three countries on the Balkan have been compared. The outcomes of the research are primarily useful for the ombudsman institutions in these countries. However, looking at the circumstances in other countries in Central- and Eastern Europe it can be concluded that the outcomes can also be relevant to those countries. In 2004 the Enlargement of the EU took place with 10 countries. Most of them were since early 1990s transition democracies and have been dealing with the same problems as countries in this study have dealt with or are still dealing with. At the same time, as already mentioned in chapter 3, these countries have established ombudsman institutions in late 1990s. This means that these Institutions are quite new and it is likely to expect that these institutions are not perfectly functioning yet. Therefore, this research can be helpful to these institutions to look at the factors that influence the effectiveness and focus on changing them in order to improve their performance.

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ANNEX I: SURVEY OF THE OMBUDSMAN INSTITUTIONS

	Establishment	Budget in €	Budget € per 1,000 citizens	Office term	Cases per 10,000 inhabitants
Bosnia and Herzegovina	1996	849,137	189	5 years	4
Bulgaria	<i>There is no ombudsman institution yet.</i>				
Croatia	1992	457,235	104	8 years	5
Czech Republic	1999	3,175,360	3,175	6 years	4 (in total 4,388 complaints)
Hungary	1995	Not available	Not available		7 (in total 4,992 complaints)
Macedonia	1997	Not available	Not available	8 years	9 (in total 1959 complaints)
Poland	<i>The website is only available in the Polish language.</i>				
Romania		Not available	Not available	5 years	2 (in total 4621 complaints)
Serbia and Montenegro	<i>There is no ombudsman institution yet.</i>				
Slovakia	2002	Not available	Not available	5 years	4 (4922 complaints during 2½ year = around 1969 per year)
Slovenia	1995	1,696,364	848	6 years	13

ANNEX II: EXACT BUDGET AND COMPLAINTS DATA

Budget in €

	BaH	Croatia	Slovenia
1996	0	0	1,091,385
1997	650,391	263,868	959,033
1998	1,078,287	286,839	883,880
1999	953,077	413,034	928,831
2000	1,184,972	441,853	899,745
2001	1,437,112	410,206	1,146,701
2002	909,095	471,934	1,258,671
2003	914,965	583,076	1,333,423
2004	849,137	457,235	1,696,364
2005	844,647	487,437	1,744,563

Number of Cases

	BaH	Croatia	Slovenia
1996	-	-	-
1997	534	1760	2887
1998	2118	2029	3448
1999	3758	1623	3411
2000	5717	1873	3059
2001	1688	1751	3304
2002	1223	1558	2870
2003	1880	2389	2754
2004	1652	2011	2631
2005	-	1653	-