THE ROLE OF THE OMBUDSMAN IN PROTECTING THE RIGHTS OF CONSUMERS OF SERVICES OF GENERAL INTEREST PROVIDED BY PRIVATE COMPANIES

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In debates on the mediating role of the ombudsman in the protection and defence of citizens'/consumers' rights, this research shows that, the ombudsman should have the competence to supervise private companies providing services of general interest in order to avert abuses related to accessibility, cost and quality. Finally, as a guideline for all ombudsmen interested in working in this field, we propose a General Code of Best Practices for private companies providing services of general interest and a methodology for implementation. The analysis is based on the case study of the Ombudsman of Catalonia.

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INTRODUCTION

Nowadays, in the context of the current debate about public service design and delivery regimes, the direct provision of public services, the indirect provision of public services (incorporating private agents into public service delivery, contracting services out, or promoting co-production initiatives) and the privatization of public services are the three available means of delivering public services to citizens (Stewart and Walsh 1992¹; Torres and Pina 2002²). In this respect, it is important to point out that, differences in national traditions of public intervention, institutional arrangements and public service markets make public services delivery an area of great diversity (Warner and Bel 2008³).

The internationalization of financial markets and the opening up of states to foreign investment has led to strong pressure in government administrations not to increase public budgets or incur deficits (Minogue 2000⁴; Salamon 2002⁵). As a result, public institutions and international organizations have started to promote market-determined economic decisions like the abolition of those economic policies, rules, regulations, administrative controls and procedures which impede economic development. This liberalization process has encouraged not only the progressive outsourcing of public services and the ensuing diversification mechanisms of public-private collaboration, but also the privatization of public services (Donahue 1989⁶; Miranda and Lerner 1995⁷; Poole and

¹ Stewart J., & Walsh K., *Change in the Management of Public Services*, 70 PUBLIC ADMINISTRATION 499-518 (1992).

² Torres L., & Pina V., *Delivering Public Services—Mechanisms and Consequences: Changes in Public Service Delivery in the EU Countries*, 4 PUBLIC MONEY & MANAGEMENT 22 (2002).

³ Warner M. E., & Bel G., *Competition or Monopoly? Comparing Privatization of Local Public Services In the US and Spain*, 86(3) PUBLIC ADMINISTRATION 723-735 (2008).

⁴ Minogue M., *Changing the State: Concepts and Practice in the Reform of the Public Sector*, BEYOND THE NEW PUBLIC MANAGEMENT. CHANGING IDEAS AND PRACTICES IN GOVERNANCE (Minogue M., Polidano C., & Hulme D., eds., Northampton: Edward Elgar Publishing 2000).

⁵ SALOMON L., THE TOOLS OF GOVERNMENT: A GUIDE TO NEW GOVERNANCE (Oxford: University Press Oxford 2002).

⁶ Donahue J. D., *Privatization Decision: Public Ends, Private Means*, BASIC BOOKS (New York, NY 1989).

⁷ Miranda R., & Lerner A., *Bureaucracy, Organizational Redundancy, and the Privatization of Public Services*, 55(2) PUBLIC ADMINISTRATION REVIEW 193-200 (1995).

Fixler 1987⁸; Sullivan 1987⁹; Warner and Bel 2008¹⁰). Another reason that justifies changing the production model is access to external expertise and the possibility to deliver public services more cost-effectively (OCDE 2011¹¹).

In fact, in order to meet the challenges of globalization and the crisis of the welfare state, advanced democracies have had to evolve towards a model of relational state (Vernis and Mendoza 2009¹²). Given the complexity of social problems and the multiplicity of actors involved, the relational state assumes that, in order to provide an effective response to these problems, it needs to involve the active collaboration of society itself. In the relational state, public authorities play a key leadership role in articulating cooperative arrangements between public and private actors, which on numerous occasions lie in areas of co-responsibility (Mendoza and Vernis 2008¹³).

Privatization of public services encompasses a broad variety of arrangements under which activities once engaged in by government are, to varying degrees, turned over to private hands (Sullivan 1987¹⁴). Consequently, a significant number of services of general interest have evolved from their primary configuration as public services reserved for public administration, to their current setup, in which they are rendered by private companies under the regulation of the free market (Bel, *et al.* 2010¹⁵; Clifton, *et al.* 2006¹⁶; Hermann and Flecker 2013¹⁷). This process means that, the public sector has lost ownership of them and only performs regulatory functions.

⁸ Poole R. W., & Fixler P. E., *Privatization of Public-Sector Services in Practice: Experience and Potential*, 6 JOURNAL OF POLICY ANALYSIS AND MANAGEMENT 612-625 (1987).

