

# OMBUDSMAN: A BRAZILIAN–DANISH APPROACH

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## OMBUDSMAN: UMA ABORDAGEM BRASILEIRO–DINAMARQUESA

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**ABSTRACT:** Considering that the Ombudsman concept originated in the Nordic countries, more precisely in Sweden; that Denmark's high levels of transparency and low levels of corruption favor the development and maintenance of the basis of an efficient administrative proceeding by means of the *due process of law in administrative proceedings*, and that Brazil, a country of continental dimensions, still has a long way to go before the effective consolidation of the fundamental right to the process, this paper aims at presenting aspects of the Danish Ombudsman's activity, as well as data regarding ombudsmen offices deployed in Brazil. Such analysis reveals nuances that the control of public administration, procedure wise, by means of deductive reasoning (all state activity should be participatory and transparent; if the administrative proceeding is a state activity, then it should strive for participation and transparency) will be a hard nut to crack. In this sense, it is reasonable to conclude that the definition of the content and the materialization of good administrative practice are crucial factors for the solidification of the due process of law in administrative proceedings in Brazil.

**RESUMO:** Considerando que o instituto do *ombudsman* se origina dos países nórdicos, mais precisamente da Suécia; considerando que a transparência e os baixíssimos níveis de corrupção na Dinamarca favorecem o desenvolvimento e a manutenção das bases do processo administrativo eficiente, pelo devido processo legal administrativo; considerando ainda que o Brasil, nação de dimensões continentais, tem um longo caminho pela frente até a consolidação efetiva do direito fundamental ao processo, este trabalho tem por objetivo externar aspectos da atividade do *ombudsman* dinamarquês, bem como dados relativos às ouvidorias implantadas no Brasil, a fim de esboçar nuances do caminho das pedras para o controle da administração pública pela via procedimental, utilizando raciocínio dedutivo (toda atividade estatal deve ser participativa e transparente; se o processo administrativo é atividade estatal, logo deve primar pela participação e pela transparência). Nesse diapasão, é razoável concluir que a definição do conteúdo e a efetivação da *good administrative practice* (princípio da boa administração) são fatores cruciais para a solidificação do devido processo legal administrativo no Brasil.

**KEYWORDS:** Ombudsman – Good administrative practice – Procedure – Brazil – Denmark.

**PALAVRAS-CHAVE:** *Ombudsman* – Princípio da boa administração – Via procedimental – Brasil – Dinamarca.

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## 1. INTRODUCTION

In an international point of view, Denmark laid the foundation to one of the three models of ombudsman institutions in the world (REPORT 1272, p. 25-34, GARDE, 2009, p. 449-452 and BØNSING, 2013, p. 383-384).<sup>1</sup> Denmark developed a model that was a mix between an administrative Court and a guiding role. Other countries have chosen either a “Swedish-model” with focus on public servants personal legal responsibility under a disciplinary or criminal basis, or a “French-model” with focus on mediation.

According to Schwarze (SCHWARZE, 2006, p. 161), Danish administrative law shows clear signs of having been influenced by a French and German administrative system. The rules relating to legal protection against the administration, on the other hand, have followed the British system and give jurisdiction to the ordinary courts. In addition, the administration is supervised by the Ombudsman, appointed by Parliament, this being an institution which is characteristic of the entire Nordic system of public law.

Addressing the difference between *control* and *redress*, Heede (HEEDE, 2000, p. 94) brings up the nature of the object on which each figure relies: *control* relies on *policies* in favor of *citizens* while *redress* relies on *individual positions* in order to *compensate* some of the effects of acts regarding specific circumstances: “control is when the supervisor seeks to influence policy for the benefit of the citizens as a whole whereas redress is when the supervisor seeks to remedy an individual's grievance”. Control is basically the comparison of something, a fact or an act, to another thing previously fixed as legal and desired, *i.e.*, the system regards an act or fact as acceptable or not according to legal standards. Concerning control, Bax (BAX, 1995, p. 12 and HEEDE *op. cit.*)

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1. The post of Ombudsman has existed in Sweden since 1809, in Finland since 1919, in Denmark since 1954 and in Norway since 1962. See pages 161 to 166.

