Ombudsmen and Similar Institutions for Protection against Racial and Ethnic Discrimination

I. Introduction

Article 13 of the 2000 EU Race Directive\(^1\) defines the requirement for member states to designate bodies for the promotion of equal treatment for all without discrimination on grounds of racial or ethnic origin. The tasks the Directive attributes to such bodies include assisting victims in pursuing their complaints, conducting independent surveys on discrimination, publishing reports and making recommendations on issues relating to discrimination. The message conveyed by the Directive is that, in order to put the equal treatment principle in place, it is not enough to issue new legislation and leave it to regular judicial procedure for implementation, but that additional efforts are necessary. Bodies combating discrimination and promoting diversity are one major pillar of such additional efforts.

One type of institution that clearly fits the Directive’s description of such bodies, which has been in place in some countries of Europe from before the document’s inception and has been working towards the above aims, is the ombudsman institution and, specifically, the ombudsman institution that specializes in minority or discrimination issues.

Throughout the past few decades, starting perhaps with the creation of the Commission for Racial Equality (CRE) in the UK in 1976, a variety of bodies combating racial discrimination and promoting equal treatment have been established. Some of them in the form of commissions with regulatory functions and complaint procedures, others as centres against racism, and others, since the mid-1990s, as specialized ombudsman institutions.\(^2\) Despite the undeniable differences

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between the different models, mainly determined by the different institutional and political cultures of the respective countries, from the years of experience of working with discrimination their grounding principles seem to have converged and a set of common principles has evolved from the activity of these institutions. These institutions can be seen as more than just examples of good practice: the careful scrutiny of cases allows us to identify the characteristic features of this recently emerged institutional solution: specialized bodies combating discrimination. Ombudsman institutions working in this field fit this group of institutions and, as this paper will argue, many aspects of the ombudsman model can be seen as cornerstones of this institutional model. The type of specialized ombudsman we talk about here is a hybrid between classical ombudsman institutions and regulatory agencies. This paper will attempt to look primarily at the ombudsman type institutions but will reflect on the common sets of working principles that ground the work of most of these bodies.

The aim of this paper is twofold. First, it will attempt to show how several features required by bodies working towards the implementation of equal treatment can be related to or even derived from classical ombudsman institutions. It will show how the ombudsman institution, a centuries-old but flexibly adopted institution, can be seen as having informed the idea for the bodies proposed by the Directive. Secondly, the paper will attempt to substantiate the necessity for having specialized agencies beyond courts for dealing with racial and ethnic discrimination. It will do so by analyzing some of the specific features of specialized ombudsman institutions and also of other specialized agencies that informed the conception of the Directive, such as the CRE in the UK.

II. THE OMBUDSMAN INSTITUTION IN GENERAL

The ombudsman institution originates in Sweden where it has operated since the beginning of the nineteenth century. It was established with the purpose...