⁹ Sullivan H. J., *Privatization of Public Services: A Growing Threat to Constitutional Rights*, 47(6) PUBLIC ADMINISTRATION REVIEW 461-467 (1987).

¹⁰ Warner M. E., & Bel G., *Competition or Monopoly? Comparing Privatization of Local Public Services in the US and Spain*, 86(3) PUBLIC ADMINISTRATION 723-735 (2008).

¹¹ OECD, *Government Outsourcing*, OECD, GOVERNMENT AT A GLANCE 2011 168-169 (Paris: OECD Publishing 2011).

¹² Vernis A., & Mendoza X., *Una Aproximación a la Conceptualización del Nuevo rol del Estado: El Estado Relacional*, 44 REVISTA DEL CLAD 'REFORMA Y DEMOCRACIA' 115-144 (2009).

¹³ Mendoza X., & Vernis A., *L'estat Relacional i la Transformació de les Administracions Públiques*, LOS ESCENARIOS DE LA GESTIÓN PÚBLICA DEL SIGLO XXI (Longo F., & Ysa T., eds., Barcelona: Escola d'Administració Pública de Catalunya 2008).

¹⁴ Sullivan H. J., *Privatization of Public Services: A Growing Threat to Constitutional Rights*, 47(6) PUBLIC ADMINISTRATION REVIEW 461-467 (1987).

¹⁵ Bel G., Fageda X., & Warner M. E., *Is Private Production of Public Services Cheaper than Public Production? A Meta-Regression Analysis of Solid Waste and Water Services*, 29 JOURNAL OF POLICY ANALYSIS MANAGEMENT 553-577 (2010).

¹⁶ Clifton J. Comín, & Díaz-Fuentes, *Privatization in the European Union: Ideological, Pragmatic, Inevitable?*, 13(5) JOURNAL OF EUROPEAN PUBLIC POLICY 736-756 (2006).

¹⁷ Hermann C., & Flecker J., *Privatization of Public Services: Impacts for Employment, Working Conditions, and Service Quality in Europe*, (London: Routledge 2013).

The term services of general interest covers a broad range of activities, from large network industries, such as energy, telecommunications, transport, audiovisual broadcasting and postal services, to others, such as education, water supply, waste management, health and social services. Although their scope and organisation vary significantly according to histories and cultures of state intervention, they can be defined as both economic and non-economic services which public authorities classify as being of general interest and subject to specific public service obligations (European Commission, 2014¹⁸). A few decades ago, most of these services were rendered by the public sector.

It is important to highlight that, these are services in which elements such as the universalization of benefits, public functions and even authority come into play. Consequently, they can affect people's fundamental rights. Taking this into account, European Union legislation establishes citizens' rights to access certain essential services, and imposes obligations on service providers to offer defined services according to specified conditions, including complete territorial coverage and affordability (European Commission 2004¹⁹; Sauter 2008²⁰).

Over recent years, consumers' rights have progressively been enhanced, especially those related to the management of services considered essential for people's daily lives. However, while the vast majority of European Union member states have introduced regulations to provide ample protection for citizens against arbitrary government action and the infringement of individual liberties, they do not provide protection from abuse by the private sector (Hermann and Flecker 2013²¹).

This article has two different parts. Firstly, we include an analytical part where we describe the role of the Ombudsman in protecting the rights of consumers of services of general interest provided by private companies; we detail the methodology approach, the research design and the case study background; and we expose the main results of our investigation about which should be the Ombudsmen role. Secondly, we include a propositive part where we suggest a General Code of Best Practices for private companies providing services of general interest and a methodology for its

¹⁸ European Commission, *White Paper on Services of General Interest*, WORKING PAPER 2004-374 (European Commission, May 2014).

¹⁹ European Commission, *White Paper on Services of General Interest*, WORKING PAPER 2004-374, (European Commission, May 2014).

²⁰ Sauter W., *Services of General Economic Interest and Universal Service in EU Law*, WORKING PAPER 2008-017 (Tilburg Law and Economic Center, Tilburg University 2008).

²¹ Hermann C., & Flecker J., *Privatization of Public Services: Impacts for Employment, Working Conditions, and Service Quality in Europe*, (London: Routledge 2013).

implementation. Lastly, as a final remark, we include some key conclusions.

