MAPPING STUDY

# OMBUDS INSTITUTIONS FOR THE ARMED FORCES IN THE OSCE REGION

Office for Democratic Institutions and Human Rights
osce ODIHR

DCAF
a centre for security, development and the rule of law

# Mapping Study

# Ombuds Institutions for the Armed Forces in the OSCE Region

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# ABBREVIATIONS

The following abbreviations are provided for reference purposes.

| | |
|---|---|
| DCAF | Geneva Centre for the Democratic Control of Armed Forces |
| ICOAF | International Conference on Ombuds Institutions for the Armed Forces |
| IHL | International Humanitarian Law |
| IHRL | International Human Rights Law |
| NHRI | National Human Rights Institution |
| ODIHR | Office for Democratic Institutions and Human Rights |
| OSCE | Organization for Security and Co-operation in Europe |
| UN | United Nations |

# Foreword

Ombuds institutions for the armed forces play a central role in the security sector, overseeing the armed forces and ensuring that they operate in an accountable and transparent manner. They help prevent human rights abuses and malpractice within and by the armed forces, thus contributing to good governance more broadly. In the exercise of their functions, ombuds institutions address both individual complaints and systemic issues that touch on legislative and administrative approaches to human rights and fundamental freedoms. Furthermore, their recommendations offer an outlook for overcoming challenges to and within the armed forces.

Ombuds institutions are responsible for strengthening institutional integrity, an important feature of democracy. To fulfil their mandates and objectives they must be established as independent and impartial bodies, capable of guaranteeing the transparency, accountability and effectiveness of an administration, as well as its responsiveness to pressing human rights concerns. To this end, ombuds institutions require necessary and sufficient resources and powers to carry out their mandate. This includes both the technical and legal framework necessary to improve skills and systems, as well as sufficient political powers to enhance their capacity to fulfil their mandates, including in receiving and investigating complaints related to the armed forces. To this end, this study, which is the result of a joint project between the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), has mapped prominent capacity-development needs of ombuds institutions in the OSCE region, and offers good practices through which these needs can be addressed.

The OSCE Code of Conduct on Politico-Military Aspects of Security requires OSCE participating States to provide appropriate legal and administrative procedures to protect the rights of armed forces personnel, including through ombuds institutions. In 2008, the OSCE/ODIHR and DCAF jointly developed the *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, which was inspired

by the Code of Conduct. This mapping study builds and expands on the work of the OSCE/ODIHR in assisting participating States to meet their human rights commitments in the security sector.

DCAF, through its Ombuds Institutions project and the International Conference of Ombuds Institutions for the Armed Forces (ICOAF), has strived to build a collaborative platform through which discussion and exchange among ombuds institutions can flourish. The ICOAF has taken place annually since. The findings of this study are expected to contribute to the body of discussions stemming from both the Ombuds Institution project and ICOAF, while also having a much broader impact.

This volume represents an attempt to bring together the experiences and good practice of ombuds institutions from across the OSCE region; it seeks to shed light on the work of many ombuds institutions for the armed forces by drawing on the feedback provided by the institutions themselves. We hope that this study will prove valuable to both established and newly formed institutions alike, as well as to actors within and outside the armed forces, and that it will inspire further discussion on issues relevant to the work of ombuds institutions.

Therefore, we are pleased to be able to present this study, which forms part of an effort to conceptualize and examine issues and challenges related to oversight of the armed forces and the promotion of human rights. It is our hope that recognition of the important role and work of ombuds institutions will be strengthened by this study, and that our offices may continue to contribute to the good governance of the security sector.

Michael Georg Link

Director, OSCE/ODIHR

Ambassador Theodor H. Winkler,

Director, DCAF

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Finally, the authors would like to thank Paulyn Marrinan Quinn, who reviewed the 2013 Capacity Needs Development survey that paved the way for this study. They would also like to extend thanks to DCAF colleagues Benjamin Buckland, Armelle Vessier and Andreas Sampson for their valuable comments on drafts of this study. Their knowledge and input greatly improved its substance and focus.

# Executive summary

This volume has been developed by DCAF and OSCE/ODIHR as part of an ongoing research project on ombuds institutions for the armed forces and within the framework of the 2014 Swiss Chairmanship of the OSCE. Through this joint effort, both organizations seek to further their mutual goals of strengthening human rights, democracy and the rule of law.

ODIHR is the main OSCE body responsible for monitoring the implementation of the OSCE human dimension commitments, and for promoting and strengthening human rights, the rule-of-law and democratic institutions, including ombuds institutions. DCAF has a long-standing programme on ombuds institutions, including in its role as a co-convenor of the ICOAF and through the research and policy guidance it provides. The programme has highlighted the essential role of ombuds institutions in protecting and promoting human rights and preventing maladministration through a number of means.

The mapping study has been developed with the aim of aiding states that seek to establish ombuds institutions by identifying the best format for doing so. As such, the study presents a framework of existing ombuds institutions in the OSCE region, as well as good practices from across OSCE participating States. The study is also intended to support existing ombuds institutions, as well as scholars, policy-makers and armed forces commands, by offering a reference instrument on the current state of ombuds institutions in the OSCE region. Finally, this publication seeks to draw attention to, generate academic interest in and raise awareness of issues currently facing ombuds institutions.

This joint study examines the different models, functions and approaches of ombuds institutions for the armed forces in the OSCE region. Ombuds institutions for the armed forces exist to address concerns and complaints relative to the armed forces and to contribute to the exercise of independent, impartial and effective oversight of the armed forces. As such, ombuds institutions can play an essential role in protecting and promoting human rights, as well as in preventing maladministration in the armed forces.

Central to achieving these aims is the exercise of good practices drawn from international standards that all recognize the need for ombuds institutions to carry out their functions in an accountable, independent, transparent, effective and responsive manner.

With the above in mind, a survey of the capacity-development needs of ombuds institutions for the armed forces in the OSCE region was carried out by DCAF and ODIHR, resulting in the present mapping study. Guided by the structure of the initial survey, this document analyses the responses to the survey provided by ombuds institutions, and identifies capacity-development needs and good practices. Since ombuds institutions in the OSCE region exist in various stages of development, identifying and recognizing their many different needs constitutes a first and critical step towards capacity development. Therefore, the study addresses central aspects of the role and functioning of an ombuds institution for the armed forces. It presents the formal, practical and capacity-development aspects of ombuds institutions, including more detailed information on these components (see Figure 1).

Figure 1. Mapping study sections and subsections

| Sections | Models, jurisdictions and in stitutional independance | Functions of ombuds institutions | Capacity development, training and cooperation |
|---|---|---|---|
| Subsections | Models<br>Establishment<br>Legal basis<br>Aspects of institutional independance | Complaints-handling<br>Investigations<br>Reporting<br>Recommendations | Capacity needs and challenges<br>Training<br>International and domestic cooperation |

Chapter 2 of the study begins by examining the existing institutional models of ombuds institutions and their role in promoting and strengthening democratic governance in line with international standards and instruments for human rights institutions. These standards include, for example, the Paris Principles, which hold that a national human rights institution (NHRI) should be independent, adequately funded, inclusive and transparent. In addition, the chapter further explores the factors that lead to the establishment of ombuds institutions in different countries. In mapping the type and prevalence of ombuds institutions in the OSCE region, two characteristics relative to good governance are also assessed, namely the *institutional independence* of ombuds institutions from state organs, and their *impartiality* in carrying out investigations.

The primary functions of ombuds institutions are the focus of Chapter 3. Complaints-handling and investigations are ranked as the most important functions carried out by ombuds institutions, followed by reporting and the issuing of recommendations. The study assesses systemic trends and individual issues, based on responses to the survey made by civilians, members of the armed forces and administrative or legislative bodies. In particular, respondents noted considerable differences in the time limits and submission procedures applied to complaints mechanisms, including conditions concerning from and

about whom complaints can be received, the authorities to which ombuds institutions report to and the acceptance rate of recommendations made by ombuds institutions. By employing the criteria of transparency, responsiveness and effectiveness, the mapping study identifies good practices in the functioning of ombuds institutions.

On the subject of capacity development, the study looks at training on relevant issues provided by ombuds institutions and their role in furthering international co-operation in the OSCE region. This section considers the wider issue of capacity development by also drawing on findings and analysis provided in previous chapters. As such, this study takes a broad view of capacity development, taking into account both the resources and powers needed to strengthen capacity. The following main capacity-development needs are identified:

a) Establishing, developing or modifying the legal framework[1] of ombuds institutions in order to realize their institutional purpose;
b) Strengthening the investigative and complaints-handling functions of ombuds institutions to enhance their efficiency and effectiveness in preventing and addressing human rights abuses and maladministration;
c) Encouraging the role of ombuds institutions in reporting and developing recommendation functions, with the aim of improving their accountability, responsiveness and transparency, as well as that of the bodies they oversee; and
d) Bolstering efforts to improve ombuds institutions through the exchange of knowledge, co-operation and good practices.

Among the many obstacles reported, *insufficient resources (human or financial), limited mandates and constraints to complaints-handling mechanisms* were the most prevalent. Throughout the study, insights are offered on how to overcome these challenges and how to support the work of ombuds institutions in the OSCE region.

# 1

# Introduction

The main objective of this mapping study has been to identify good practices with which to assist ombuds institutions in the OSCE region to better develop their capacity, while enhancing understanding of the role, the scope of activities and the institutional impact of ombuds institutions. In doing so, the study has managed to determine and reassert good practices for independent complaints mechanisms for the armed forces.

The study was conducted through a survey sent to a variety of independent institutions mandated to receive and investigate complaints related to the armed forces. These include general ombuds institutions, ombuds institutions with exclusive jurisdiction and ombuds institutions within the armed forces. The survey was designed to capture valuable information on the types of ombuds institutions for the armed forces that are active within OSCE participating States that, once processed, led to the production of this study.

The structure of the study resembles that of the survey, in that it covers the models, mandate and legal basis of the institutions, their complaints-handling functions, their reporting and recommendation functions and, lastly, the issues of capacity development, training and international co-operation. It is the aim of DCAF and ODIHR that this study will provide ombuds institutions, as well as policymakers, members of the armed forces and civil society, with guidance and tools to meet capacity-development needs in the oversight of armed forces. Additionally, the study can prove useful to scholars, policymakers and members of the armed forces that have a vested interest in democratic institutions.

## 1.1 DEFINITIONS

### Ombuds institutions for the armed forces

This study uses the term "ombuds institutions" to denote independent institutions with explicit responsibility for human rights promotion and protection and/or for matters relating to maladministration of the armed forces. According to international standards such as the Paris Principles[2] (see Box 1), two important characteristics of an ombuds institution are its *independence* from state organs, including from those which it is mandated to oversee, and its *impartiality* in carrying out its investigations. Consequently, ombuds institutions are particularly important in ensuring the accountability of public authorities outside the adversarial environment of the courts.[3] As such, ombuds institutions play a crucial role in ensuring that the armed forces operate with integrity and in a manner that is both accountable and transparent.

This study focuses on those ombuds institutions that are mandated to receive complaints about the armed forces. Generally speaking, the term "armed forces" encompasses all statutory bodies with a legal capacity to use force, including the military, the police and the gendarmerie, among others. For the purpose of this study, the term "armed forces" is used in reference to all bodies that fall under the responsibility of defence ministries, including the military, namely, the army, the navy, the air force and special forces. Throughout this study, the concept of ombuds institution for the armed forces is used to refer to the three categories or types of institutions that are analysed in this study. These are:

- General ombuds institutions, which are mandated to receive complaints about all, or nearly all, state bodies. They are referred to as "general" as their mandate relates to all public services and branches of government, including the armed forces.
- Ombuds institutions with exclusive jurisdiction, which are independent and have sole jurisdiction over the armed forces. Such ombuds institutions are civilian and independent from the military chain-of-command.
- Ombuds institutions within the armed forces, which function within the military. Such institutions are not completely independent; most often, they report to the minister of defence and receive their funding from the defence budget.

As a clarification, it should be noted that the terms "ombuds institution" and "ombudsperson" where chosen over the term "ombudsman" as the more inclusive and gender-neutral expressions.

### Capacity development and ombuds institutions

Capacity development, in its most comprehensive definition, refers to both the technical and legal aspects of improving the skills and systems of an ombuds institution, as well as to the political process of strengthening the capacity of an ombuds institution to fulfil its mandate.[4] As such, capacity development focuses on ensuring that ombuds institutions meet the specific needs of all stakeholders, including people, the military and other branches of government. The technical and legal dimension

relates to elements such as the legal framework (including laws and the constitution), skills, expertise, techniques, rules, procedures and management of an ombuds institution. The political dimension of capacity development, on the other hand, relates to the interests, resistance or willingness of other actors (for example, the military) to co-operate and engage with ombuds institutions.

The aim of capacity development in the context of ombuds institutions is to improve their effectiveness and efficiency. This can best be achieved by ensuring that they operate in an enabling environment, including by providing them with the resources or powers necessary to fulfil their mandates and protect human rights. For example, according to the findings[5] of a survey conducted in 2009, representatives of ombuds institutions considered that the effectiveness and efficiency of the institution depended on having a strong legal framework, operational and institutional independence, support from parliament and ministers, as well as adequate resources. It follows, therefore, that capacity development should target and improve these factors and, in doing so, should be guided by the principles of local ownership, impartiality, gender sensitivity and accountability to beneficiaries. It should also be acknowledged that capacity development is a long-term process.[6]

In this context, research findings[7] suggest that sustainable improvements to the work of ombuds institutions can be made when capacity development efforts aim to:

- foster internal institutional learning and development;
- help ombuds institutions adapt to changing environments and rising challenges;
- enhance the ability of ombuds institutions to handle and investigate complaints, conduct thematic investigations and manage outreach activities;
- increase the expertise and specialization of staff; and
- improve the credibility of ombuds institutions.

Capacity development is not only important for ombuds institutions. First, it is important for those affected by human rights violations or maladministration that complaints and systemic issues are addressed in an efficient and effective manner. Second, efficient and effective ombuds institutions help the armed forces to more effectively identify and deal with problems, thus contributing to improved administration. Third, capacity development helps ombuds institutions to perform their role in ensuring the effective and accountable governance of the armed forces and of the security sector more generally.

As a process, capacity building requires on-going and persistent efforts by all ombuds institutions. For newly established institutions, both individual and institutional capacity often has to be built from scratch. For well-established institutions, a constant focus on capacity development helps them maintain, improve and adapt their capacities in the face of changing environments and needs.

## 1.2 METHODOLOGY AND STRUCTURE OF THE PUBLICATION

The mapping study consists of two phases, the first one of involved a detailed survey of numerous ombuds institutions in OSCE participating States. The survey, which can be found on the ICOAF website, was designed to gather information on the functioning and powers of these institutions, as well as on their capacity building needs.[8] The second phase will build on this study and will lead towards the production and publication of an in-depth compilation of case studies from selected OSCE participating States.

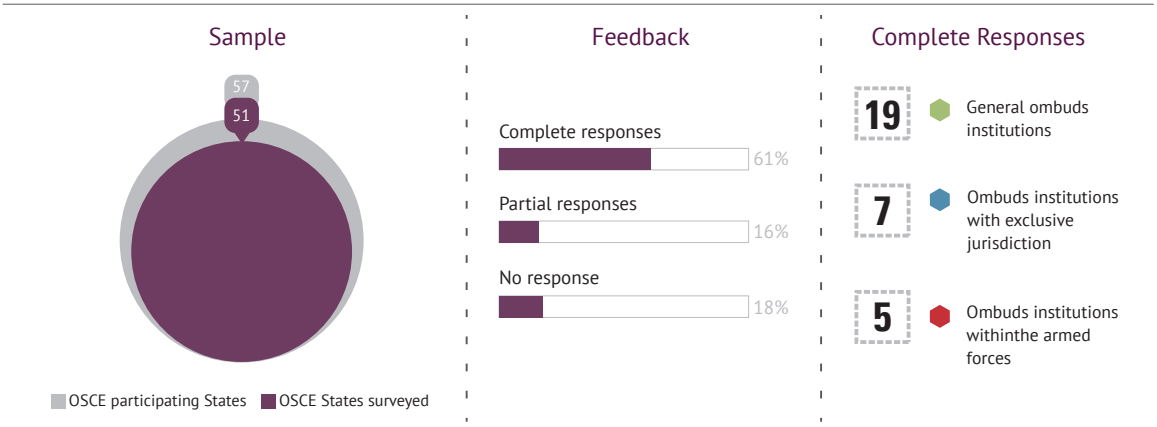
This study is divided into four sections, as follows:

- Models, jurisdiction and independence of ombuds institutions, which covers matters relating to the establishment of the ombuds institution, its legal basis, mandate and powers, as well as its relationship with other relevant bodies under its remit;
- Functions of the ombuds institution, focusing on complaints-handling and investigations;
- Functions of the ombuds institution, focusing on its reporting and recommendation functions; and
- A section on capacity development, training and co-operation, which addresses current challenges and existing measures to improve the functioning of the institution, including co-operative practices.

