

*Monaco, 23 January 2024*

How the Court views the work of ombudsmen

Your Serene Highness,  
Your Excellency the Minister of State,  
Your Excellency the Archbishop,  
Madam President of the National Council,  
Madam Secretary of Justice,  
Ministers,  
Excellencies,  
Madam High Commissioner, dear Marina,

I am delighted and honoured to be taking part in today's important celebration marking the first ten years of Monaco's High Commissioner for the Protection of Rights, Liberties, and for Mediation.

I want to pay tribute to the ombudsmen who have travelled to be with us from - in order of geographical distance - Benin, Morocco, Malta, and Slovenia.

There are shared values and institutional relationships between the European Court of Human Rights and ombudsmen, and that is the subject of this brief presentation.

Every State, even those most committed to Human Rights and with the most effective protections, need an independent institution to put in place a system of "backstops".

The role of High Commissioner, mediator, or ombudsman (the original Scandinavian term) is essential and unique in the organisation of a State.

- Firstly, because it is embodied by a real person, with a name and a face. Having an actual person occupy the role brings it closer to the public and allows people to identify with it. In Canada, they have a "citizen's protector", and in Albania there is the "people's advocate". Whatever the name chosen, accessibility is key and the institution has the same duty: to listen, assist, alert, pacify, find solutions, and report on situations.

- The role is unique, because the High Commissioner or ombudsman is pivotal in protecting fundamental freedoms, both nationally and also internationally. Its powers reflect the scale and complexity of its appointed task.

Domestically, the High Commissioner's role is to act as a sort of "weatherglass" or "antenna", working in direct contact with citizens to identify and resolve problems before they end up in national courts, or ultimately before the European Court of Human Rights. It provides a way of preventing problems from reaching the litigation stage. As such, the ombudsman contributes to the subsidiarity of the ECHR's

role. Naturally, the ECHR is a court that operates in a supranational and litigious setting, but officially it calls for all Human Rights-related issues to be settled amicably and locally in the State concerned. The Court wholeheartedly encourages and endorses the role of ombudsmen in seeking peaceful solutions through mediation.

“As key players in amicable dispute resolution, you are the friendly face of the law.”

The synergy between the Court and ombudsmen does not end there.

Ombudsmen may come into direct contact with the European Court of Human Rights. They can intervene in cases as third parties. The legal basis for these third party interventions is Article 36 of the European Convention on Human Rights. “Any person concerned who is not the applicant [may] submit written comments.” Anyone can ask to intervene, but not everyone is allowed to do so.

The ombudsman is always welcome to intervene before the ECHR as an “amicus curiae”, literally a “friend of the court”.

I should like to address you more directly, in your capacity as friends of the Court, given that we share the same aims.

As in your own domestic legal systems, you act as an effective conduit for ECHR case law, providing it - us - with the benefit of your expert knowledge of your own national law.

Your written interventions enable us to adopt a broader approach in our judgments, which would otherwise rely too narrowly on our own case law and the legal positions adopted by the parties.

Your own approach, which always puts Human Rights first, is a valuable asset for the Court. To rule on certain sensitive issues, the Court needs a more detailed local, political or social perspective.

Your role is to outline the national context through a prism that, while committed to certain values, it is true, nonetheless remains objective.

Ombudsmen intervene meaningfully and prominently in many different areas, among them the protection of minors in the specific context of migration, inhumane conditions in prisons and detention centres, and child abuse, not to mention discrimination, often seen as one of the leading sources of injustice. You are to be found wherever human beings are suffering, democracy is ailing, or simply where misunderstanding or abuse occurs in the relationship between government and citizen.

Before closing, I must emphasise the importance of the activity reports produced by ombudsmen.

They are a snapshot of the state of individual freedoms. Rest assured that the judges of the ECHR read these periodic accounts of your work most carefully, and I must say that they are generally of excellent quality. And those of the Monegasque High Commissioner in particular contain some very keen analysis.