I. THE ROLE OF THE OMBUDSMAN IN PROTECTING THE RIGHTS OF CONSUMERS OF SERVICES OF GENERAL INTEREST PROVIDED BY PRIVATE COMPANIES

As an agent of rights, justice and democracy, the ombudsman is an independent and impartial body that oversees the functioning of public administrations, investigating complaints of maladministration (Abedin 2011²²; Ambrož 2005²³; Gilad 2009²⁴; Kirkham, *et al.* 2009²⁵; Seneviratne 2002²⁶; Stuhmcke 2012²⁷). Maladministration may be found if an institution fails to respect fundamental rights, regulations or the principles of good administration. Among others, these cover administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, withholding of information and unnecessary delay (Diamandouros 2010²⁸; Kirkham, *et al.* 2009²⁹; Stuhmcke 2008³⁰; Van Roosbroek, *et al.* 2008³¹). Nevertheless, considering the progressive privatization of services of general interest and the inadequate legal framework to protect citizens'/consumers' rights against abuses perpetrated by the private sector, these traditional functions are insufficient in guaranteeing the defence of people's rights.

Bearing this in mind, the aim of this research is answer the following question: Should the ombudsman have competence to oversee private companies providing services of general interest in order to ensure quality

²² Abedin N., *Conceptual and Functional Diversity of the Ombudsman Institution: A Classification*, ADMINISTRATION & SOCIETY (September 2, 2011).

²³ Ambrož M., *The Mediating Role of the Ombudsman in the Protection of Human Rights*, 14(2) INTERNATIONAL JOURNAL OF SOCIAL WELFARE 145-153 (2005).

²⁴ Gilad S., *Juggling Conflicting Demands: The Case of the UK Financial Ombudsman Service*, 19(3) JOURNAL OF PUBLIC ADMINISTRATION RESEARCH AND THEORY 661-680 (2009).

²⁵ Kirkham R., Thompson B., & Buck T., *Putting the Ombudsman into Constitutional Context*, 62(4) PARLIAMENTARY AFFAIRS 600-617 (2009).

²⁶ SENEVIRATNE M., OMBUDSMEN: PUBLIC SERVICES AND ADMINISTRATIVE JUSTICE (London: Butterworths 2002).

²⁷ Stuhmcke A., *The Evolution of the Classical Ombudsman: A View from the Antipodes*, 2 INTERNATIONAL JOURNAL OF PUBLIC LAW AND POLICY 83-95 (2012).

²⁸ Diamandouros P. N., *Improving EU Competition Law Procedures by Applying Principles of Good Administration: The Role of the Ombudsman*, 1(5) JOURNAL OF EUROPEAN COMPETITION LAW & PRACTICE 379-396 (2010).

²⁹ Kirkham R., Thompson B., & Buck T., *Putting the Ombudsman into Constitutional Context*, 62(4) PARLIAMENTARY AFFAIRS 600-617 (2009).

³⁰ Stuhmcke A., *Changing Relations between Government and Citizen: Administrative Law and the Work of the Australian Commonwealth Ombudsman*, 67(3) AUSTRALIAN JOURNAL OF PUBLIC ADMINISTRATION 321-339 (2008).

³¹ Van Roosbroek S., & Van de Walle S., *The Relationship between Ombudsman, Government, and Citizens: A Survey Analysis*, 24(3) NEGOTIATION JOURNAL 287-302 (2008).

and to protect and defend citizens'/consumers' rights? This paper argues that, the ombudsman should have this competence to prevent abuses relating to accessibility, cost and quality. Regarding elements that legally and materially justify the ombudsman's participation in this realm of private management, we go on to review the concepts of soft institutionalization and institutional security.

In a civilized society, institutionalization is important. Many believe that, institutionalizing refers to passing laws, implementing them and subsequently, in the case of the courts, judging and levying penalties for non-compliance. However, the contemporary concept of institutionalisation is underpinned by three concepts: the rules (in other words, laws), the rules of the game by which we operate, and the values (Hall and Taylor 1996³²; Immergut 1998³³; March 2010³⁴; March and Olsen 1989³⁵; Olsen 2013³⁶). Rules form the framework but they are not enough on their own. In fact, the more one legislates, the more difficult is compliance of this legislation. Therefore, the underlying factor is to establish rules of the game amongst ourselves and a set of values with which to prevent abuses of power, inequality and asymmetries. Therefore, it makes sense to work in this field of rules and values. This is the soft part of institutionalization and the ombudsman has a role to play here.

Applying this differentiation to institutionalization, the problems derived from information asymmetries that occur between large corporations and the people who are their customers is something which cannot be solved solely by passing laws. The soft side of institutionalization involves establishing and promoting codes of ethics in companies at a general level. Soft institutionalization also concerns best practices, the self-regulation of these organizations and corporate social responsibility. Therefore, these elements, which can be viewed as more intangible than tangible, provide an important added value, which is to institutionalize organisations through rules of play and values.

Another important idea related with institutionalization is the idea of legal security. Legal security is essential to guarantee economic

³² Hall P. A., & Taylor R. C. R., *Political Science and the Three New Institutionalisms*, 44 POLITICAL STUDIES 936-957 (1996).