The survey was first sent to 51 OSCE participating States, out of a total of 57, through diplomatic channels, relying on foreign ministries to direct it to the relevant institutions mandated to deal with the armed forces. The survey was not sent to the six OSCE participating States that do not have armed forces.[9]

Both partial and complete responses were received by the project partners and were then collated, categorized and analysed according to the type of ombuds institution. A total of 31 complete survey responses were received from ombuds institutions in OSCE participating States. These were categorized according to the legal basis and mandate of the ombuds institution in question as general ombuds

Figure 2. Feedback from the OSCE/ODIHR-DCAF 2013 survey



institutions (19 responses),[10] ombuds institutions with exclusive jurisdiction over the armed forces (seven responses)[11] or ombuds institutions within the armed forces (five responses).[12] Eight ombuds institutions[13] sent partial responses, four of which indicated that they do not have a mandate to receive and investigate complaints from the armed forces.[14] These responses were, thus, not considered for the study. In addition, responses from nine other countries in the OSCE region[15] were not included as did not provide sufficient detail, while some survey responses were submitted too late after the deadline to

Table 1. List of respondents to the OSCE/ODIHR-DCAF 2013 survey, by country

| | |
|---|---|
| Albania | Albanian People's Advocate |
| Austria | Austrian Parliamentary Commission for the Federal Armed Forces |
| Belgium | Service of the Complaint Manager of the Belgium Armed Forces |
| Bosnia and Herzegovina | Parliamentary Military Commissioner of Bosnia and Herzegovina |
| Canada | National Defence and Canadian Forces Ombudsman |
| Czech Republic | Inspectorate of Ministry of Defence |
| Estonia | Office of the Chancellor of Justice in Estonia |
| Finland | The Parliamentary Ombudsman of Finland |
| Georgia | Office of the Public Defender (PDO) of Georgia |
| Germany | Parliamentary Commissioner for the Armed Forces |
| Hungary | Office of the Commissioner for Fundamental Rights |
| Ireland | Ombudsman for the Defence Forces |
| Kazakhstan | National Center for Human Rights |
| Kyrgyzstan | Office of the Ombudsman (Akyikatchy) of Kyrgyz Republic |
| Latvia | Ombudsman's Office of the Republic of Latvia |
| Lithuania | Inspector General, Ministry of National Defence |
| Malta | Office of the Ombudsman in Malta |
| Montenegro | Protector of Human Rights and Freedoms of Montenegro |
| Netherlands | Inspector General of the Netherlands Armed Forces |
| Norway | Parliamentary Commissioner for the Norwegian Armed Forces |
| Poland | The Office of the Human Rights Defender |
| Portugal | Portuguese Ombudsman |
| Romania | People's Advocate (Romanian Ombudsman) |
| Serbia | The Protector of Citizens of the Republic of Serbia |
| Slovakia | Office of Control of the Ministry of Defence of Slovak Army Forces |
| Slovenia | Human Rights Ombudsman of Slovenia |
| Sweden | The Swedish Parliamentary Ombudsman |
| Tajikistan | Human Rights Commissioner's Office of the Republic of Tajikistan |
| Turkey | The Ombudsman Institution of the Republic of Turkey |
| Ukraine | Office of the Ukrainian Parliament Commissioner for Human Rights |
| United Kingdom | Service Complaints Commissioner for the Armed Forces |

Ombuds institutions with exclusive jurisdiction

General ombuds institutions

Ombuds institutions within the armed forces

Table organized alphabetically by country, with name of corresponding instituions N=31

be included in the report. It is recommended that further research on those institutions that were not included in this mapping study be conducted.

It is important to remember that this study only covers those OSCE participating States that have armed forces, and their corresponding ombuds institutions. In some states, there are multiple institutions mandated to receive armed forces complaints. Although the survey did not specify any limitations on the number of responses received from each participating State, only one survey response was received per country.

International standards applicable to ombuds institutions provided the reference framework for analysing the responses (see Box 1). This was further complemented by desk research, including information gathered from ombuds institutions' web sites and annual reports, as well as from existing and available legislation regulating the work of ombuds institutions. The tables, graphs and diagrams presented herein have been developed based on all the information gathered as part of this study.

### Box 1. International standards relevant to ombuds institutions

**1993** The UN Principles relating to the status of National Institutions (the Paris Principles), detail standards for national human rights institutions (NHRIs) on composition, funding, functions and methods of operations, among others.

**1994** The OSCE Code of Conduct (CoC) on Politico-Military Aspects of Security requires states to reflect in their laws the rights and duties of the armed forces, as well as to provide legal and administrative procedures to protect these rights.

**1997** The Council of Europe Committee of Ministers, Recommendation No. R (97) 14, encourages member states to establish an ombudsperson or/and independent national institutions for the promotion and protection of human rights.

**2007** The International Ombudsman Association Standards of Practice cover good practices on independence, neutrality and confidentiality, among others.

# 2

# Models, jurisdiction and independence of ombuds institutions in the OSCE region

This chapter serves as an introduction to the different types of ombuds institutions in the OSCE region based on the responses to the survey. Section 2.1 provides an overview of ombuds institutions as models for democratic governance and explains their categorization. In Section 2.2, the manner and date of the establishment of these institutions is explored. Finally, features of institutional independence of the ombuds institution are reviewed in Section 2.3, including the selection and mandate of the ombudsperson, as well as the issue of budget autonomy.

## 2.1 OMBUDS INSTITUTIONS IN THE OSCE REGION

As mentioned in the introduction, the term "ombuds institution" is often used freely to refer to a variety of institutional bodies that deal with complaints, perform mediation and defend human rights. For this reason, the different kinds of institutions that exist in the OSCE region are divided into one of three categories based on certain criteria. These criteria include: whether ombuds institutions are part of a chain of command or are set up independently; whether they deal with complaints about the armed forces on a general or exclusive basis; and whether they are staffed by civilian or military personnel. These criteria have resulted in three categories being applied: general ombuds institutions, ombuds institutions with exclusive jurisdiction and ombuds institutions within the armed forces. As outlined in the introduction, the majority of respondents belong to the general ombuds institutions category (see Figure 2).

Figure 3. OSCE participating States that provided complete responses to the survey, by type of ombuds institution

| General Ombuds Institutions | Ombuds Institutions with Exclusive Jurisdiction | Ombuds Institutions within the Armed Forces |
|---|---|---|
| Albania | Austria | Belgium |
| Estonia | Bosnia and Herzegovina | Czech Republic |
| Finland | Canada | Lithuania |
| Georgia | Germany | Netherlands |
| Hungary | Ireland | Slovakia |
| Kyrgyzstan | Norway | |
| Malta | United Kingdom | |
| Montenegro | | |
| Portugal | | |
| Poland | | |
| Romania | | |
| Serbia | | |
| Slovenia | | |
| Sweden | | |
| Tajikistan | | |
| Turkey | | |
| Ukraine | | N=31 |

Institutions in the same category have some shared features, on the basis of which relevant conclusions and recommended good practices can be made. This is not to say that the conclusions presented in this study apply only to ombuds institutions in the OSCE participating States. On the contrary, the good practices and recommendations identified herein and presented in the final subsection of each chapter can be applied to countries and ombuds institutions both within and outside the OSCE region.

Ombuds institutions for the armed forces can and do play a role in strengthening democratic governance in the OSCE region, in line with OSCE commitments and international instruments.[16] For example, UN Commission on Human Rights resolution 2000/64 on the role of good governance in the promotion of human rights pinpoints five attributes of good governance, three of which relate to the work of ombuds institutions, namely, transparency, responsibility and responsiveness. In the past decades, ombuds institutions for the armed forces have grown in number in the OSCE region with the aim of promoting fundamental freedoms and protecting human rights. While most states share a basic vision for ombuds institutions for the armed forces, differences in their mandate, powers and capacity are often a product of singular historical and domestic circumstances.

## 2.2 THE ESTABLISHMENT OF OMBUDS INSTITUTIONS IN THE OSCE REGION

According to the survey, there are two main reasons for the establishment of ombuds institutions in the OSCE region. The first corresponds to the process of democratic transition, part of which has led to the creation of general ombuds institutions in a number of OSCE participating States. The second most common reason behind their establishment arose from the initiative to strengthen civilian control of the armed forces, which led to the creation of many ombuds institutions with exclusive jurisdiction of the armed forces. Other respondents in this category described the creation of ombuds institution as being motivated by specific events of political or historical relevance. These revolved around the need to protect the rights of armed forces personnel, as well as the creation or improvement of quality-control mechanisms to oversee procedures and practices within the armed forces on account of abuses, misconduct or conflict (see Box 2).

### Box 2. The establishment of ombuds institutions: country examples

**Austria.** The Austrian Parliamentary Commission for the Federal Armed Forces was founded in 1955 as a monitoring body of the National Council for the Austrian Armed Forces.

**Germany.** The Parliamentary Commission for the Armed Forces was established in 1956 on account of the rearmament of the German Armed Forces after World War II.

**The Czech Republic.** The Inspectorate of the Ministry of Defence was created in 1997 in response to the professionalization of the army and the decision to end conscription.

Over the past 200 years, various historical and political circumstances have led to the establishment of different types of ombuds institutions. A number of ombuds institutions were set up in the aftermath of World War II, for example, as well as following the end of the Cold War. Following the collapse of the Soviet Union, post-communist countries in Europe began the process of democratic transition, which included the creation of ombuds institutions as part of a wider movement to build democratic institutions in these countries. Similarly, according to the feedback provided by respondents, the experience of World War II prompted the establishment of parliamentary commissions in Austria, Germany and Norway, in order to provide effective control of the armed forces. The establishment of ombuds institutions with exclusive jurisdiction was often motivated by even more specific events. For example, the Canadian Ombudsman for the Department of National Defence and the Canadian Forces was created in 1998, following allegations of serious misconduct by Canadian soldiers deployed to the United Nations peacekeeping operation in Somalia (1992-1993). This led to a government-sponsored independent Commission of Inquiry, which recommended the establishment of an ombuds institution for the armed Forces. Similarly, the United Kingdom's Office of the Service Complaints Commissioner was established in 2008 on the recommendation of two parliamentary reports that investigated the death of armed forces personnel in army barracks. In countries such as Belgium and Slovakia, ombuds institutions within the armed forces were, for the most part, created due to changes to the armed forces introduced between 1993 and 2010.[17]

Figure 4. Timeline for the creation of ombuds institutions for the armed forces in the OSCE region

| YEAR | GENERAL OMBUDS INSTITUTIONS | OMBUDS INSTITUTIONS WITH EXCLUSIVE JURISDICTION | OMBUDS INSTITUTIONS WITHIN THE ARMED FORCES |
|---|---|---|---|
| 1809 | SWEDEN | | |
| | | | |
| 1920 | FINLAND | | |
| | | | |
| 1940 | | | |
| 1945 | | | NETHERLANDS |
| 1952 | | NORWAY | |
| 1955 | DENMARK | AUSTRIA | |
| 1956 | | GERMANY | |
| 1960 | | | |
| 1965 | | | |
| 1970 | | | |
| 1975 | PORTUGAL | | |
| 1980 | | | |
| 1981 | SPAIN | | |
| 1985 | | | |
| 1987 | POLAND | | |
| 1990 | | | |
| 1992 | ESTONIA | | |
| 1993 | | | SLOVAKIA |
| 1994 | SLOVENIA | | LITHUANIA |
| 1995 | MALTA, HUNGARY | | |
| 1997 | GEORGIA, ROMANIA | | CZECH REPUBLIC |
| 1998 | UKRAINE, ALBANIA | CANADA | |
| 2001 | | | BELGIUM |
| 2002 | KYRGYZSTAN, KAZAKHSTAN | | |
| 2003 | MONTENEGRO | | |
| 2004 | ARMENIA | | |
| 2005 | SERBIA | IRELAND | |
| 2007 | LATVIA | | |
| 2008 | | UK | |
| 2009 | TAJIKISTAN | BOSNIA AND HERZEGOVINA | |
| 2013 | TURKEY | | |

On the whole, proposals to establish general ombuds institutions have been initiated by parliaments and, in the case of the countries surveyed, the establishment of general ombuds institutions has received the broad support of civil society.[18] Ombuds institutions with exclusive jurisdiction over the armed forces also mentioned receiving the support of parliament in their creation. In the case of ombuds institutions within the armed forces, the most prominent supporters for their creation have been military staff and command.

In terms of international support, the survey showed that international organizations supported the creation of general ombuds institutions[19] in post-communist countries in Europe during the democratic transition period in the late 1980s and 1990s, when a great number of the general ombuds institutions were established.[20] In the case of 58 per cent of general ombuds institutions surveyed, the support of international organizations was a significant factor in their creation.[21] Exceptions include Sweden, Finland and Portugal, whose institutions were established before this period, as well as Turkey, which only established its ombuds institution in 2013.

## 2.3 INSTITUTIONAL INDEPENDENCE

The institutional independence of an ombuds institution refers to the legal, organizational and budgetary measures that protect it against interference in its work. The need for institutional independence was acknowledged in a study conducted in 2009, in which ombuds institutions expressed the opinion that institutional independence strongly contributes to their effectiveness.[22]

The survey covered two main aspects of the institutional independence of ombuds institutions. The first aspect concerns the independence of the institution's legal basis and the autonomy of its budget. The second relates to the organizational aspects of institutional independence, namely, the mandate of the institution and the management of its human resources, including whether it has the authority to appoint and remove staff, as well as the civilian or military composition of personnel. This information is of crucial importance when assessing an ombuds institution's capacity to act and operate independently. These features of institutional independence are explained in further detail below and represented in Table 2a.

### 2.3.1 The legal basis of an ombuds institution

Institutional independence is an aspect of effective functioning that, as made apparent from responses to the survey, is most often guaranteed in the legal basis of ombuds institutions. However, the degree to which an ombuds institution is independent from the government and state bodies that it is mandated to oversee varies. Most often, the parliament, government or ministry of defence has authority over the appointment and funding of an ombudsperson or over the institution's budget. Legal guarantees can, however, enable and enhance the institutional independence of an ombuds institution, and, with it, its effective functioning.

Survey results showed that the role and independence of approximately 84 per cent of the general ombuds institutions assessed,[23] as well as of one ombuds institution with exclusive jurisdiction,[24] are guaranteed by a constitutional provision. Similarly, most of the ombuds institutions within the armed forces[25] have a legal basis in an executive or royal decree. In addition to such provisions, most countries also have a specific law on the general ombuds institution. This information is illustrated in Table 2a, where different types of legislative instruments are detailed according to the relevant ombuds institution.

### 2.3.2 Funding and budget autonomy

Budgetary autonomy means that an ombuds institution can manage its funds independently without the involvement of other authorities or state bodies. The independence and impartiality of their work can be significantly compromised if their funding is heavily dependent on the institutions whose activities they are tasked to oversee. According to answers provided in the survey, insufficient funding currently poses one of the biggest challenges to the work of ombuds institutions. As such, the matter of budgetary autonomy is particularly relevant to the capacity of ombuds institutions to receive and investigate complaints independently and without interference from the executive or the armed forces. In particular, ombuds institutions should not be faced with budget cuts as a direct result of the recommendations they make to the institutions they oversee.