SEERDEN, René. *Administrative law of the European Union, its member states and the United States: a comparative analysis*. Cambridge: Intersentia, 2012.

VALDÉS, Daisy de Asper y. Ombudsman para o Brasil? *Revista de Informação Legislativa*, Brasília, v. 100, n. 25, p. 117-126, dez. 1988.

## 8. CHARTS

Source: MENEZES, Ronald Amaral. *Resultados do Projeto Coleta OGU 2013* – Instituto de Pesquisa Econômica Aplicada (Ipea). Brazilian Forum of Public and Private Ombudsmen. 2014. Available at: [[http://www.cgu.gov.br/Eventos/2014\\_Forum\\_Ouvidorias/index.asp](http://www.cgu.gov.br/Eventos/2014_Forum_Ouvidorias/index.asp)]. Access on: 29.06.2014.

Chart 1: Brazilian Ombudsmen – Profile of agents

Brazilian ombudsmen	Men	Women	Age Average	Education	In charge for	Designation	Subordination
Federal institutions	47%	53%	49,7	76% MBA in Law or Business; 23% bachelors; 1% high school	77% over 1 year; 55% over 2 years	74% by discretion of the higher authority of the entity	77% to the higher authority of the entity he belongs to

Chart 2: Structure and service

BRAZILIAN OMBUDSMEN	Structure	Mandate <sup>11</sup> / integration	Workers in the institution	Average qualification of workers	Workers are registered in OCFP <sup>12</sup>	User's service
Federal institutions	90% are organs; 7% just the function of an agent	37% mandate; 57% develop conjoint actions with other institutions	44% - 1 to 3; 23% more than 10.	44% Bachelors	53%	97% <i>in loco</i> ; 41% call center.
State and municipal institutions	83% organs; 17% functions	17% mandate; 67% integration	67% more than 10; 17%- 8 to 10; 16% - 1 to 3.		33%	100% <i>in loco</i> ; 67% call center.

11. Limited actuation time. Term of office.

12. Ombudsman Continuous Formation Policy (“Profoco”).

Chart 3: Petitions in 2013

BRAZILIAN OMBUDSMEN	Petitions in 2012	Types of manifestation	Number of praises	Number of denunciations	Number of requests
<i>Federal institutions</i>	29, up to 500; 10, 501-1000; 7, 2001-2500; 10, 2501- 5000; 7, 5001-10000;	5% praises; 12% denunciations; 41% requests; 38% complaints; 4% suggestions.	75%, up to 66; 50%, up to 10; 10% up to 3.	75% up to 165; 50% up to 38; 25% up to 5.	75% up to 1586; 50% up to 414; 25% up to 44.
<i>State and municipal institutions</i>	1, 5000-10000; 1, 10001-20000; 1, 20001-50000; 2, over 50000.	2% praises; 21% denunciations; 41% requests; 33% complaints; 3% suggestions	-----	-----	-----

Chart 4: Petitions and results

BRAZILIAN OMBUDSMEN	Number of complaints	Number of suggestions	Means of petitions	Results of the activities of the institutions
<i>Federal institutions</i>	75% up to 1088; 50% up to 253; 25% up to 68.	75% up to 74; 50% up to 20; 25% up to 5.	40% online form; 15% call center; 30% email; 9% in person; 2% mail; 4% other ways.	In 55% of the cases, there were recommendations; 67% of the recommendations were accomplished.
<i>State and municipal institutions</i>	-----	-----	29% online form; 44% call center; 30% email; 7% in person; 1% mail; 16% other ways	In 17% of the cases, there were recommendations; 67% of the recommendations were accomplished.

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