³³ Immergut E. M., *The Theoretical Core of the New Institutionalism*, 26 POLITICS AND SOCIETY 5-34 (1998).

³⁴ MARCH J. G., *REDISCOVERING INSTITUTIONS* (Simon and Schuster 2010).

³⁵ March J., & Olsen J., *Rediscovering Institutions: The Organizational Basis of Politics*, (New York NY: The Free Press 1989).

³⁶ Olsen J. P., *The Institutional Basis of Democratic Accountability*, 36(3) WEST EUROPEAN POLITICS 447-473 (2013).

development in a system. Economic development is nothing more than a means to the ultimate end, which is human development. Many public institutions have neglected to provide legal security to the system to promote economic development and, consequently, a human development to the greatest degree possible. Public institutions must work to establish and guarantee the foundation necessary for there to be legal security (Meyer and Hammerschmid 2006³⁷). In addition, linked to this, it is necessary to take into account the concept of institutional security.

Institutional security means that, economic and social development will be promoted not only if public institutions establish a groundwork for security but also if private institutions themselves work on standards of general interest, public interest, by criteria that also bring to the system a high degree of security in the relationship between citizens and users and these organizations. In this sense, we are all the state. Not only public institutions but also the private companies, and especially, the large private corporations that provide something as critical and hard to define as services of general interest or public interest. These companies are also the state at this level of discussion. If public institutions do their job, and these corporations do not generate relationships of trust with these customers, there will be neither institutional security, nor economic or human development (Mahoney and Thelen 2009³⁸).

The previous elements could justify the ombudsman's competency to supervise private companies providing services of general interest. However, it is necessary to pose one extra research question to complement the analysis: Considering that, there is already a constellation of public and private actors working to guarantee the quality of services provided to citizens and the defence of consumers' rights, is there any redundancy if we assigned this new competency to the ombudsman? Indeed, regulatory agencies, consumer affairs agencies with broad competencies, local councils through municipal consumer affairs offices, the judiciary, consumers' organizations or similar units try to guarantee the quality and defence of consumers' rights. Aside from these figures, companies regulate themselves through customer service and quality departments, customer advocates and corporate social responsibility departments.

To answer this question, this article analyses the case study of the Ombudsman of Catalonia (Síndic de Greuges de Catalunya). The

³⁷ Meyer R., & Hammerschmid G., *Public Management Reform: An Identity Project*, 21(1) PUBLIC POLICY AND ADMINISTRATION 99-115 (2006).

³⁸ Mahoney J., & Thelen K., *Explaining Institutional Change: Ambiguity, Agency, and Power*, (Mahoney J., & Thelen K., eds., Cambridge, UK: Cambridge University Press 2009).

Ombudsman of Catalonia has the competence of supervising not only the activity of the Autonomous Catalan Administration (and their affiliated or dependent public and private organizations), but also the private companies that render services of general interest in the Autonomous Community of Catalonia.

II. METHODOLOGY

A. Research Design

The data upon which the article is grounded were gathered by conducting 35 in-depth, open-ended interviews and three focus groups with key actors between May and December 2013. The interviewees were: directors; managers and support unit members linked to the Ombudsman of Catalonia and companies providing services of general interest; low-level adjudicators; actors representing the interests of citizens; and international renowned specialists in the role of ombudsmen as agents of rights, justice and democracy³⁹. In addition to these two primary information sources, 1,500 pages of documents specific to the research setting were reviewed, including reports and other associated documents and website data. The combination of three different information sources allowed for triangulation and saturation of information, thereby enhancing validity, generalizability and transferability of the results.

B. Case Study Background

The Ombudsman of Catalonia (Síndic de Greuges de Catalunya) is a Spanish regional Ombudsman that has competences in the Autonomous Community of Catalonia, one of the 17 first-level political and administrative divisions of Spain, created in accordance with the Spanish Constitution of 1978. The Ombudsman of Catalonia has its roots in two medieval institutions: Peace and Truce Assemblies (Assemblees de Pau i Treva) and Judges of Complaints (Provisors de Greuges). However, the Ombudsman of Catalonia, as we know it today, has its roots in the Swedish ombudsman, a post created in 1809 as a Parliamentary commissioner in charge of co-ordinating citizens' complaints about maladministration. In doing so, it aims to redress such conduct and also to inform parliament. During the second half of the 20th century, this institution was exported to

³⁹ In order to ensure anonymity, the positions, dates and places of individual and collective interviews are not disclosed since this information could disclose the identity of interviewees.

most democratic countries (the Ombudsman of Catalonia institutional webpage 2014⁴⁰).