The funding of general ombuds institutions comes, without exception, from the state budget, and final budgetary allocations are made by the parliament. In contrast, in the case of ombuds institutions with exclusive jurisdiction, budget decisions are most often made by the ministry of defence.[26] In Germany and Bosnia and Herzegovina, parliament is responsible for passing decisions on the budget of the ombuds institutions. Finally, budget decisions for all ombuds institutions within the armed forces are made by the ministry or minister of defence.

In the OSCE region, the planning and estimation of, and final decision on, the budget of ombuds institutions is a fairly standardized process, particularly in the case of general ombuds institutions. In this case, the ombudsperson, sometimes in co-operation with government officials, provides an estimate of the budget, and the final budget decision is made by parliament. For ombuds institutions with exclusive mandates, budget decisions are made by the defence minister or parliament after an estimate has been submitted by the ombuds institution. For ombuds institutions within the armed forces, the minister of defence is often responsible for either drawing up an estimate or for making the final decision on the budget, or, as in most cases, for both. Seventy-five per cent of the general ombuds institutions that responded to the survey saw an increase in their budgets in 2012.[27] In contrast, half of the ombuds institutions with an exclusive mandate, and three of those functioning within the armed forces, suffered from a decrease in the budget in 2012.

### 2.3.3 Organizational aspects of institutional independence

The composition of personnel in general ombuds institutions and in ombuds institutions with exclusive jurisdiction is usually stipulated in legislation, although this is not the case for ombuds institutions within the armed forces (except in the case of the Netherlands, where the ombudsperson has a three-year tenure) and for the ombuds institution in the United Kingdom. Regardless of their type, a common feature of most ombuds institutions is that the ombudsperson is both appointed and removed from office either by parliament[28] or by the ministry of defence.[29] Exceptions include Canada and the United Kingdom, where the minister of defence plays a more decisive role in the matter, as well as Ireland, where the Commissioner is appointed by the president, on the recommendation of the government.

#### Box 3. Appointment of an ombudsperson: country examples

**Norway.** The Storting (or Parliament) Election Committee selects the candidate and proposes her or his candidature to the parliament.

**Ireland**. An open public competition is held for the post, after which a recommendation from the government to the president is made.

**Hungary.** The president proposes a candidate who is then vetted by the Parliamentary Committee on Constitution, Legislation and Justice, as well as by the Committee on Human Rights, Minorities and Religious Affairs. The plenary of the parliament elects the Ombudsman.

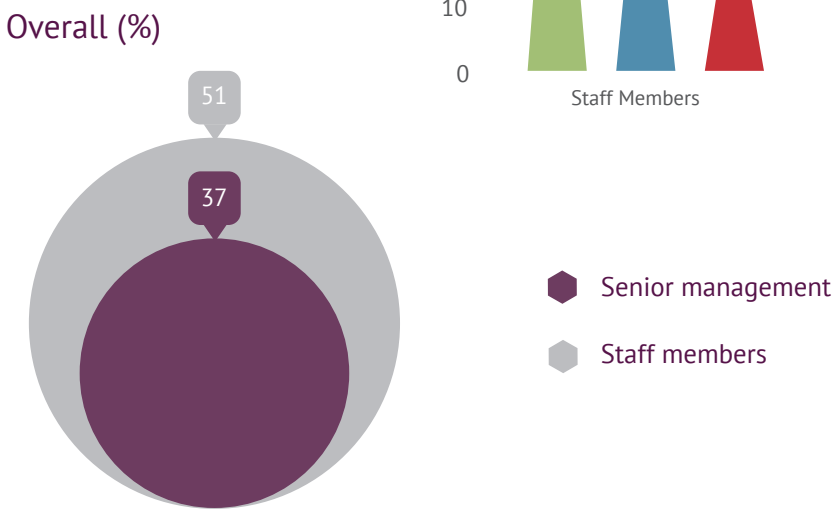
In terms of human resources, the survey revealed that all general ombuds institutions, except that of Albania, are completely autonomous in their recruitment of staff. In contrast, just over half of the ombuds institutions within the armed forces[30] and with exclusive jurisdiction[31] have autonomy in this matter. Meanwhile, some trends in staff composition were observed based on responses to the survey. In general ombuds institutions and in ombuds institutions with exclusive jurisdiction, civilians make up a large majority of staff. The opposite is true in ombuds institutions within the armed forces, where military personnel make up 67 per cent of staff. Another important element of independence is the existence of provisions that grant immunity to office holders for actions and opinions expressed in the exercise of their functions. Office holders in almost all general ombuds institutions benefit from immunity in this regard,[32] while those in ombuds institutions with exclusive jurisdiction or those within the armed forces do so only limitedly.[33] This information is presented in Table 2b.

In terms of the gender composition of staff in ombuds institutions in the OSCE region, the survey revealed that general ombuds institutions have the highest rate of women staff members (58 per cent), as well as of women in senior management positions (50 per cent) (see Graph 1). In ombuds institutions with exclusive jurisdiction and in those within the armed forces, less than a third of staff members are female. To a certain extent, these findings correlate with the percentage of civilian personnel in ombuds institutions, which is also higher in general ombuds institutions (more than 50 per cent) than in the other two types of ombuds institutions. On average, women are far more likely to occupy a staff member position than a senior management position. In a small number of institutions, the ombudsperson is a woman, as is the case in the United Kingdom's Service Complaints Commissioner. In general, while

the security sector tends to be male-dominated, ombuds institutions have come some way in achieving greater gender balance among personnel.

Graph 1. Percentage of female staff in ombuds institutions in the OSCE region

*Percentages are calculated from the total sample of survey responses and sorted by type of ombuds institution and position*



## Table 2a. The institutional independence of ombuds institutions in the OSCE region, according to their legal basis

*The table details the legal basis and budget authority of each ombuds institution. The shaded areas indicate the existence of the corresponding condition.*

| | N=30 | Legal Basis | | | | Budget authority | |
|---|---|---|---|---|---|---|---|
| | | Constitutional provision | Royal or executive decree | Legislation or statute | Other | Parliament | Ministry of defence |
| General ombuds institutions | Albania | ■ | | ■ | | ■ | |
| | Estonia | ■ | | ■ | | ■ | |
| | Finland | ■ | | | | ■ | |
| | Georgia | ■ | | | | ■ | |
| | Hungary | ■ | | ■ | | ■ | |
| | Kazakhstan | | ■ | | | ■ | |
| | Kyrgyzstan | ■ | | ■ | | ■ | |
| | Latvia | | | ■ | | ■ | |
| | Malta | ■ | | ■ | | ■ | |
| | Montenegro | ■ | | ■ | | ■ | |
| | Poland | ■ | | ■ | | ■ | |
| | Portugal | ■ | | ■ | | ■ | |
| | Romania | ■ | | ■ | | ■ | |
| | Serbia | ■ | | ■ | | ■ | |
| | Slovenia | ■ | | | | ■ | |
| | Sweden | ■ | | | | ■ | |
| | Tajikistan | | | ■ | | ■ | |
| | Ukraine | ■ | ■ | ■ | | ■ | |
| Ombuds institutions with exclusive jurisdiction | Austria | | | ■ | | | ■ |
| | Bosnia and Herzegovina | | | ■ | | ■ | |
| | Canada | | | | * | | ■ |
| | Germany | ■ | | ■ | | ■ | |
| | Ireland | | | ■ | | | ■ |
| | Norway | | | ■ | | ■ | |
| | United Kingdom | | | ■ | | | ■ |
| Ombuds institutions within the armed forces | Belgium | | ■ | | | ** | |
| | Czech Republic | | ■ | | | | ■ |
| | Lithuania | | | ■ | | | ■ |
| | Netherlands | | ■ | | | | ■ |
| | Slovakia | | | ■ | | | ■ |

** The powers and duties of the Ombudsman in Canada are provided for in the Ministerial Directives Respecting the Ombudsman for the Department of National Defence and the Canadian Forces, issued by the Minister of National Defence. Ministerial Directives are given legal effect as an administrative order for Canadian Forces (military) members and as a directive for Department of National Defence (civilian) personnel.*

*** In Belgium, it is the Directorate for Budget and Finance that makes the final budget allocations.*

## Table 2b. The institutional Independence of ombuds institutions in the OSCE region, according to organizational aspects

*The table details the organizational aspects of institutional independence of each ombuds institution. The shaded areas indicate the existence of the corresponding condition or body responsible.*

| N=30 | | Staffing | | | Tenure in office | Appointment and removal | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Immunity for the office holder | Civilian staff (%) | Staffing autonomy | Years in office** | Parliament | Supreme court | Head of the government | Ministry of defence |
| General ombuds institutions | Albania | | 69 | | 5 | | | | |
| | Estonia | | 100 | | 7 | | | | |
| | Finland | | 100 | | 4 | | | | |
| | Georgia | | 90 | | 5 | | | | |
| | Hungary | | 100 | | 6 | | | | |
| | Kazakhstan | | 100 | | 5 | | | | |
| | Kyrgyzstan | | 100 | | 5 | | | | |
| | Latvia | | 100 | | 5 | | | | |
| | Malta | | 0 | | 5 | | | | |
| | Montenegro | | 100 | | 6 | | | | |
| | Portugal | | 65 | | 4 | | | | |
| | Poland | | 100 | | 5 | | | | |
| | Romania | | 100 | | 5 | | | | |
| | Serbia | | 100 | | 5 | | | | |
| | Slovenia | | 100 | | 6 | | | | |
| | Sweden | | 100 | | 4 | | | | |
| | Tajikistan | | 100 | | 5 | | | | |
| | Ukraine | | 100 | | 5 | | | | |
| Ombuds institutions with exclusive jurisdiction | Austria | | 100 | | 6 | | | | |
| | Bosnia and Herzegovina | | 100 | | 5 | | | | |
| | Canada | | 100 | * | 5 | | | | |
| | Germany | | 100 | | 5 | | | | |
| | Ireland | | 75 | | 7 | | | | |
| | Norway | | 100 | | 4 | | | | |
| | United Kingdom | | 100 | | ? | | | | |
| Ombuds institutions within the armed forces | Belgium | | 15 | | ? | | | | |
| | Czech Republic | | 47 | | ? | | | | |
| | Lithuania | | 9 | | ? | | | | |
| | Netherlands | | 10 | | 3 | | | | |
| | Slovakia | | 35 | | ? | | | | |

** With the exception of executive positions, Canada has complete power to decide on staffing appointments.*

*** In Ireland, tenure must not exceed seven years. Most appointments last for three years, and are often renewed. Those marked with a question mark are unknown.*

## 2.4 GOOD PRACTICES

"Good practices" are procedures, activities and legal and institutional frameworks that strengthen the capacity of ombuds institutions to fulfil their mandates, including in receiving and investigating complaints related to the armed forces. Based on analysis of the survey responses provided in this chapter, this section is intended to give an overview of good practices related to the models, jurisdiction and independence of ombuds institutions.

In summary, the following good practices can be drawn from this chapter:

- The establishment of an ombuds institution should be an inclusive, comprehensive process that considers the interests and needs of the armed forces command, armed forces personnel, military associations and service unions, civil society and independent oversight institutions.
- The legal basis of an ombuds institution, as well as its institutional independence, should be guaranteed by law and grounded in the constitution. The tenure of the office holder should be established in legislation.
- Ombuds institutions should have the appropriate and necessary powers and resources to carry out the functions within their mandate, regardless of their institutional model.
- Ombuds institutions for the armed forces should remain independent from undue influence from the armed forces command or the administrative bodies that they are mandated to oversee.
- Ombuds institutions should have budgetary autonomy and should be able to procure and manage their resources independently. They should also possess the liberty to recruit and appoint their own staff and to ensure the gender-balanced composition of their human resources.
- Procedures for the appointment and potential removal of an office holder from office should be stipulated in a transparent and accountable manner, and circumstances or criteria under which such processes take place should be specified.
- The office holder should not be held legally liable for any opinions or acts performed in the exercise of her or his functions, as provided for by and in compliance with the law.

# 3

# The functions of ombuds institutions (part I)

This chapter focuses on the functions of ombuds institutions for the armed forces, with specific reference to those activities within their mandates, such as conducting investigations and reporting their activities. The ombuds institutions that participated in the study were asked to rank their functions from most to least important. The survey results indicate that different types of ombuds institutions prioritize certain functions over others owing to their different mandates (see Table 3).

For example, receiving and investigating complaints, as well as providing recommendations on individual cases and general issues, all featured high on the list of principal functions of ombuds institutions. Based on the responses to the survey, it appears that ombuds institutions carry out a wide range of different functions (see Table 3 for a complete listing), of which the most recurrent include:

- Mediating in disputes between the complainant and the armed forces, and monitoring armed forces' compliance with national laws;
- Educating the armed forces about national and international legal standards; and
- Monitoring the fairness, efficiency and effectiveness of the internal complaints-handling systems of the armed forces.

Overall, ombuds institutions listed receiving and investigating complaints as their primary functions, with making recommendations a secondary activity. Almost all ombuds institutions listed the above two functions as part of their mandate, with only a few ombuds institutions with exclusive jurisdiction and those within the armed forces citing a lack of the necessary capacity or mandate to carry out these functions.[34] In fact, some offices reported that they cannot investigate or receive complaints, as their mandate is restricted to providing general or individual recommendations. In contrast, some ombuds institutions stated that their mandate does not include the issuing of recommendations.[35]

Some distinctive features were noted among certain ombuds institutions in the OSCE region. The Dutch Inspector General, for example, although unable to receive complaints, reported having the capacity to mediate in the resolution of problems brought to their attention by individual members of the armed forces (both current and former) or by their relatives. Similarly, the Inspectorate of Minister of Defence of the Czech Republic noted that its recommendations only apply to reforming the practices and procedures of the armed forces.

According to survey responses, the functions rated least important by general ombuds institutions include the monitoring of the fairness, efficiency and effectiveness of armed forces' internal complaints-handling systems, with some ombuds institutions lacking the mandate to carry out this activity.[36] Conversely, a number of ombuds institutions with exclusive jurisdiction cited monitoring the fairness, efficiency and effectiveness of internal complaints-handling mechanisms as their most important function. Three ombuds institutions within the armed forces[37] also ranked such monitoring activities as a primary function.

Further differences were also noted in terms of how ombuds institutions train the armed forces about national or international legal standards applicable to their work. On the whole, general ombuds institutions[38] ranked this as the second most important function of their office after complaints-handling and investigations. Another function ranked highly by respondents was monitoring the compliance of the armed forces with national laws and regulations, including relevant labour laws, health and safety regulations and laws protecting the human rights of armed forces personnel. Most general ombuds institutions, as well as a majority of ombuds institutions with exclusive jurisdiction, reported that they carry out this function. Exceptions include Albania, Canada, Georgia, Ireland and Tajikistan. In contrast, four ombuds institutions within the armed forces[39] lack this mandate, and only three of them are able to monitor armed forces' compliance with national laws,[40] making it one of their least important functions.

Finally, findings showed that, overall, ombuds institutions place a relatively low priority on monitoring armed forces' compliance with International Humanitarian Law (IHL) and International Human Rights Law (IHRL). Out of the entire sample of respondents, only the ombuds institutions of Estonia and Kyrgyzstan ranked the monitoring of their armed forces' compliance with IHR/IHL as a primary function, despite the fact that the protection of human rights is a common founding principle for democratic institutions. Consistent with former DCAF publications on the subject, this mapping study found that, although monitoring compliance with human rights and IHL is a function that ombuds institutions might identify as important, it usually falls within the broader remit of public administration, or is included as a responsibility of military justice systems.[41]

## Table 3. Functions of ombuds institutions for the armed forces in the OSCE region

*The table condenses the functions that each ombuds institution carries out. The shaded areas indicate the existence of the corresponding function, as ranked by respondents from most important to least important, and shaded accordingly. Those that were not ranked but were indicated as a function by the respondent in question are marked with a dot (•).*

| N=28 | Functions of ombuds institutions | Receive and investigate complaints | Make individual recommendations | Monitor compliance with national laws | Monitor compliance with IHRL/IHL** | Monitor fairness of internal armed forces mechanisms | Make general recommendations | Mediate in disputes | Educate the army | Other |
|---|---|---|---|---|---|---|---|---|---|---|
| General ombuds institutions | Albania | | | | | | | | | |
| | Estonia | | | | | | | | | |
| | Finland | | | | | | | | | |
| | Georgia | • | • | | • | | | | • | |
| | Hungary | | | | | | | | | |
| | Kyrgyzstan | | | | | | | | | |
| | Malta | | | | | | | | | |
| | Montenegro | | | | | | | | | |
| | Portugal | | | | | | | | | |
| | Poland | | | | | | | | | |
| | Romania | | | | | | | | | |
| | Serbia | • | • | • | • | • | • | • | • | |
| | Slovenia | | | | | | | | | |
| | Sweden | | | | | | | | | |
| | Tajikistan | • | • | | | | • | | • | |
| | Ukraine | • | • | • | • | • | • | • | • | * |
| Ombuds institutions with exclusive jurisdiction | Austria | | | | | | | | | |
| | Bosnia and Herzegovina | | | | | | | | | * |
| | Canada | | | | | | | | | * |
| | Germany | | | | | | | | | |
| | Ireland | | | | | | | | | |
| | Norway | | | | | | | | | |
| | United Kingdom | | | | | | | | | |
| Ombuds institutions within the armed forces | Belgium | | | | | | | | | |
| | Czech Republic | | | | | | • | | | |
| | Lithuania | | | | | | | | | |
| | Netherlands | | | | | | | | | |
| | Slovakia | | | | | | | | | |

*Most important* *Least important*

** Other additional functions mentioned by respondents:*

*Bosnia and Herzegovina - Visits barracks to check conditions in which soldiers live and work.*

*Canada- Provides information and assistance to constituents.*

*Ukraine - Submits constitutional appeals to the Constitutional Court of Ukraine.*

*** International Human Rights Law (IHRL) and International Humanitarian Law (IHL).*

## 3.1 COMPLAINTS-HANDLING

This subsection discusses the complaints-handling process, with a particular focus on from whom and about what ombuds institutions can receive complaints (see Table 4). As mentioned above, receiving complaints is a central function of ombuds institutions. It enables them to identify areas of public administration that could be improved, and helps to promote accountability among state agencies. A number of related issues are also discussed, such as assistance for complainants and legal instruments or regulations protecting them from the threat of reprisals, as well as how ombuds institutions register complaints from different actors.

As a point of departure, the study has noted that the complaints-handling mechanisms of those ombuds institutions surveyed are as varied as the institutions themselves. First, depending on their mandates, different ombuds institutions receive complaints about different actors. For example, not all ombuds institutions are mandated to receive complaints about the ministry of defence or the armed forces. A majority of the general ombuds institutions surveyed reported that they receive complaints about the minister of defence or civilians working within the defence ministry,[42] while 76 per cent of them receive complaints about the armed forces.[43] However, general ombuds institutions (44 per cent of respondents) are less likely to receive complaints concerning the military police (71 per cent)[44] and military intelligence (43 per cent)[45]. The opposite is true of ombuds institutions within the armed forces, which often have greater awareness of complaints related to these actors given the nature of their mandate.[46]

Some ombuds institutions are more likely to receive complaints from some groups than from others. Although nearly all ombuds institutions in this study are mandated to receive complaints from serving and former members of the armed forces, general ombuds institutions received fewer complaints from armed forces personnel than the other two types of institutions, which have a more specific mandate for the armed forces. General ombuds institutions very often receive claims made by civilians against the armed forces,[47] while only one ombuds institution with exclusive jurisdiction (Norway) is able to receive complaints from civilians. Another difference observed between the different types of institutions is the ability to receive complaints from family members of armed forces personnel and from civil society organizations, with 80 per cent of general ombuds institutions receiving complaints from such actors.[48] In turn, only 57 per cent of ombuds institutions with exclusive jurisdiction[49] receive complaints from family members of armed forces personnel, while just over half of the ombuds institutions within the armed forces surveyed[50] reported that they do so.

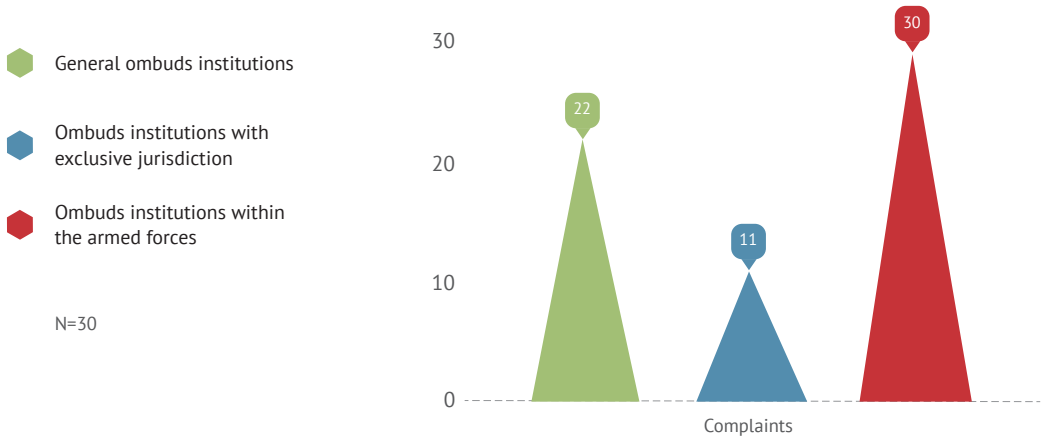
Another aspect considered in this study is the gender composition of complainants. According to the survey, most ombuds institutions reported receiving complaints from women, with the exception of ombuds institutions in Albania, the Czech Republic, Hungary, Latvia and the Netherlands, which did not receive any complaints from women. The highest percentage of complaints received from women was recorded among ombuds institutions within the armed forces, closely followed by general ombuds institutions. In overall terms, however, lower percentages of complaints are submitted by women to ombuds institutions. This could either indicate an issue of under-reporting, associated with the challenges women may face in raising complaints, or it could correspond to lower numbers of women in

the armed forces and, thus, fewer women being affected by the actions of the armed forces.[51]

There are two other important aspects of complaints-handling mechanisms that should be mentioned, namely, provisions concerning who can submit complaints and about whom complaints can be made. These two issues are linked to the procedures and practices ombuds institutions have in place to encourage applicants to lodge their complaints. For ombuds institutions receiving complaints about institutions within the ministry of defence, it becomes important to have practices and legal instruments in place to allow victims of maladministration or human rights abuses to come forward. From the survey responses received, the following practices are deemed useful in the complaints-handling process:

1. Providing advisory assistance to individuals wanting to file a complaint;
2. Relying on legal instruments to address any threats of reprisals against complainants; and
3. Recording information on the specific groups that file complaints, and monitoring under- and over-representation.[52]

## Graph 2. Percentage of complaints received from women




*Percentages are calculated from the total sample of survey responses and presented by type of ombuds institution*

## Table 4. Complaints-handling mechanisms of ombuds institutions for the armed forces in the OSCE region

*The table contains details on the complaints-handling mechanisms of ombuds institutions. The shaded areas indicate the existence of the corresponding condition*

| | N=30 | Who can complain? | | | | | Complaints mechanism | | How are complaints | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Armed forces personnel | Veterans | Family | Citizens or residents | Associations | Must first exhaust the Armed forces internal mechanism | Process is linked to internal mechanisms of the armed forces | Online | Anonymously |
| General ombuds institutions | Albania | ■ | ■ | ■ | ■ | ■ | | | ■ | |
| | Estonia | ■ | ■ | | | | | | ■ | |
| | Finland | ■ | ■ | ■ | | ■ | | | ■ | |
| | Georgia | ■ | ■ | ■ | ■ | ■ | | | ■ | ■ |
| | Hungary | ■ | ■ | ■ | ■ | ■ | | | ■ | ■ |
| | Kazakhstan | ■ | ■ | ■ | ■ | ■ | | | ■ | |
| | Kyrgyzstan | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | |
| | Latvia | ■ | ■ | ■ | ■ | ■ | | | ■ | ■ |
| | Malta | ■ | | | | | ■ | ■ | ■ | |
| | Montenegro | ■ | ■ | ■ | ■ | ■ | | | ■ | ■ |
| | Portugal | ■ | ■ | ■ | ■ | ■ | | | ■ | |
| | Poland | ■ | ■ | ■ | ■ | ■ | | | ■ | ■ |
| | Romania | ■ | ■ | ■ | | | ■ | | ■ | |
| | Serbia | ■ | ■ | ■ | ■ | | ■ | ■ | ■ | |
| | Slovenia | ■ | ■ | ■ | ■ | ■ | | | ■ | ■ |
| | Sweden | ■ | ■ | ■ | ■ | ■ | | | ■ | |
| | Tajikistan | ■ | ■ | ■ | ■ | ■ | ■ | | ■ | |
| | Ukraine | ■ | ■ | ■ | ■ | ■ | ■ | | ■ | |
| Ombuds institutions with exclusive jurisdiction | Austria | ■ | ■ | ■ | ■ | ■ | | ■ | ■ | ■ |
| | Bosnia and Herzegovina | ■ | ■ | ■ | | ■ | ■ | ■ | | |
| | Canada | ■ | ■ | ■ | | | | | ■ | ■ |
| | Germany | ■ | ■ | | | | | | ■ | |
| | Ireland | ■ | ■ | | | | ■ | ■ | ■ | |
| | Norway | ■ | ■ | ■ | ■ | ■ | | | | |
| | United Kingdom | ■ | ■ | * | | | n/a | ■ | | |
| Ombuds institutions within the armed forces | Belgium | ■ | | | ■ | ■ | ■ | ■ | ■ | ■ |
| | Czech Republic | ■ | ■ | ■ | ■ | ■ | – | ■ | | ■ |
| | Lithuania | ■ | ■ | | | ■ | – | – | | ■ |
| | Netherlands | n/a | | | | | n/a | | n/a | |
| | Slovakia | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | |

* *Family and associations can contact the Service Complaints Commissioner on behalf of serving and former members of the armed forces.*

With only four exceptions,[53] all ombuds institutions reported providing assistance to persons wanting to file a complaint. In addition, those institutions that reported to be aware of threats of reprisals made against complainants also indicated that they had legal instruments and regulations in place to deal with such threats. However, those institutions that said they were unaware of any such threats being made lacked appropriate mechanisms to address or prevent them. The study found that ombuds institutions' readiness to receive anonymous complaints helps to encourage applicants to lodge complaints.[54] Complaints filed anonymously are very rarely accepted by ombuds institutions across the three categories, however.

Another important characteristic for the effective functioning of ombuds institutions is accessibility. Some ombuds institutions have sought to increase their accessibility by being physically present in different provinces and regions of their countries, sometimes establishing an overseas presence in cases where armed forces personnel are posted abroad. However, in addition to physical presence, it is also essential to have a variety of channels through which both armed forces personnel and civilians can contact the institution. A majority of general ombuds institutions surveyed[55] reported that they receive complaints online, as did four of the ombuds institutions with exclusive jurisdiction.[56] Only two of the ombuds institutions within the armed forces surveyed[57] provide complainants with the opportunity to file complaints online.

### Box 4 Lodging complaints: country examples

**Latvia.** Although not required, it is recommended that complainants seek out every possible internal complaint mechanism before turning to the Ombudsman's office.

**Ireland.** Armed forces personnel can go directly to the Ombudsman.

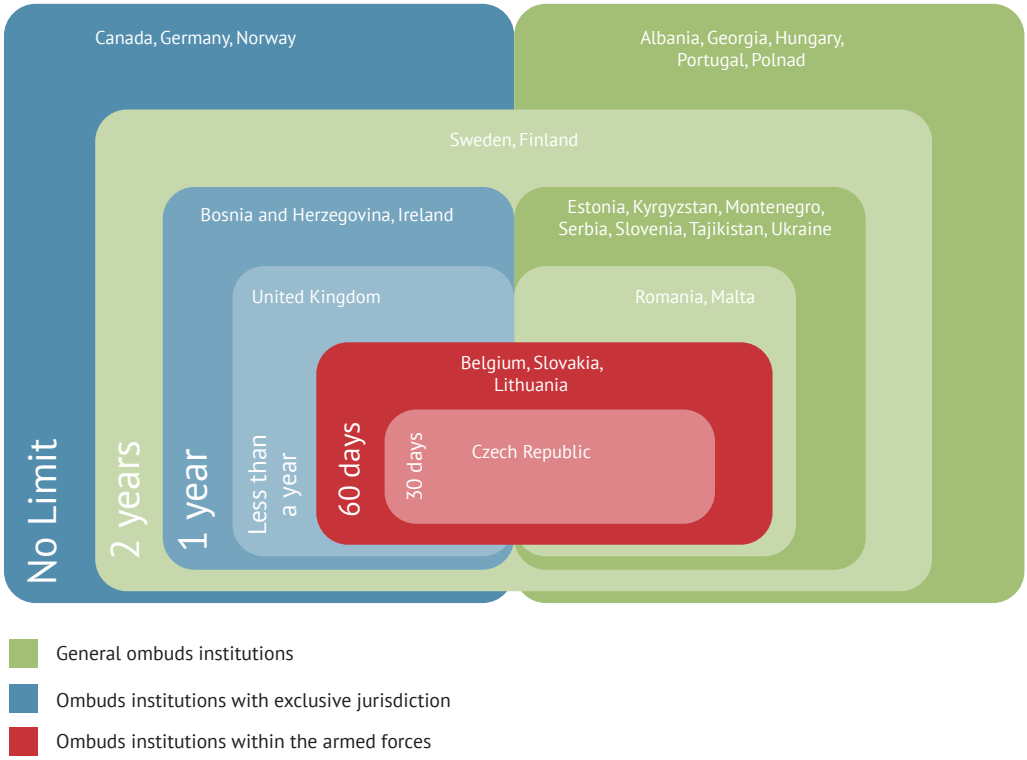
**Slovakia.** Individuals seeking to make a complaint must first exhaust internal complaints mechanisms within the military.

An ombuds institution's accessibility is not only a matter of how the institution can be contacted, however. There often exist multiple restrictions and conditions according to which armed forces personnel or civilians can make a complaint to an ombuds institution concerning the armed forces. General ombuds institutions often place time limits on the validity of complaints, with complaints only being received up to one year after the time when a complainant becomes aware of the action that gives rise to the complaint. Such time limits usually apply to both civilians and armed forces personnel. The time limits for lodging complaints set by different ombuds are illustrated in Figure 3.

Time limits are not the only restriction limiting the submission of complaints. Armed forces personnel are often required to first address their complaints to an authority within the military[58] and, in some cases, must exhaust the military's internal complaints-handling mechanism before contacting the ombuds institution.[59] While general ombuds institutions are not involved in the internal complaints-handling processes of the armed forces,[60] 58 per cent of them[61] require armed forces personnel to first direct their complaints to military authorities, while 42 per cent require that personnel exhaust internal complaints mechanisms before contacting the ombuds institution.[62] Similar conditions are applied by

ombuds institutions with exclusive jurisdiction, as most of them require that complaints first be directed to military authorities[63] and internal mechanisms before considering them.[64]

Figure 5. Time limits for complaints-handling processes in the OSCE region. According to time allocated for lodging complaints.




## 3.2 INVESTIGATIONS

This subsection gives an overview of the most common complaints investigated by ombuds institutions, and discusses processes adopted or put in place to address the effectiveness, independence and impartiality of these investigations.

There were no significant differences between the different types of ombuds institutions and the complaints they usually investigate. Overall, the most common complaints received by the ombuds institutions surveyed are:

- Veterans' issues, including pensions and the return of armed forces personnel to civilian life after completing military service, as well as post-traumatic stress disorder (PTSD) and other related problems;
- Issues concerning the recruitment of armed forces personnel, especially the unfair rejection of applications and long delays in recruitment processes;
- Issues concerning financial and other benefits received by armed forces personnel, in particular the denial of benefits or paying back benefits and the calculation of disability benefit entitlements, including maternity benefits; and
- The mistreatment, bullying and harassment of armed forces personnel, in particular, but not exclusively, in the context of initiation rituals.