In 1978, the Spanish Constitution also dealt with the figure of the ombudsman, giving it the name of People's Defender (*Defensor del Pueblo*) and introduced an important innovation: for the first time in history, it received a commission to defend the fundamental rights of citizens. From then on, practically all ombudsman institutions created worldwide have also received the commission to defend human rights. In addition, some Autonomous Communities also took up the figure of the ombudsman not only to oversee the conduct of the administration but also to defend fundamental rights.

The Statute of Autonomy of Catalonia, passed in 1979, provided for the creation of an Ombudsman of Catalonia, who received the title of Broker of Complaints (*Síndic de Greuges*). In 1984, the Parliament of Catalonia passed a law regulating the institution of the Ombudsman of Catalonia and its mission to defend the fundamental rights and public liberties of citizens. To this effect, the Ombudsman of Catalonia was granted the power to oversee the public administration of the Generalitat de Catalunya and all local Catalan bodies. In 1989, the Law was modified to enable the Ombudsman of Catalonia to appoint an assistant in charge of the defence of the rights of children.

Catalonia's new Statute of Autonomy, which reinforces and grants greater competences to the Ombudsman of Catalonia, was passed in July 2006. As of then, the Ombudsman of Catalonia has overseen, on an exclusive basis, the activity of the Autonomous Catalan Administration, that of any public or private related bodies that are associated with or answerable to it, as well as "private companies that manage public services or that carry out activities of general or universal interest, or equivalent activities in a publicly-subsidised or indirect way, and that of other persons with a contractual relationship with the Administration of the Generalitat and with the public bodies which are answerable to it" (Statute of Autonomy of Catalonia 2006⁴¹).

This case study is theoretically and socially relevant because it is a unique case. The Ombudsman of Catalonia is not only the sole European ombudsman that has competences to supervise the public administration and the private companies that render services of general interest at the same time, but also the sole European ombudsman that supervises private

⁴⁰ The Ombudsman of Catalonia institutional webpage "The Síndic: History" (2014). Available at <http://www.sindic.cat/en/page.asp?id=38> (last visited Jan. 15, 2014).

⁴¹ *Statute of Autonomy of Catalonia 2006*, (Catalonia 2006).

companies that render services of general interest in general. Other countries, like the United Kingdom, divide the functions of supervising public administration and the functions of supervising private companies between two different institutions. Other countries, like Belgium, France or Ireland, have different ombudsmen supervising private companies for each specific industry (communications, energy, property, copyright licensing industries, etc.).

III. INTERPRETATION OF THE RESULTS

Our analysis to verify if there is any redundancy to assign the competency to guarantee the quality of services provided to citizens and the defence of consumers' rights to the Ombudsman of Catalonia clearly shows that, despite there is a constellation of actors making up the system of guarantees, in practice, consumers are still quite vulnerable and there is a space for the Ombudsman of Catalonia to work on this field. Consequently, we conclude that, there is no redundancy to assign this competence to the Ombudsman of Catalonia.

There are several reasons that support this thesis:

The regulatory entities of Spain (following the continental, not the Anglo-Saxon tradition) have little independence, politically speaking. They perform regulation of a political nature (e.g., set recommended retail prices), addressing organization and competition in the sector, but they do not cover the defence of consumers. In this regard, although they supervise companies very closely when it comes to tariffs and competition, as a trade-off, they are quite lax when it comes to consumer defence.

The different public administrations have the problem of their overarching, cross-disciplinary outlook on issues, and due to their fragmentation, tend to seek solutions to incidents rather than resolution of problems regarding categories or systems.

Companies see customer service, quality and corporate social responsibility more as elements of a marketing strategy than a true defence of consumer rights. Corporate social responsibility has little conceptual content, and little practical and effective development (basically focusing on of environmental and globalization issues, but less concerned with defining and delving into the rights of consumers in a broad, responsible manner).

In Spain, private companies that provide services of general interest have many organizational problems in guaranteeing the rights of their users or consumers. They often provide services to millions of users, yet are relatively inflexible in handling specific incidents that affect their users,

who are often left defenceless. Companies do not place a high priority on servuction (improvement in service provision and service to users), as they design standardized, rigid mass production systems conceived in accordance with the dimensions of scale economies that benefit the internal structure of organizations, foregoing the needs and specificities of their customers.

Thus, it seems indisputable that, the constellation of administrative institutions that regulate and supervise the system suffer fragmentation and a lack of a cross-disciplinary vision, which leaves many areas in which there are gaps in effective protection for the users of these kinds of services.

IV. THE METHODOLOGY TO BE FOLLOWED BY ANY OMBUDSMAN INTERESTED IN IMPLEMENTING A GENERAL CODE OF BEST PRACTICES FOR PRIVATE COMPANIES PROVIDING SERVICES OF GENERAL INTEREST

The Ombudsman's of Catalonia experience and expertise in the defence of citizens' rights in the area of public administrations and their activities can be partially conveyed to and used in its application to the private sector providing services of general interest. There is no great difference between public and private management of services of general interest. Both involve providing services to vast customer bases (sometimes numbering in the millions), Fordist production systems, the need to guarantee fundamental rights, or those that affect citizens' dignity and the exercise of authority in the broad sense of the term. Therefore, best practices can and should be transferred from the public to the private sector, and in this conceptual migration, the Ombudsman of Catalonia can play a significant role.

By way of example, we can take the Code of Best Practices written for the administration by the Ombudsman of Catalonia in 2009 (Ombudsman of Catalonia 2009⁴²). This code can be used to develop a General Code of Best Practices for companies providing services of general interest with modifications, deletions and extensions derived from its adaptation to private services of general interest. In Section 6, we present a General Code of Best Practices for private companies providing services of general interest as a guideline for all ombudsmen interested in working in this field. This draft code of best practices can be divided into two sections: on one hand, principles, and on the other, criteria. The principles should refer to the

⁴² Ombudsman of Catalonia, *Code of Best Practices Written for the Administration by the Ombudsman of Catalonia*, (Barcelona: Ombudsman of Catalonia 2009).

best practices linked to values that companies should have in their relationship with the people who are their customers. The criteria refer to the best practices linked to service provision processes, which range from contracting to cancellation of the service.

The methodology to implement this Code of Best Practices for companies providing services of general interest should comprise the following steps. Firstly, the ombudsman should work in cooperation with the private companies and public institutions directly involved on reaching a consensus version of the General Code of Best Practices described in Section 6 of this article. Secondly, the ombudsman should establish specific protocols for the private services of general interest that have their own specificities. For example: (a) utilities for households and businesses (water, gas and electricity); (b) telephony; (c) mobility (transit). Lastly, the ombudsman should carry out a study for each of these broad sectors into the issues and pathologies detected, and draw up a code of bad practices as a preliminary step towards the design of sectorial codes of best practices. This task would have to be performed in cooperation and consensus with the private and public actors of each sector.

Related to this, the ombudsman institution should set itself up as something of a think tank regarding subjects of defence of consumer rights for private services of general interest. The Ombudsman's Office should set up a networked scope for its activity. For example, it should establish networks, contacts and meetings with representatives of the companies, in order to discuss common problems and solutions and open up the possibility for exchange of experiences (good and bad practices) among the companies themselves in different areas of activity. In addition, it should also create networks, contacts and meetings among the different public agents involved in the defence of consumer rights (regulating agencies, autonomous consumer affairs agencies, local councils, etc.) to define priority areas for future study and analysis. Moreover, the establishment of mixed networks of public actors and private companies is also recommended/advisable. Finally, the ombudsman should create and manage something approaching an epistemic community that allows cross-disciplinary, integrated systems of conceptual and practical learning in the improvement of the defence of consumer rights.

The working methodology used by the ombudsman should include some or all of the following activities: detecting troublesome areas through contacts in the above-mentioned networks and from complaints received; writing a monographic report on a given area; carrying out fieldwork in the sector, including real problem detection systems such as the mystery

shopper method; writing an unflinching, realistic report on the sector's situation and problems, and presenting it to the network of public actors and related private companies; proposing a package of improvements to be carried out by private companies, as well as improvements in public actors' supervision of them and following-up on and supervising these improvements. Finally, it should write reports addressed to Parliament and public opinion, of a more general and diplomatic nature, on problems detected, together with solutions and improvements agreed and implemented by all involved.

The Ombudsman's Office should process complaints and reports from users of services of general interest just as it does with public administrations. The advantage is that, the ombudsman-company relationship is far more agile than the ombudsman-administration equivalent. This is largely because formalities and conventional case file management are unnecessary, and the relationship allows for rapid contact with companies via e-mail or telephone). Companies are generally receptive to complaints, and problems can be resolved speedily. Using their position of influence, the ombudsman should be able to report on possible corporate wrongdoing, making it known to public opinion. An ombudsman's report could have greater social repercussions than that of a consumer affairs agency. Such agencies' roles are open to interpretation and they tend to have less media impact than an ombudsman might have). The ombudsman's power, which should only be used in very extreme cases, makes for a situation in which the ombudsman-company relationship is very fluid, as companies become more concerned about potentially negative publicity.

The Ombudsman's Office should act in its full capacity to process complaints and perform *ex officio* monitoring of private companies. That said, it should also prioritize, as far as possible, preventive measures, which, in our opinion, could be of greatest value to the system and to society. The ombudsman may need to promote active collaboration, by seeking complicity in and with companies, prioritizing prevention, and placing less emphasis on inspection and penalization. Such strategies would make for a good start. Prevention is the area in which it is easiest to build the necessary cooperation. Attending to claims, along with this cooperation, can dynamically define the ombudsman's area of activity, well beyond establishing a formal or primary framework, which may be more difficult to apply in practice.