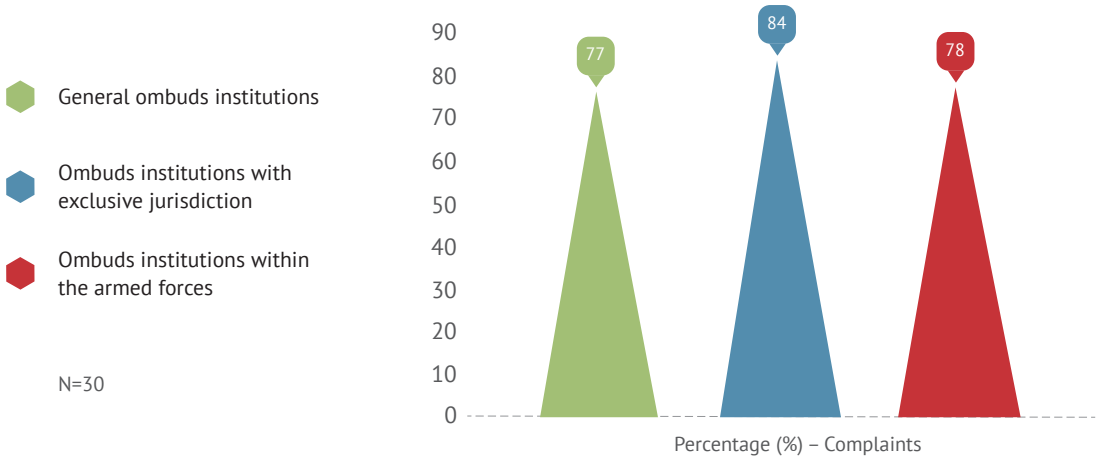
Veterans' issues were a common complaint received by all the ombuds institutions surveyed (see Graph 2). The other three categories of complaints listed above were equally prevalent in terms of overall percentages; however, recruitment issues were most often lodged with ombuds institutions within the armed forces. Maladministration and mistreatment were common complaints submitted to general ombuds institutions, while the majority of complaints received by ombuds institutions with exclusive jurisdiction related to benefits.

In terms of the mechanisms for addressing complaints, the survey showed that not all complaints are followed by a further investigation; this term implies that, after a complaint is lodged, it will be investigated by the ombuds institutions as part of their functions. In reality, only 32 per cent of ombuds institutions investigate all the complaints received, including six general ombuds institutions,[65] three ombuds institutions with exclusive jurisdiction[66] and one ombuds institution within the armed forces.[67] The reasons given by ombuds institutions as to why some complaints do not warrant the conduct of an investigation or further investigation are based on issues with the submission of complaints. For example, investigations may not be carried out in cases where forms are filled out incorrectly, do not comply with basic requirements or are submitted outside the prescribed deadline. In such cases, most institutions would be required to justify their decision not to investigate a complaint. Nonetheless, the average percentage of complaints that are investigated further is high, at between 77 per cent and 84 per cent across all types of ombuds institution (see Graph 1).

About 90 per cent of ombuds institutions in the study indicated[68] that they exercised operational independence and sole discretion in determining the manner in which complaints are investigated. However, in the case of some institutions and, in particular, ombuds institutions with exclusive jurisdiction[69] and ombuds institutions within armed forces,[70] investigations can be suspended or terminated by a government agent or body. The government bodies most often responsible for terminating investigations are parliament and the ministry of defence. Consequently, all general ombuds institutions surveyed, as well as 85 per cent of ombuds institutions with exclusive jurisdiction[71] and 80 per cent of those within the armed forces,[72] reported the existence of safeguards and provisions guaranteeing that investigations are not suspended or terminated without good cause. In addition, similar measures, such as own-motion investigations, are often applied to ensure that the ombuds institution is not prevented from exercising its jurisdiction. This information can be reviewed in detail in Table 5.

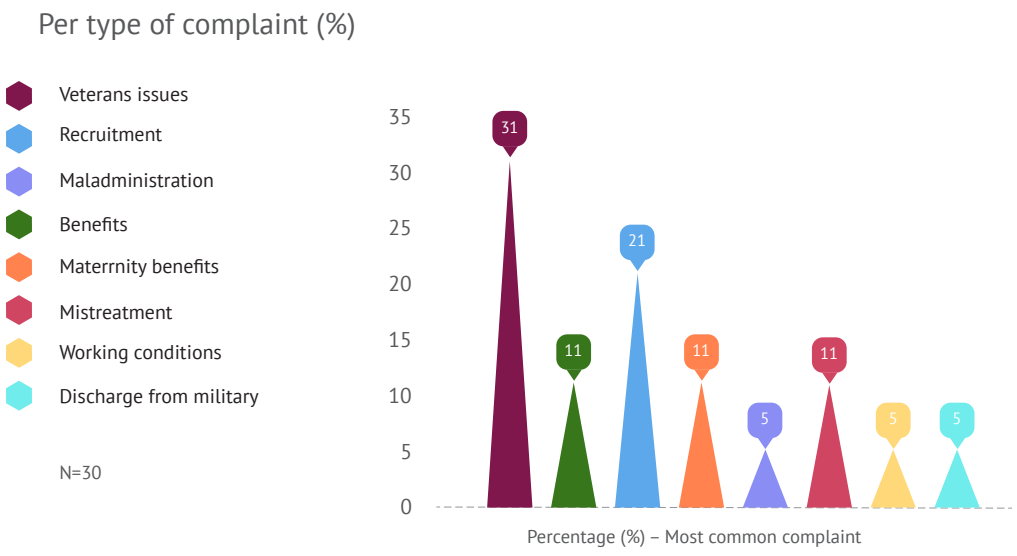
## Graph 3. Percentage of complaints that are further investigated, by type of institution

*Percentages of complaints followed by further investigation, as calculated from the total sample of survey responses and presented by type of ombuds institution.*




## Graph 4. Most common types of complaint received by ombuds institutions in the OSCE region

*Percentages of the most common complaints received by all survey respondents, as calculated from the total sample of survey responses.*



## Table 5. Investigative functions of ombuds institutions for the armed forces in the OSCE region

*The table details the investigative functions of ombuds institutions. The shaded areas indicate the existence of the corresponding condition.*

| | N=30 | Investigations | | | Further investigations on complaints | | Investigative powers | | Monitoring Mechanisms | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Can be terminated by a government authority | Ombuds institution can begin own-motion investigations | Ombuds institutions can refuse to investigate complaints | Percentage (%) | Must provide reasons for decisions | Access to classified information | Access to armed forces' premises | Site visits | Progress reports | Meetings |
| General ombuds institutions | Albania | | | | n/a | | | | | | |
| | Estonia | | | | 75 | | | | | | |
| | Finland | n/a | | | 65 | | | | | | |
| | Georgia | n/a | | | 100 | | | | | | |
| | Hungary | | | | n/a | | | | | | |
| | Kazakhstan | | | | 100 | | | | | | |
| | Kyrgyzstan | | | | 100 | | | | | | |
| | Latvia | n/a | | | * | n/a | | | | | |
| | Malta | | | | 90 | | | | | | |
| | Montenegro | | | | 100 | | | | | | |
| | Portugal | | | | 40 | | | | | | |
| | Poland | | | | 50 | | | | | | |
| | Romania | | | | n/a | | | | | | |
| | Serbia | | | | 25 | | | | | | |
| | Slovenia | | | | n/a | | | | | | |
| | Sweden | | | | 50 | | | | | | |
| | Tajikistan | | | | 100 | | | | | | |
| | Ukraine | | | | 100 | | | | | | |
| Ombuds institutions with exclusive jurisdiction | Austria | | | | 100 | | | | | | |
| | Bosnia and Herzegovina | | | | 80 | | | | | | |
| | Canada | | | | 19 | n/a | | | | | |
| | Germany | | | | 98 | | | | | | |
| | Ireland | | | | 100 | | | | | | |
| | Norway | | | | 100 | | | | | | |
| | United Kingdom | n/a | | | 88 | | | | | | |
| Ombuds institutions within the armed forces | Belgium | | | | 90 | | | | | | |
| | Czech Republic | | | | 100 | | | | | | |
| | Lithuania | | | | n/a | | | | | | |
| | Netherlands | n/a | | n/a | n/a | n/a | | | | | |
| | Slovakia | | | | 43 | | | | | | |

** Latvia had not received any complaints at the time of the survey.*

## 3.3 INVESTIGATIVE POWERS AND OBSTACLES TO INVESTIGATION

The purpose of investigations is to address complaints, provide solutions and prevent the reoccurrence of abuses or maladministration. Investigative powers, as understood by responses to the survey, range from the ability to lead investigations (referred to as 'own-motion investigations'), to having access to the documents, premises, experts and resources necessary to effectively conduct an investigation. Table 5 maps two of the investigative powers reported by ombuds institutions in OSCE participating States (namely, access to classified information and access the premises of armed forces).

All general ombuds institutions, as well as most of the ombuds institutions with exclusive jurisdiction[73] and those within the armed forces, [74] indicated that they have the right to initiate own-motion investigations. In addition, most general ombuds institutions,[75] ombuds institutions with exclusive jurisdiction and those within the armed forces reported that they have the capacity and authority to request classified documents to support their investigation.[76] Furthermore, 80 per cent of the ombuds institutions surveyed[77] have the legal power to visit the premises of the armed forces and to access classified documents,[78] as well as the right to draw on outside or third-party expertise to inform their investigations.[79] However, some ombuds institutions reported having limited powers of investigation, as well as instances when their investigations were terminated or when their requests for information were declined or access to resources limited. Such cases occur as a result of the particular legislation and circumstances of a state, and tend to centre on state security and, in some cases, on the exercise of parliamentary or administrative discretion. A good practice that can be applied in such cases is to request that the authorities provide a reasoned justification for any decision to deny access to information in the course of an investigation.

To support the progress of their investigations, as well as the implementation of recommendations, ombuds institutions rely on key monitoring mechanisms, such as site visits, progress reports and meetings. Conducting field or site visits is a common monitoring activity, as is holding follow-up discussions with members of the armed forces, complainants or commanders. Similarly, ombuds institutions can arrange follow-up meetings with the defence minister to enquire about the implementation of recommendations. In addition, progress reports allow ombuds institutions to keep relevant stakeholders informed about the progress of activities and decisions made concerning a complaint. In Albania, for example, the ombuds institution must notify the complainant within 30 days of receiving a complaint, and, upon concluding the investigation, must notify the complainant of its decision, as well as of any steps taken to rectify the problem. In Canada, meanwhile, upon receiving a complaint relating to an operational mission, the Canadian Ombudsman must notify the contingent commander and keep her or him informed of the investigation's progress.[80]

## 3.4 GOOD PRACTICES

Good practices related to complaints-handling and investigations, the primary two functions of ombuds institutions, are closely bound to the principles of independence, transparency and efficiency. As already mentioned, good practices can relate to the legal and institutional frameworks that serve as a basis of an ombuds institution's mandate, as well as to activities and procedures that ombuds institutions can carry out to contribute to their effective functioning.

Based on the findings of this chapter, good practices related to complaints-handling and investigations are listed below.

### Complaints-handling:

- Ombuds institutions can become more physically accessible by establishing local and regional offices, providing services with as few barriers as possible and assisting those seeking to make complaints.
- Ombuds institutions can facilitate the submission of complaints by allowing complaints to be submitted through various channels, including by email, online submissions, post and a dedicated hotline.
- Ombuds institutions can facilitate the complaints-handling process by providing sufficient timeframes for the submission of complaints, preferably longer than 30 days after the issue is first identified by the complainant.
- Whenever an investigation is not pursued, the ombuds institution can ensure appropriate follow-up, such as by providing assistance to the complainant or by referring the complaint to other authorities.
- Ombuds institutions can have mechanisms in place to protect complainants from any threats of reprisal made against them, such as the ability to make anonymous complaints or to offer protected communications, whereby communication records are kept from public disclosure.

### Investigations:

- Ombuds institutions for the armed forces aim to investigate issues independently and impartially and to prevent their recurrence.
- Ombuds institutions make preliminary assessments of complaints in order to determine whether an investigation can proceed further.
- Decisions on the conduct of further investigations are grounded in and justified by clear and publicly available criteria.
- Ombuds institutions possess the ability to launch own-motion investigations.
- Clear guidelines govern who can conclude an investigation and make decisions. They also detail how to identify who is at fault and what steps should be taken to remedy the complaint.
- Ombuds institutions have unrestricted access to information essential to their work, guaranteed by law whenever provisions relative to security and classified data allow.

- No administrative body or authority can terminate or suspend ongoing investigations being undertaken by an ombuds institution without providing exhaustive and legally grounded motives for doing so.
- Upon reaching a decision, an ombuds institution notifies all concerned parties of the decision and provides recommendations, where relevant.
- Ombuds institutions may have the power to propose amendments to laws, general acts or other regulations that may result in the violation of the rights of armed forces personnel.

# 4

# The functions of ombuds institutions (part II)

This chapter provides an overview of two more key functions of ombuds institutions, namely, reporting on their activities and issuing recommendations. It includes a subsection on the practices of ombuds institutions in making recommendations and monitoring their implementation, as well as a subsection on how and to whom ombuds institutions report on their activities (see Table 6).

## 4.1 ISSUING RECOMMENDATIONS

A primary function of ombuds institutions, as recognized by international standards, is to issue recommendations. In the case of ombuds institutions for the armed forces, there are at least two types of recommendations that can be made: individual recommendations on how to rectify the situation that first led to the complaint, and general policy recommendations on a range of issues. With three exceptions, almost all of the ombuds institutions that participated in the study reported that they can issue both general and individual recommendations.[81] More importantly, all ombuds institutions reported that that they are able to monitor the implementation of their recommendations.

The ombuds institutions surveyed employ different methods when monitoring the effective implementation of their recommendations. These methods are referred to as comprehensive monitoring mechanisms, and those used by ombuds institutions in the OSCE region include follow-up meetings with members of the armed forces, visits and progress reports. Of these, follow-up meetings are the most frequently applied type of monitoring mechanism, with 83 per cent of general ombuds institutions,[82] all ombuds institutions with exclusive jurisdiction and all those within the armed forces monitoring their recommendations in this way. Conducting site visits to army bases and other locations was the second most common monitoring measure, with 78 per cent of general ombuds institutions,[83] 86 per cent of

ombuds institutions with exclusive jurisdiction[84] and 60 per cent of ombuds institutions within the armed forces[85] carrying out visits. In addition, 56 per cent of general ombuds institutions,[86] all ombuds institutions with exclusive jurisdiction and 40 per cent of ombuds institutions within the armed forces conduct progress reports and follow-up meetings after such visits.[87] The Canadian Ombudsman, for example, issues a progress report that is submitted to the Minister of National Defence. The report is then made public 28 days after its submission to ensure that recommendations included in the report are implemented.

The recommendations provided by ombuds institutions are not legally binding and cannot be enforced. As such, by monitoring the implementation of recommendations, ombuds institutions can assess their own impact in addressing issues, as well as evaluate their credibility and level of authority. According to survey responses (see Table 6), the total percentage of recommendations issued by ombuds institutions that were accepted and implemented by the authorities to whom they were made was 76 per cent. This figure, together with the average time taken to respond to recommendations, was considered by ombuds institutions as an indication of their effectiveness in fulfilling their mandate. This argument is further developed in the following section

According to survey responses, the percentage of recommendations that are accepted by the relevant defence ministry varies from zero to 100 per cent. Overall, it was found that recommendations made by ombuds institutions with exclusive jurisdiction and those within the armed forces are more often accepted by a minister of defence than recommendations made by general ombuds institutions. On average, 89 per cent of recommendations from ombuds institutions with exclusive jurisdiction and 78 per cent of those from ombuds institutions within the armed forces were accepted,[88] compared with 62 per cent[89] of those made by general ombuds institutions. In addition, the survey indicated that it took one month for the minister of defence to respond to a recommendation. However, the time taken by all relevant institutions to respond to recommendations was reported as varying from 20 days to 12 months.[90]

### Box 5. Commenting on or suggesting draft legislation: country examples

**Montenegro. T**he Protector of Human Rights and Freedoms of Montenegro may initiate legislative proposals for laws, regulations and general acts to harmonize the legal framework with internationally recognized standards on human rights and fundamental freedoms. The corresponding authority is compelled to make a statement on such an initiative.