V. GENERAL CODE OF BEST PRACTICES FOR PRIVATE COMPANIES PROVIDING SERVICES OF GENERAL INTEREST: PRINCIPLES AND CRITERIA LINKED TO SERVICE PROVISION

A. *CODE of Best Practices: Principles*

1. Equality and Non-discrimination Principle

a. Best practices to guarantee material equality

Companies should facilitate access to all services for people with physical or mental disabilities. In addition, companies should establish special service mechanisms for people with mental disabilities that do not require any special training (?).

Companies should prioritize services to the persons to help to overcome age-related impairments (such as mobility, hearing, comprehension problems, etc.).

b. Best practices to ensure non-discrimination

Companies need to make a special effort with regard to linguistic communication in order to facilitate proper service provision to persons not fluent in either of Catalonia's two official languages.

Companies should plan and offer support systems in their face-to-face or telephone services that could provide additional assistance to citizens/customers expressing difficulty in understanding administrative procedures.

2. Proportionality Principle and Absence of Abuse of Corporate Power

a. Best practices in the exercise of companies' activities and non-abuse of corporate power in the provision or cancellation of a service

In the exercise of their activities, companies are subjected to the principles of adequacy and proportionality. Therefore, they must weigh the benefits and disadvantages of one or another action according to citizens'/customers' interests, not only those of the company. This principle is especially relevant in decisions of cancellation or termination of a service, and complaints filed by a company for possible non-payment.

b. Best practices regarding the use of force by companies' security personnel

When the exercise of a fundamental right and the protection of the company's security come into conflict, the security personnel's response

must always be proportional.

3. Impartiality and Objectivity

a. Best practices in the exercise of supervision activities

Companies should define and publicize the quality indicators for services which make it possible for them to be objectively measured, thus facilitating compliance with their obligation to ensure the proper operation of these services.

Companies should also ensure that, their employees do not have incompatibilities, or conflicts of interest in the performance of the tasks assigned to them.

Companies should establish and maintain service management supervision bodies that are citizen/customer-oriented, and as independent as possible (outside the company's hierarchy of command). Citizens/customers should have access to these bodies through their complaints.

b. Best practices in service provision

All clauses and agreements between the company and the citizen/customer should be established in writing, and should stipulate the commitments made by the company and the considerations agreed to by the citizen/customer. The document should be clear and concise to avoid, as far as possible, divergent interpretations.

None of the clauses or agreements between company and citizen/customer should establish considerations, limitations or exceptions that could be considered abusive to the citizen/customer.

4. Clarity, Guidance and Legitimate Expectations

a. Best practices for informing on the rights of citizens/customers

The company should provide sufficient information and guidance to citizens/customers on their rights and the procedures affecting them in a clear, comprehensible way.

When a citizen/customer complains that, they have suffered damages as a result of deficient service provision or when a citizen who is not a customer of the company complains about damages deriving from negative externalities in the provision of the service, the company should inform them on the actions and procedures it has carried out, and the channels and rights available to them to claim compensation for the damages they believe they have suffered.

b. Best practices for informing on procedural requisites

Companies should draft their correspondence, bills and formal notices addressed to citizens/customers in comprehensible language that does not generate confusion among addressees.

Companies must inform and advise consumers not only on the requisites to request their services, but also all of the technical aspects derived from the service provision, and they must do so in a simple, comprehensible manner.

5. Courtesy and Proper Treatment

a. Best practices for handling citizens/customers addressing the company

Company employees should treat citizens/customers respectfully, in face-to-face as well as telephone communications, or any written communication.

In order to ensure quality service, the company should apologize, either proactively (when it detects a case) or reactively (in case of complaint), if customers are mistreated through the company's activities or if they cause any damage through their activity to citizens uninvolved with their service provision.

Company employees responsible for correctly answering citizen/customer queries should have the proper level of training, in addition to sufficient and appropriate information.

When performing customer service duties, company employees should be clearly identified by their name, surname and the post they hold.

Companies should ensure that, their customers/citizens have quick access to employees with the training and information to resolve their doubts or problems. They should devote all resources necessary to minimize the number of intermediate steps (persons or telephone filters).

b. Best practices to ensure appropriate handling of an individual's personal circumstances

Companies have to offer services suited to the needs of citizens/customers, in accordance with their particular circumstances. To do so, they must provide the professionals responsible for interacting directly with citizens/customers with specific training.