**Serbia.** The Protector of Citizens is entitled to propose laws and comment on new laws that fall within his mandate. The Protector may also launch legislative initiatives with the Government or National Assembly in order to amend laws, regulations or general acts whenever their deficiencies result in the violation of a citizen's rights. The Government, or the competent Committee of the National Assembly, is obliged to consider the initiatives of the Protector of Citizens.

**Germany.** The German Commissioner has no formal role in commenting on draft laws. However, as a permanent guest (the Commissioner is not a Member of Parliament) in the Parliamentary Defence Committee, s/he is often asked to comment. Furthermore, the Commissioner is able to initiate public discussions about draft laws and legislative reforms that concern the armed forces.

## Table 6. Reporting functions of ombuds institutions for the armed forces in the OSCE region

*The table details the reporting and recommendation functions of each ombuds institution. The shaded areas indicate existence of the corresponding item.*

| | N=30 | Reporting authority | | | Type of reports | | | |
|---|---|---|---|---|---|---|---|---|
| | | Parliament | Ministry of defence | Head of government | Annual report | Special or ad hoc report | Public and media address | Recommendations accepted (%) |
| General ombuds institutions | Albania | ■ | | | ■ | ■ | ■ | – |
| | Estonia | ■ | | | ■ | ■ | ■ | 95 |
| | Finland | ■ | | | ■ | ■ | ■ | 95 |
| | Georgia | ■ | | | ■ | ■ | ■ | 0 |
| | Hungary | ■ | | | ■ | ■ | ■ | – |
| | Kazakhstan | | | ■ | ■ | ■ | ■ | – |
| | Kyrgyzstan | ■ | | | ■ | ■ | ■ | – |
| | Latvia | ■ | ■ | | ■ | ■ | ■ | – |
| | Malta | ■ | ■ | ■ | ■ | ■ | ■ | 40 |
| | Montenegro | ■ | | | ■ | ■ | ■ | – |
| | Portugal | ■ | | | ■ | ■ | ■ | 37 |
| | Poland | ■ | ■ | | ■ | ■ | ■ | 60 |
| | Romania | ■ | | | ■ | ■ | ■ | 100 |
| | Serbia | ■ | | | ■ | ■ | ■ | 70 |
| | Slovenia | ■ | | | ■ | ■ | ■ | – |
| | Sweden | ■ | | | ■ | ■ | ■ | – |
| | Tajikistan | * | | | ■ | ■ | ■ | – |
| | Ukraine | ■ | | | ■ | ■ | ■ | 100 |
| Ombuds institutions with exclusive jurisdiction | Austria | ■ | | | ■ | | ■ | 90 |
| | Bosnia and Herzegovina | ■ | ■ | | ■ | ■ | ■ | 100 |
| | Canada | | ■ | | ■ | ■ | ■ | 80 |
| | Germany | | ■ | | ■ | ■ | ■ | – |
| | Ireland | | ■ | | ■ | ■ | ■ | 85 |
| | Norway | ■ | | | ■ | ■ | ■ | 99 |
| | United Kingdom | ■ | ■ | | ■ | ■ | ■ | 80 |
| Ombuds institutions within the armed forces | Belgium | | ■ | | ■ | ■ | | 75 |
| | Czech Republic | | ■ | | ■ | ■ | | 90 |
| | Lithuania | | ■ | | ■ | | | – |
| | Netherlands | ■ | ■ | | ■ | ■ | ■ | n/a |
| | Slovakia | | ■ | | ■ | | | 70 |

**The ombuds institution in Tajikistan indicated in its survey response that it does not report to a specific authority.*

This is not to say that the recommendations made by general ombuds institutions are not as appropriate as those issued by the other two types of institution. The above findings can be explained by a number of factors, including the type of mandate of the ombuds institution in question, its institutional proximity to the authorities that it oversees, the nature of the institutional relationship and the scope of the recommendation. All of these traits can have an impact on the receptiveness of an administrative body to implementing recommendations issued by an ombuds institution.

In addition, all ombuds institutions involved in the study play a certain role in commenting on draft laws relevant to the work of the armed forces (see Box 5). In fact, most ombuds institutions in the OSCE region can provide recommendations and comment on draft laws.[91] Very few institutions can propose legislative reforms, however. Altogether, only 23 per cent of the ombuds institutions that responded to the survey can do so.[92]

## 4.2 REPORTING AND INFORMATION SHARING

Providing information on the ombuds institution and making it publicly available is essential both for the complainants and for the wider public. Reporting is the main method through which ombuds institutions make information publicly available, although other means are also employed, such as awareness-raising activities. In their annual reports, ombuds institutions provide an account of their activities, including: information on the mandate, functions and budget of the ombuds institution, and on the number and types of complaints received and processed, as well as details of activities conducted to follow-up on recommendations. As such, ombuds institutions provide decision makers, the media and the public with valuable information on the state of government administration. In so doing, the annual reports and public outreach activities of ombuds institutions help to place the promotion and protection of human rights of armed forces personnel within the public's reach and on the political agenda.

Almost all ombuds institutions for the armed forces are required to issue annual reports to the relevant authority, usually the parliament or defence ministry.[93] Details of the number and types of complaints received by ombuds institutions in the OSCE region are a key focus of their annual reports (see Table 7). The second most common aspect included in the annual reports of ombuds institutions is the number of complaints processed (87 per cent), followed by information on their mandate and organization (84 per cent of annual reports of all ombuds institutions), and details of activities conducted to follow-up on recommendations (83 per cent). Information on the types of complaints made was included in 77 per cent of the annual reports issued by ombuds institutions, while 75 per cent of annual reports also provided examples of complaints handling.

Table 7 provides insight into the quantity and variety of information included in the annual reports of ombuds institutions in the OSCE region. As indicated in the paragraph above, most institutions report on their mandate and on the number and types of complaints. However, not all institutions provide information on their mandates, which is often a question of institutional design. For example, the annual reports of some ombuds institutions within the armed forces are intended for the defence minister

and specialized personnel within the armed forces and defence ministry; since these actors are well acquainted with the institution, they have no need for information on the ombuds institution's mandate. Nevertheless, the absence of such information in annual reports might disadvantage armed forces personnel or civilians who wish to lodge a complaint with the ombuds institution, and who may not be so well acquainted with its mandate. Similarly, the information that was least likely to be included in the annual report was the budget of the ombuds institution. Budgetary information was included in the annual reports of only 47 per cent of the ombuds institutions surveyed, a majority of which were general ombuds institutions (77 per cent). Providing information on the budget is a standard reporting measure for any administrative body. Considering that all ombuds institutions taking part in the study receive substantial amounts of public funding, providing information on how the budget is spent would be valuable both to decision makers and to the ombuds institutions themselves, especially in cases where funding is thought to be insufficient.

### Table 7. The contents of annual reports of ombuds institutions for the armed forces in the OSCE region

*The table details subjects covered in the annual reports of ombuds institutions in the OSCE region.*

| Content featured in annual reports | GENERAL OMBUDS INSTITUTIONS (%) | OMBUDS INSTITUTIONS WITH EXCLUSIVE JURISDICTION (%) | OMBUDS INSTITUTIONS WITHIN THE ARMED FORCES (%) |
|---|---|---|---|
| Mandate, organization and functioning | 94 | 100 | 60 |
| Budget | 77 | 43 | 20 |
| No. of complaints received | 94 | 100 | 100 |
| No. of complaints processed or dismissed | 94 | 86 | 80 |
| Follow-up on recommendations | 82 | 86 | 80 |
| Types of complaints | 71 | 100 | 60 |
| Examples of cases | 100 | 86 | 40 |

Responses to the survey suggest that ensuring the availability and accessibility of information is central to the reporting function of an ombuds institution. Annual reports are useful resources through which ombuds institutions can inform the public, members of the armed forces and the government of their activities and findings. Nonetheless, desk and documental research carried out for this study showed that there are substantial differences among those ombuds institutions surveyed in terms of the accessibility of their annual reports. As such, annual reports from general ombuds institutions are most often available and accessible both electronically and in print, while the annual reports of ombuds institutions within the armed forces are far more limited in their distribution. Besides annual reports, ombuds institutions reported that they also issue special and thematic reports as useful means

through which to address topical issues and present recommendations resulting from their own-motion investigations. With two exceptions,[94] all general and ombuds institutions with exclusive jurisdiction can issue *ad hoc* and thematic reports. Three out of the five ombuds institutions within the armed forces that took part in the study stated that they also submit *ad hoc* and thematic reports. In terms of public outreach, all general ombuds institutions and ombuds institutions with exclusive jurisdiction can address the media or the public without prior approval from an authority. In contrast, among the ombuds institutions within the armed forces, only the Dutch Inspector General is empowered to address the media or the public without any prior authorization.

Finally, ombuds institutions were asked whether they carry out other information-sharing activities besides issuing annual reports. All the general ombuds institutions surveyed reported that they also engage with the public by disseminating information through websites and other media, by holding open days and field visits, by encouraging co-operation with civil society and by giving presentations at exhibitions, seminars and lectures. Ombuds institutions with exclusive jurisdiction reported that they provide service personnel with information on their work by visiting barracks and other military establishments, by giving presentations on submitting complaints during training courses for enlisted personnel and by distributing their annual reports within the armed forces. Out of all the ombuds institutions within the armed forces, only the Dutch Inspector General reported that it engages in awareness-raising activities in military schools and distributes information online via an intranet.

## 4.3 GOOD PRACTICES

Based on the findings and analyses of this chapter, various good practices related to ombuds institutions' activities in issuing recommendations and reports can be identified. In this context, good practices are procedures, activities and legal and institutional frameworks that strengthen the capacity of ombuds institutions to issue recommendations and reports about their work.

### Good practices in issuing recommendations:

- Recommendations issued by ombuds institutions should rectify, redress, mitigate or reverse any decision, act or legislation that detracts from the fundamental rights that the ombuds institution in question is tasked to protect.
- Ombuds institutions should have the power to issue policy recommendations designed to encourage reforms, in particular in cases where certain practices have given rise to malfeasance in order to prevent their reoccurrence.

### Good practices in reporting:

- An ombuds institution should issue reports on its activities to the legislature, the armed forces command and the wider public in a transparent, accountable and effective manner.
- Ombuds institutions should be able to produce and release regular reports on their activities without fear of censorship. Such reports can include periodic, thematic and ad hoc reports on specific cases or otherwise important issues.

- Ombuds institutions can issue reports with both detailed and generalized recommendations on problems relevant to individual complainants, as well as on broader issues.
- Ombuds institutions should be able to issue reports to the legislature, as these are important means of ensuring that recommendations are complied with, and provide the legislature with an opportunity to enact legislation on any issues identified.
- Ombuds institutions should have the power to address the public and the media. Public reports can ensure compliance with recommendations by drawing attention to issues that may not otherwise be open to public or media scrutiny.

# 5

# Capacity development, training and co-operation

This chapter looks at ways to develop the capacity of ombuds institutions to fulfil their mandate, including through training and co-operation between ombuds institutions in the OSCE region. It touches on measures already in place to guarantee the effective functioning of ombuds institutions, and analyses issues covered in training provided by ombuds institutions for their staff. It also examines how ombuds institutions in the OSCE co-operate internationally. Based on the findings and analysis provided in preceding chapters, this chapter will present an overview of the challenges facing ombuds institutions in terms of their capacity to effectively fulfil their mandate, as well as recommended approaches to overcoming these challenges. Section 5.1 will focus on obstacles to the effective functioning of ombuds institutions, and will look at tools used to assess the capacity of ombuds institutions. It will also examine attempts to revise the mandate, legal framework and internal regulations of ombuds institutions towards improving their functioning. Section 5.2 will focus on the importance of training staff to strengthening the capacity of ombuds institutions. Finally, Section 5.3 will assess the role of domestic and international co-operation in enhancing the capacity of ombuds institutions.

## 5.1 CAPACITY-DEVELOPMENT NEEDS AND CHALLENGES

To engage in capacity development, ombuds institutions must first identify the areas in which they need to develop their capacity. Identifying capacity-development needs can be a difficult process, as there is no "right" or standard way of conducting effective assessments and evaluations. Nonetheless, this mapping study found that over 80 per cent of all ombuds institutions have conducted reviews of their capacity to fulfil their mandates.[95] This means that most of these institutions sought feedback on their capacity through external, independent and internal evaluations. The adoption of specific measures to assess satisfaction with their work was not as widespread, however, with only 32 per cent of general

ombuds institutions and none of the ombuds institutions within the armed forces adopting such measures. The general ombuds institutions surveyed reported that they conduct independent studies,[96] interviews,[97] surveys[98] and public opinion polls.[99] In contrast, 86 per cent of ombuds institutions with exclusive jurisdiction indicated that they conduct surveys and[100] independent assessments,[101] and receive feedback from complainants.[102] Such activities and procedures are useful for obtaining feedback from stakeholders (and, in particular, from complainants) about the work and capacity of the ombuds institution in question. None of these measures were mentioned by the ombuds institutions within the armed forces that responded to the survey.

Providing complainants with the opportunity to give feedback on the work of an ombuds institution does not necessarily require substantial resources. Although some measures for receiving feedback are costly, such as independent assessments and public opinion polls, there are other cost-effective alternatives, including receiving feedback via complaints boxes, email and by post, that allow ombuds institutions to gauge the opinions of external stakeholders about their capacity to fulfil their mandates.

Other measures relevant to the assessment and identification of capacity-development needs include the use of internal guidelines and practice instructions to support their functions. According to survey responses, such measures are applied by 89 per cent of general ombuds institutions, 80 per cent of the ombuds institution within the armed forces and 71 per cent of the ombuds institutions with exclusive jurisdiction. In particular, internal guidelines help to reaffirm institutional independence, and allow the institution to adapt their approach when confronted with incidences of human rights violations and maladministration that they have not previously encountered. Further, internal guidelines may contribute to improving the effective functioning of human resources, thereby contributing to capacity building.

As mentioned earlier, legal guarantees and constitutional provisions help to safeguard the mandate of an ombuds institution, including when changes are sought or made. Of the ombuds institutions surveyed, approximately 47 per cent of general ombuds institutions, 40 per cent of ombuds institutions within the armed forces and 29 per cent of ombuds institutions with exclusive jurisdiction reported that there had been efforts by external actors to modify their mandate or their operations. To the benefit of certain ombuds institutions, the constitutional and legal provisions guaranteeing their mandate require state organs pursuing these changes to provide good reason for doing so, and to consult closely with the institution.

### Box 6. Reviewing and extending the mandate of ombuds institutions: country examples

**Serbia.** In July 2011, the Protector of Citizens submitted an initiative to establish the Protector of Citizens as a National Preventive Mechanism (NPM), consistent with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

**United Kingdom**. In their 2013 report into The Work of the Service Complaints Commissioner for the Armed Forces, the House of Commons Defence Select Committee (HCDC) recommended that the Service Complaints Commissioner's role be changed to that of an Ombudsman.

**Malta.** The Office of the Parliamentary Ombudsman in Malta advanced a proposal in 2014 to strengthen and constitutionally review its mandate to function as a national human rights institution (NHRI). The matter is still under consideration.

According to the survey findings, general ombuds institutions are usually consulted when changes to their mandates are introduced. However, ombuds institutions within the armed forces and with exclusive jurisdiction were not all consulted.

The active participation of ombuds institutions in shaping their mandate allows them to address any issues, obstacles or practices that might hamper their effective functioning. Indeed, ombuds institutions can and have proposed changes to the mandate or functioning of their institution. About 84 per cent of general ombuds institutions and 57 per cent of ombuds institutions with exclusive jurisdiction reported that they had submitted proposals for the review or extension of their mandate. Ombuds institutions within the armed forces, however, reported that they had not done so. Differences in the levels of initiative between different types of ombuds institutions in proposing such changes can be linked to their ability to identify problems in their functioning.

Out of the total sample, 35 per cent of ombuds institutions reported that they had not identified any problems in the functioning of their institution, with ombuds institutions within the armed forces representing the majority of such responses. Meanwhile, general ombuds institutions and ombuds institutions with exclusive jurisdiction reported a number of related, but mandate-specific, obstacles. A lack of sufficient financial and human resources was identified as the most common obstacle to their effective functioning. Overall, 53 per cent of general ombuds institutions, 43 per cent of ombuds institutions with exclusive jurisdiction and 60 per cent of ombuds institutions within the armed forces reported having insufficient financial resources, while over half of them[103] reported shortages in human resources. Only two general ombuds institutions[104] reported that their work was hampered by insufficient levels of co-operation from the armed forces. None of the ombuds institutions within the armed forces or those with exclusive jurisdiction included in the survey reported encountering such problems. Furthermore, 57 per cent of the ombuds institutions with exclusive jurisdiction, 40 per cent of ombuds institutions within the armed forces and 16 per cent of general ombuds institutions reported that insufficient powers hindered their ability to research complaints.

## Table 8. Obstacles to the work of ombuds institutions for the armed forces in the OSCE region

*The table lists challenges to the work of ombuds institutions in the OSCE region. The shaded areas indicate the existence of the corresponding obstacle or activity related to the mandate.*

| | | Obstacles | | | | Mandate | | | |
|---|---|---|---|---|---|---|---|---|---|
| N=30 | | Insufficient financial resources | Insufficient human resources | Insufficient powers | Insufficient co-operation from the armed forces | External actors modified the mandate | External actors made changes to the mandate without consulting the ombuds institution | External actors made changes to the mandate in consultation with the ombuds institution | The ombuds institution submitted a proposal or proposals to revise the mandate |
| General ombuds institutions | Albania | ■ | ■ | | | ■ | ■ | | ■ |
| | Estonia | | | | | ■ | | ■ | ■ |
| | Finland | | | | | | | | ■ |
| | Georgia | | | | ■ | | | | ■ |
| | Hungary | ■ | ■ | ■ | | ■ | | ■ | ■ |
| | Kazakhstan | ■ | ■ | | | | | | ■ |
| | Kyrgyzstan | ■ | ■ | | | ■ | | ■ | ■ |
| | Latvia | ■ | ■ | ■ | | | | | |
| | Malta | | | | | | | | ■ |
| | Montenegro | ■ | ■ | ■ | | ■ | | ■ | ■ |
| | Portugal | ■ | ■ | ■ | | ■ | | ■ | |
| | Poland | ■ | ■ | | | ■ | | ■ | ■ |
| | Romania | ■ | ■ | | | | | | |
| | Serbia | ■ | ■ | | | | | | ■ |
| | Slovenia | | | | | ■ | | ■ | |
| | Sweden | | | | | | | | ■ |
| | Tajikistan | | ■ | | | | | | ■ |
| | Ukraine | | | | | ■ | | ■ | ■ |
| Ombuds institutions with exclusive jurisdiction | Austria | ■ | ■ | ■ | | | | | ■ |
| | Bosnia and Herzegovina | ■ | ■ | ■ | | | | | |
| | Canada | | | ■ | | | | | ■ |
| | Germany | | ■ | | ■ | ■ | ■ | | |
| | Ireland | | | | | | | | ■ |
| | Norway | | | | | | | | |
| | United Kingdom | ■ | ■ | ■ | | ■ | ■ | | ■ |
| Ombuds institutions within the armed forces | Belgium | ■ | ■ | ■ | | | | | |
| | Czech Republic | ■ | ■ | ■ | | ■ | ■ | | |
| | Lithuania | ■ | ■ | | | | | | |
| | Netherlands | | | | | ■ | ■ | | |
| | Slovakia | ■ | ■ | ■ | ■ | | | | |

## 5.2 TRAINING

Ombuds institutions in the OSCE region train their staff on a variety of specialized issues. Depending on their size and the scope of their activities, ombuds institutions included in the survey reported that they offer specialized training on issues that they regularly address. The survey found that general ombuds institutions are usually characterized by larger bureaucratic structures, bigger budgets, higher numbers of personnel and greater volumes of complaints received. It is, therefore, not surprising that these institutions offer training to their staff on a broader range of issues. An estimated 68 per cent of the general ombuds institutions surveyed provide their staff with training on human rights issues[105] and complaints handling.[106] Just over half of all general ombuds institutions offer gender training and instruct their stuff on data collection.[107] In addition, about 42 per cent[108] of the general ombuds institutions surveyed reported that they educate their staff on international humanitarian law (see Table 9 and Graph 3).

In comparison, the survey found that ombuds institutions with exclusive jurisdiction train their staff on fewer issues. Staff training is most often provided on complaints handling,[109] although the ombuds institutions in Austria and Bosnia and Herzegovina also provide training on human rights and gender issues. Only Austrian ombuds institution reported that it trains staff on matters of international humanitarian law. Ombuds institutions within the armed forces, on the other hand, offer training on a more diverse range of subjects, with all such respondents reporting that they train staff on complaints handling,[110] report writing[111] and human rights.[112] Three ombuds institutions within the armed forces reported that they offer training on gender and religious issues,[113] while only one reported educating staff on international human rights law.[114]

In general, the survey found that only a small proportion of ombuds institutions provide training on human rights-related issues, international humanitarian law, anti-corruption and religious issues. Awareness of such issues can improve the ability of staff to deal appropriately with complaints related to discrimination and maladministration, for example. Whether through training or through targeted recruitment, equipping staff with the understanding and skills necessary to conduct their work is crucial to ensuring that ombuds institutions are able to effectively carry out their mandate. In this light, training has been identified as an important area of focus for capacity-development needs in ombuds institutions.

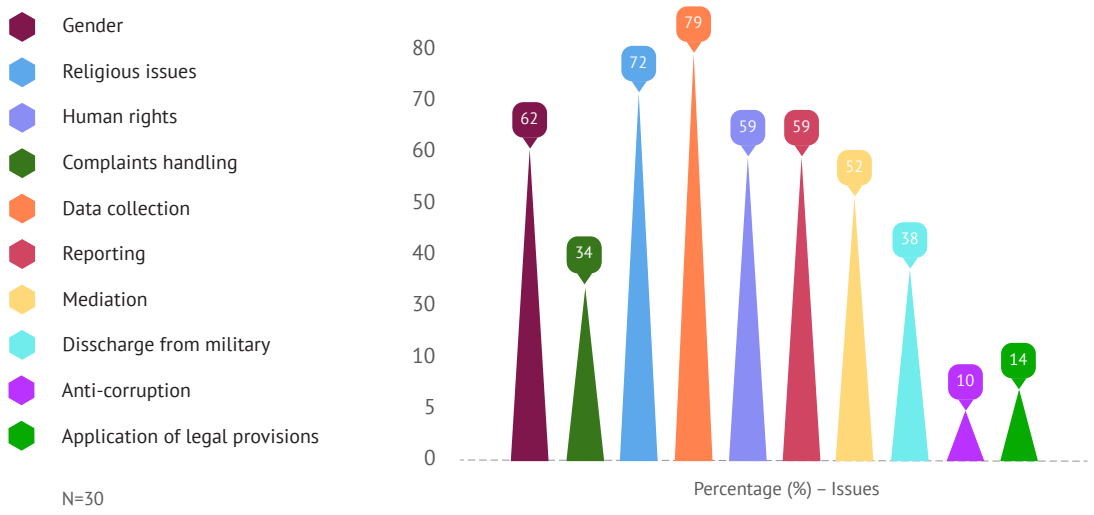
## Table 9. Issues on which ombuds institutions in the OSCE region provide training to their staff

*The percentages of ombuds institutions providing training on each issue are calculated from the total sample of responses.*

| Training provided to staff | GENERAL OMBUDS INSTITUTIONS (%) | OMBUDS INSTITUTIONS WITH EXCLUSIVE JURISDICTION (%) | OMBUDS INSTITUTIONS WITHIN THE ARMED FORCES (%) |
|---|---|---|---|
| Gender | 58 | 29 | 60 |
| Religious issues | 21 | 0 | 60 |
| Human rights | 68 | 29 | 80 |
| Complaints-handling | 68 | 86 | 80 |
| IHL | 42 | 14 | 20 |
| Data collection | 47 | 29 | 60 |
| Reporting | 47 | 14 | 80 |
| Mediation | 37 | 29 | 40 |

## Graph 5. Types of staff training provided by ombuds institutions in the OSCE region

*According to the percentage (%) of ombuds institutions that provide staff training on each issue, as reported by survey respondents*



## 5.3 INTERNATIONAL AND DOMESTIC CO-OPERATION WITH OTHER OMBUDS INSTITUTIONS

More than half of the surveyed ombuds institutions reported that they actively co-operate on an international, including through their participation in international fora, events and seminars. This subsection focuses on assisting ombuds institutions in expanding the scope of their international and inter-institutional co-operation efforts.

The ombuds institutions surveyed were asked about their participation in ICOAF, DCAF and OSCE/ODIHR activities (see Table 10). All ombuds institutions with exclusive jurisdiction reported that they participate in ICOAF, as well as in activities organized by DCAF, as did 52 per cent of general ombuds institutions and 60 per cent of ombuds institutions within the armed forces. All ombuds institutions with exclusive jurisdiction and 68 per cent of the general ombuds institutions that responded to the survey reported that they participate in activities organized by the OSCE/ODIHR.

In their survey responses, ombuds institutions indicated whether they participate in capacity-building efforts for and by military ombuds institutions in other countries.[115] All ombuds institutions with exclusive jurisdiction, one general ombuds institution and one ombuds institution within the armed forces reported taking part in such activities. Other types of inter-institutional co-operation were also noted, including with other bodies, such as military associations. All ombuds institutions with exclusive jurisdiction and all general ombuds institutions[116] noted that they have consulted with other ombuds institutions on matters of common interest, either through direct communication or during international meetings and forums. As such, the survey found that general ombuds institutions tend to co-operate with other ombuds institutions in other countries, while ombuds institutions with exclusive jurisdiction often reach out to other institutions within their respective countries. Few ombuds institutions within the armed forces co-operate on matters of common interest with other military associations or ombuds institutions, including at both the domestic or international level.

### Box 7. International and domestic co-operation with other ombuds institutions: country examples

**United Kingdom**. The Service Complaints Commissioner (SCC) can redirect cases to other ombuds institutions in the United Kingdom, when appropriate. Internationally, the SCC engages with ombuds institutions on development and capacity issues.

**Ukraine**. The Advisory Councils of the Ukrainian Parliament Commissioner for Human Rights and her representatives ensure efficient co-operation with civil society organizations dealing with human rights protection, including that of armed forces personnel and war veterans.

## 5.4 GOOD PRACTICES

For this final section, the mapping study has identified some good practices that are intrinsically related to the process of capacity development. After identifying the capacity-development needs of ombuds institutions from across the OSCE region – namely, insufficient resources and powers – good practices in addressing these needs are as follows:

- Ombuds institutions may benefit from sharing good practices and supporting capacity-building efforts with other institutions from their countries and abroad. Better co-operation and information sharing between ombuds institutions from different states helps to mitigate issues and improve the functioning of institutions.
- Ombuds institutions can conduct regular internal appraisals and reviews of their legal, institutional and operational capacity, to ensure that they fulfil their mandates.
- Ombuds institutions can have mechanisms in place to receive feedback about their functioning. Such feedback can come from complainants and other external stakeholders.
- Ombuds institutions can provide training to their staff on issues relevant to their work, including on complaints-handling, gender, human rights law, religion, reporting, mediation, preventing corruption and the functioning of the armed forces.

## Table 10. International co-operation and participation of ombuds institutions in OSCE, DCAF and ICOAF initiatives

*The table notes ombuds institutions' participation in, as well as co-operation with, DCAF, the OSCE and other institutional initiatives. The shaded areas indicate the existence of the corresponding body.*

| N=30 | | Project Body | | | |
|---|---|---|---|---|---|
| | | OSCE/ODIHR | DCAF | ICOAF | Others |
| General ombuds institutions | Albania | ■ | | ■ | |
| | Estonia | | ■ | ■ | |
| | Finland | ■ | ■ | | |
| | Georgia | ■ | ■ | ■ | ■ |
| | Hungary | | | | ■ |
| | Kazakhstan | ■ | | | |
| | Kyrgyzstan | ■ | | | |
| | Latvia | ■ | | | ■ |
| | Malta | | | | ■ |
| | Montenegro | ■ | ■ | ■ | |
| | Portugal | ■ | | | ■ |
| | Poland | ■ | ■ | ■ | |
| | Romania | ■ | ■ | | |
| | Serbia | ■ | ■ | ■ | ■ |
| | Slovenia | n/a | | | |
| | Sweden | | | ■ | |
| | Tajikistan | ■ | ■ | ■ | |
| | Ukraine | ■ | | | ■ |
| Ombuds institutions with exclusive jurisdiction | Austria | ■ | ■ | ■ | ■ |
| | Bosnia and Herzegovina | ■ | ■ | ■ | |
| | Canada | ■ | ■ | ■ | ■ |
| | Germany | ■ | ■ | ■ | |
| | Ireland | ■ | ■ | ■ | ■ |
| | Norway | ■ | ■ | ■ | |
| | United Kingdom | ■ | ■ | ■ | |
| Ombuds institutions within the armed forces | Belgium | | | ■ | |
| | Czech Republic | ■ | | | ■ |
| | Lithuania | n/a | | | |
| | Netherlands | | | ■ | |
| | Slovakia | n/a | | | |

# 6

# Conclusions

The main objective of this mapping study has been to identify good practices and to assist ombuds institutions in the OSCE region in developing their capacity, while highlighting the importance of their roles, the scope of their activities and their institutional impact. In doing so, the study has managed to determine and reassert good practices related to independent complaints mechanisms for the armed forces. In doing so, the study has "mapped" the various models of ombuds institutions in the OSCE region, outlining how these institutions work in terms of mandate, organization, powers and functions.

The mapping study was conducted based on responses to the survey provided by ombuds institutions in 31 of the OSCE participating States. The survey examined four key areas, each corresponding to a chapter of this study, to review comparative approaches to mandates, functions and powers taken by different types of ombuds institutions in the OSCE region. After reviewing the responses provided by survey respondents and assessing the most pressing capacity-development needs across the range of institutions, this study has identified a core set of good practices designed to assist ombuds institutions in the OSCE region to better develop their capacities.

The good practices contained in this study, and advanced through observance of the International Standards Relating to Ombuds Institutions, respond to certain capacity-development needs that are common to a majority or all of the ombuds institutions surveyed. This has led to the identification of a number of good practices that, if implemented, can strengthen the capacity of ombuds institutions in fulfilling their mandate. In particular, good practices were identified in the following areas:

- Establishing, developing or modifying the legal framework of ombuds institutions so as to meet the needs that led to their establishment and to realize their institutional purpose;
- Strengthening the investigative and complaints-handling functions of ombuds institutions so as to achieve efficiency and effectiveness in the prevention of human rights abuses and maladministration;
- Encouraging the reporting and recommendation functions to improve accountability, responsiveness and transparency in the exercise of good governance by ombuds institutions and by the bodies they oversee; and
- Bolstering efforts to improve ombuds institutions through co-operation and the exchange of knowledge and good practices.

The OSCE/ODIHR and DCAF recognize that the role and work of the ombuds institutions that participated in this study are crucial to the exercise of good governance and democratic values. Nonetheless, in all cases there is room for improvement, especially in terms of facing new challenges and the changing nature of complaints. In conclusion, OSCE participating States are encouraged to make further and continuous efforts to develop the capacity of ombuds institutions for the armed forces by equipping them with the necessary resources and powers to fulfil their mandate and, in doing so, to further human rights and the rule of law.

## ENDNOTES

1. The legal framework of an ombuds institution pertains to the regulation of its mandate, powers and functioning, while providing guarantees for its independence.
2. UN General Assembly, *National institutions for the promotion and protection of human rights*, 20 December 1993, A/RES/48/134 (The Paris Principles). The Paris Principles relate to the status and functioning of national institutions for the protection and promotion of human rights, and are also relevant for ombuds institutions for the armed forces.
3. Benjamin S. Buckland and William McDermott, *Ombuds institutions for the Armed Forces: A Handbook* (Geneva: Centre for the Democratic Control of Armed Forces (DCAF), 2012).
4. Hans Born, Benjamin S. Buckland and William McDermott, *Capacity Development and Ombuds Institutions for the Armed Forces* (Geneva: DCAF, 2014), p. 3.
5. Hans Born, Aidan Wills and Benjamin S. Buckland, *Comparative Perspective of Ombudsman Institutions for the Armed Forces*, Policy Paper No. 34 (Geneva: DCAF, 2011).
6. Carlos Lopes and Thomas Theisohn, "Ownership, Leadership and Transformation: Can we do better for capacity development", UNDP, New York, 2003, p. 13, as included in OECD, "The Challenge of Capacity Development: Working Towards Good Practice," DAC Guidelines and Reference Series, Paris, 2006, Annex B.
7. Hans Born, Benjamin S. Buckland and William McDermott, op. cit., note 4, p. 5.
8. For more information, see ICOAF website: <http://icoaf.org>.
9. Andorra, the Holy See, Iceland, Liechtenstein, Monaco and San Marino.
10. Ombuds institutions in the following countries: Albania, Estonia, Finland, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Malta, Montenegro, Poland, Portugal, Romania, Serbia, Slovenia, Sweden, Tajikistan, Turkey and Ukraine.
11. Ombuds institutions in the following countries: Austria, Bosnia and Herzegovina, Canada, Germany, Ireland, Norway and the United Kingdom.
12. Ombuds institutions in the following countries: Belgium, the Czech Republic, Lithuania, the Netherlands and Slovakia.
13. Partial responses were sent by ombuds institutions in Armenia, Azerbaijan, Bulgaria, Croatia, Cyprus, Denmark, Luxembourg and Mongolia. Switzerland provided a partial response outside of the survey timeframe. In its response, the Swiss ombuds institution noted that, at the time of the study, Switzerland was preparing an amendment to the "Federal Law on Armed Forces and the Military Administration", which would provide the legal basis for the creation of an independent Ombudsperson for the Swiss Armed Forces. The Ombudsperson would be expected to remain administratively subordinated to the Federal Department of Defence, Civil Protection and Sports.
14. Ombuds institutions in the following countries: Albania, Bulgaria, Croatia, Luxembourg and Mongolia.
15. Ombuds institutions in the following countries: Albania, Belarus, Bulgaria, Croatia, Italy, Luxembourg, Moldova, Mongolia, Switzerland and Turkmenistan.
16. See, for example, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990; OSCE Ministerial Council, Decision No. 10/07, "Tolerance and Non-discrimination: Promoting Mutual Respect and Understanding", Madrid, 29 and 30 November 2007, <http://www.osce.org/mc/29452?download=true>; and UN Commission on Human Rights, *Commission on Human Rights resolution 2000/64 The role of good governance in the promotion of human rights*, 27 April 2000, E/CN.4/RES/2000/64.
17. The House of Commons Defence Select Committee, "Duty of Care: Third Report of Session 2004-5", HC 63-I, London, 14 March 2005; Nicholas Blake QC, "The Deepcut Review: A review of the circumstances surrounding the deaths of four soldiers at Princess Royal Barracks, Deepcut, between 1995 and 2002", HC795, London, March 2006.
18. Ombuds institutions in the following countries: Estonia, Hungary, Malta, Serbia, Slovenia, Sweden, Tajikistan, Turkey and Ukraine.
19. Ombuds institutions in the following countries: Albania, Hungary, Kazakhstan, Kyrgyzstan, Montenegro, Romania, Serbia, Slovenia, Turkey, Tajikistan and Ukraine.
20. In Albania, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Montenegro, Poland, Portugal, Romania, Serbia, Slovenia, Sweden, Tajikistan and Ukraine.
21. Ombuds institutions in the following countries: Albania, Hungary, Kazakhstan, Kyrgyzstan, Montenegro, Romania, Serbia, Slovenia, Turkey, Tajikistan and Ukraine.
22. Hans Born, Aidan Wills and Benjamin S. Buckland, *op. cit.*, note 5, Annex.
23. All ombuds institutions except in Latvia, Kazakhstan and Tajikistan.
24. The ombuds institution in Germany.
25. Ombuds institutions in Belgium, the Czech Republic and the Netherlands.
26. Ombuds institutions in Austria, Canada, Ireland and the United Kingdom.
27. Ombuds institutions in Albania, Estonia, Georgia, Kazakhstan,Kyrgyzstan, Malta, Montenegro, Poland, Romania, Serbia, Sweden, Tajikistan and Ukraine. The ombuds institution in Turkey reported that, since it only began to operate in 2013, it could not answer this question.
28. This is the case for all general ombuds institutions except office holders in Tajikistan and Kazakhstan.
29. This is the case for all ombuds institutions within the armed forces.
30. Those in the Czech Republic, the Netherlands and Slovakia.
31. Those in Austria, Bosnia and Herzegovina, Canada and Norway.
32. With the exception of Sweden.

33. Three out of seven officer holders in ombuds institutions with exclusive jurisdiction and three out of five office holders in ombuds institutions within the armed forces benefit from immunity in this regard. Such is the case of ombuds institutions with exclusive jurisdiction – namely, Austria, Bosnia and Herzegovina and Ireland – as well as in the case of ombuds institutions within the armed forces – namely, Belgium, Lithuania and Slovakia.

34. The ombuds institution with exclusive jurisdiction in the United Kingdom cannot investigate complaints and, therefore, can only make general recommendations. However, this will soon change, as the ombuds institution's mandate is being modified. The ombuds institutions within the armed forces in the Czech Republic and the Netherlands cannot investigate complaints, although the ombuds institution within the armed forces in the Netherlands can receive them.

35. Ombuds institutions in some states, such as in Georgia and Latvia, indicated that they are not empowered to make general recommendations to the armed forces.

36. Ombuds institutions in Albania, Georgia, Slovenia and Tajikistan.

37. In Belgium, Lithuania and Slovakia.

38. However, educating the armed forces is not part of the functions of general ombuds institutions in Albania, Malta, Portugal, Slovenia and Turkey.

39. In the Czech Republic, the Netherlands and Slovakia.

40. Ombuds institutions in Belgium, Lithuania and Slovakia.

41. Hans Born, Aidan Wills and Benjamin S. Buckland, *op. cit.*, note 5.

42. Ombuds institutions in Albania, Estonia, Finland, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Poland, Romania, Serbia, Slovenia, Sweden, Tajikistan, Turkey and Ukraine. Only the ombuds institution in Malta did not report any complaints concerning the ministry of defence. Portugal did not answer the question.

43. All ombuds institutions except Albania, Georgia, Latvia, Montenegro and Tajikistan (which only received complaints about civilians working for the armed forces). Portugal did not answer the question.

44. Ombuds institutions in Austria, Bosnia and Herzegovina, Canada, Norway and the United Kingdom.

45. Ombuds institutions in Austria, Bosnia and Herzegovina and Norway.

46. Except those that do not receive complaints, such as the Netherlands.

47. Ombuds institutions in Finland, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Montenegro, Poland, Portugal, Serbia, Slovenia, Sweden, Tajikistan and Ukraine.

48. This includes all ombuds institutions except those in Estonia, Malta and Romania (which only receives complaints from family members). The ombuds institution in Latvia did not give a clear response to this issue.

49. Those in Austria, Bosnia and Herzegovina, Canada and Norway.

50. Belgium, Lithuania and Slovakia.

51. These issues were explored in a DCAF survey conducted in 2013 and carried out for an ICOAF gender workshop. While the causes of these complaints were not further investigated for this volume, they are comprehensively explored in the DCAF publication *Ombuds Institutions for the Armed Forces and Gender* (2014), available on the DCAF and ICOAF websites.

52. Thirty-seven per cent of general ombuds institutions and 57 per cent of ombuds institutions with exclusive jurisdiction indicated that they register information on complaints from specific groups, often disaggregating by gender, while only one ombuds institution within the armed forces reported that it gathered information on the specific groups of complainants.

53. With the exception of Finland, Hungary, Ireland, Lithuania.

54. Countries where ombuds institutions accept anonymous complaints include Austria, Belgium, Canada, the Czech Republic, Georgia, Hungary, Latvia, Lithuania, Montenegro, Poland and Slovenia.

55. With the exception of Albania.

56. Ombuds institutions in Austria, Canada, Germany and Ireland.

57. Ombuds institutions in Belgium and Slovakia.

58. In Belgium, Slovakia, Bosnia and Herzegovina, Canada, the Czech Republic, Hungary, Ireland, Kyrgyzstan, Lithuania, Malta, Montenegro, Norway, Romania, Serbia, Slovenia, Tajikistan and Ukraine.

59. In Belgium, Bosnia and Herzegovina, Hungary, Ireland, Kyrgyzstan, Malta, Norway, Romania, Serbia, Slovakia, Tajikistan and Ukraine.

60. With the exception of Kyrgyzstan, Malta, Serbia.

61. All ombuds institutions except in Albania, Estonia, Finland, Georgia, Latvia, Poland, Portugal and Sweden.

62. Ombuds institutions in Hungary, Kyrgyzstan, Malta, Romania, Serbia, Tajikistan, Turkey and Ukraine.

63. Ombuds institutions in Bosnia and Herzegovina, Canada, Ireland and Norway.

64. Ombuds institutions in Bosnia and Herzegovina, Ireland and Norway.

65. Ombuds institutions in Georgia, Kazakhstan, Kyrgyzstan, Montenegro, Tajikistan and Ukraine. In all, the average percentage of investigated complaints was 72 per cent. The percentage dropped to less than 50 per cent in only three general ombuds institutions (40 per cent in Portugal, 26 per cent in Turkey and 25 per cent in Serbia).

66. Ombuds institutions in Austria, Ireland, Norway. In six of the seven ombuds institutions in this group, the percentage of investigated complaints was more than 80 per cent. This stands in stark contrast to the remaining case, Canada, whose percentage was 19 per cent.

67. Only three institutions indicated the percentage of complaints that they investigated, namely, institutions in Belgium (90 per cent), the Czech Republic (100 per cent), and Slovakia (43.5 per cent).
68. With the exception of Belgium, Kyrgyzstan and Slovakia.
69. In Bosnia and Herzegovina, Germany and Ireland.
70. In the Czech Republic and Slovakia.
71. With the exception of Germany.
72. With the exception of the Netherlands and Slovakia.
73. With the exception of Ireland and the United Kingdom.
74. Ombuds institutions in Belgium, the Czech Republic and Lithuania.
75. Ombuds institutions in Albania, Estonia, Malta, Montenegro, Poland (where the ombuds institution only has access to classified documents), Portugal, Serbia, Slovenia, Sweden and Ukraine.
76. With the exception of the ombuds institutions in Georgia, Kazakhstan, Latvia, Portugal and the United Kingdom.
77. With the exception of the ombuds institutions in Albania, Georgia and Latvia.
78. With the exception of the ombuds institutions in Georgia and Kazakhstan. In Austria, Belgium, the Czech Republic and Slovakia, the armed forces may decline access to information for ombuds institutions.
79. With the exception of the ombuds institutions in Romania and the United Kingdom.
80. Benjamin S. Buckland and William McDermott, *op. cit.*, note 4, pp. 65-67.
81. As mentioned before, due to the specificity of their mandate, the Service Complaints Commissioner of the United Kingdom and the Inspectorate of Ministry of Defence of the Czech Republic can only issue general recommendations. Similarly, the ombuds institution in Georgia can only issue individual recommendations.
82. In Albania, Estonia, Finland, Kyrgyzstan, Latvia, Malta, Montenegro, Portugal, Romania, Serbia, Slovenia, Sweden, Tajikistan and Ukraine.
83. In Albania, Estonia, Finland, Hungary, Kazakhstan, Kyrgyzstan, Montenegro, Poland, Portugal, Romania, Serbia, Sweden, Tajikistan and Ukraine.
84. All ombuds institutions except in Ireland.
85. In Belgium, the Czech Republic and the Netherlands.
86. In Estonia, Finland, Kyrgyzstan, Malta, Romania, Serbia, Slovenia, Sweden and Tajikistan.
87. Ombuds institutions in the Netherlands and Slovakia.
88. The percentage of recommendations issued by ombuds institutions within the armed forces that are accepted by ministries of defence varies from 70 per cent to 90 per cent, with an average of 78 per cent.
89. Turkey responded that, owing to the fact that the ombuds institution was established in March 2013, the ombuds institution had not yet issued any recommendations concerning the armed forces.
90. This applies to general ombuds institutions in Albania, Estonia, Hungary, Kazakhstan, Kyrgyzstan, Poland, Tajikistan and Ukraine; ombuds institutions with exclusive jurisdiction in Bosnia and Herzegovina and Austria; and ombuds institutions within the armed forces in Slovakia and Lithuania.
91. Ombuds institutions in Belgium, Hungary, Latvia, the Netherlands and Portugal did not mention any such role. Montenegro indicated that its role in this regard is very limited.
92. The ombuds institutions that can propose legislative reform include four general ombuds institutions (Montenegro, Poland, Serbia and Turkey), two ombuds institutions with exclusive jurisdiction (Canada and Ireland) and two ombuds institutions within the armed forces (the Czech Republic and Slovakia).
93. At the time of the study, all general ombuds institutions, with the exception of Kazakhstan and Tajikistan (who do not produce annual reports), report to their respective parliaments, whilst all ombuds institutions within the armed forces report to the minister of defence. Five of the seven ombuds institutions with exclusive jurisdiction report to parliament, while ombuds institutions with exclusive jurisdiction in Canada and Ireland report only to the defence minister. The ombuds institution in Turkey stated that, because it only started to operate in March 2013, it has not yet produced any reports, but that when it does, it will report to the parliament.
94. The ombuds institutions in Austria and Latvia do not issue thematic reports or *ad hoc* reports.
95. 89 per cent of general ombuds institutions, 86 per cent of ombuds institutions with exclusive jurisdiction and 80 per cent of ombuds institutions within the armed forces.
96. In the case of the ombuds institution in Finland.
97. In the case of the ombuds institution in Georgia.
98. In the case of the ombuds institution in Portugal.
99. In the case of ombuds institutions in Serbia and Turkey.
100. In the case of the ombuds institution in Canada.
101. In the case of the ombuds institution in Germany.
102. In the case of ombuds institutions in Ireland and the United Kingdom.
103. 53 per cent of general ombuds institutions, 57 per cent of ombuds institutions with exclusive jurisdiction and 60 per cent of those within the armed forces.
104. Those in Georgia and Portugal.
105. Ombuds institutions in Albania, Estonia, Finland, Georgia, Kyrgyzstan, Latvia, Montenegro, Poland, Romania, Serbia, Tajikistan, Turkey and Ukraine.

106. Ombuds institutions in Albania, Estonia, Finland, Kazakhstan, Kyrgyzstan, Latvia, Poland, Romania, Serbia, Sweden, Tajikistan, Turkey and Ukraine.
107. Ombuds institutions in Albania, Estonia, Finland, Georgia, Kyrgyzstan, Latvia, Poland, Serbia, Tajikistan, Turkey and Ukraine.
108. Ombuds institutions in Estonia, Kyrgyzstan, Latvia, Poland, Serbia, Sweden, Tajikistan and Turkey.
109. Institutions in Germany and Norway did not indicate the subjects covered in staff training.
110. With the exception of the Netherlands.
111. Ombuds institutions in all states except Lithuania.
112. Ombuds institutions in all states except Slovakia.
113. Ombuds institutions in Belgium, the Netherlands and Slovakia.
114. The ombuds institution in the Netherlands.
115. This is the case for ombuds institutions in Canada and the United Kingdom.
116. With the exception of Estonia and Montenegro.

## About the project partners

The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is based in Warsaw, Poland. It is active throughout the OSCE region in the fields of election observation, democratic development, human rights, tolerance and non-discrimination and the rule of law. OSCE participating States have recognized the importance of independent national institutions to strengthen human rights and the rule of law, including ombuds institutions for the armed forces. Given its comprehensive human rights and rule of law mandate and work, OSCE/ODIHR is uniquely positioned to address the issue of ombuds institutions for the armed forces.

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international foundation for security, development and rule of law, whose mission is to assist the international community in pursuing good governance in and the reform of the security sector. The centre has a fully-fledged programme on ombuds institutions that has been running for over five years. The programme has highlighted the essential role of such institutions in protecting and promoting human rights and in preventing maladministration through a number of means.