6. Obligation to Respond Explicitly

a. Best practices for the obligation to respond explicitly

Companies should provide written or oral responses to the matters that

citizens/customers raise. If matters have been addressed in writing, the response should also be in writing, even if a telephone response has previously been made to deal with the query sooner.

Lack of competence or coherence in the queries received does not exonerate the company from its obligation to respond, except in cases in which an organized collective query meant to overload the company's response system has been detected.

b. Best practices for response content

The company's explicit responses should be reasoned, intelligible and congruent with the queries or allegations received so as to not cause feelings of insecurity, legal or otherwise, to the citizens/customers to whom they are addressed.

Companies should avoid issuing standardized responses, as this could violate the right to a congruent response. Furthermore, responses should focus on the specific matter of concern to the interested party.

c. Best practices for responses via electronic media

Queries sent by citizens/customers by e-mail should be answered by this channel with the same guarantees and formality as those sent by standard mail.

7. Linguistic Rights

a. Best practices to guarantee the right to use official languages

Companies should guarantee the option to use either of the official languages in their interactions with citizens.

The language used is determined by the territory where the service is provided, not the territory where the company is headquartered.

b. Best practices regarding the use of unofficial languages

Companies need to make a special effort with regard to linguistic communication to facilitate proper service provision to persons who are not fluent in either of Catalonia's two official languages.

c. Best practices regarding the availability of resources to guarantee linguistic rights

Companies should avoid situations in which, due to a lack of foresight (in their forms, computer programs, etc.), users are unable to address themselves and be attended to orally or in writing in the official language they choose.

Companies should require their employees to have sufficient linguistic training (oral and written) in the official languages for them to be capable of fulfilling the duties inherent in their post.

8. Acknowledgement of Receipt

a. Best practices for acknowledgement of query receipt

In its acknowledgement of receipt, the company should identify the person responsible for responding.

If the citizen/customer sends a query to a department of the company that does not have relevant competencies, this department should automatically relay it to the department responsible and notify the interested party that this has been done, in the event of a possible delayed response.

9. The Right to be Consulted and Informed

a. Best practices regarding the right to be previously consulted and informed in the event of the supplier making significant changes to the service provision

Regardless of whether it is legally permissible, suppliers may not cancel any service, or make modifications to contractual conditions, without previously informing the citizen/customer, or without having gathered information on the individual situation of the citizen/customer.

10. Reasonable Term

a. Best practices to avoid procedural delays

Suppliers should make every effort to resolve incidents (delays or cancellations in service provision, etc.) as quickly as allowed by technology, and within the legal terms allowed.

The system of attending to users by appointment in the supplier's face-to-face customer service department should aim to improve the service, and not postpone dealing with queries due to a lack of resources or staff.

The concept of reasonable time should be applied in the telephone service provided to citizens/customers. Companies should implement the technological means to detect when a citizen/customer has been kept waiting on hold for too long, or has been contacted on successive occasions.

The company should resolve in a reasonable time period all queries in the order in which they are received, and should only prioritize certain queries on justifiable grounds.

11. Duty to State Grounds

a. Best practices regarding sufficient grounds

A company's decisions and rulings must be grounded in a clear, comprehensible manner. Technical reasons should be written and explained in plain, easy-to-understand language.

b. Best practices for grounds in the company's exercise of discretion

If the company has to choose between several correct and possible options, it should choose that, which it considers most beneficial for the citizen/customer, except for cases in which there is damage to the interests of other citizens, or damage to the general interest.

The criteria established for previous best practice should be incorporated into the company's action protocol, and must be applied to any future similar situations, regardless of whether or not there is a query or complaint.

12. Notification of Decisions and Indication of the Possibility to Appeal

a. Best practices on the content and practice of notifications

When a company makes notifications, it should do so with the mechanisms that allow the addressees to be aware of this act and be informed of how to exercise their rights of defence.

Regardless of whether it is legally permissible, suppliers may not cancel any service, or make modifications to contractual conditions, without previously informing the citizen/customer, or without having gathered information on their individual situation.

On cancelling a service, companies should first attempt all available means of contact with citizens/customers (telephone, e-mail or visit to their home) to inform them of their decision to cancel a service. This should be followed by postal notification (by registered mail with proof of delivery), and allow a period of grace before applying the measure.

In its notifications, the company should outline the interested party's options to challenge or overturn the decision.

13. Personal Data Protection

a. Best practices for personal data information and processing

All data provided by citizens/customers are confidential, and it is completely prohibited to use them for purposes beyond the specific service

requested and accepted by the user.

Citizens' and customers' personal data in the company's power should be used proactively to improve the service.

Companies should ask their users whether they want their data to be used by the company to inform them about/of new services, offers and other commercial and marketing promotions.

When a third company is handling the personal data included in the files of the principal company, the contract must expressly stipulate the security measures to be applied, and guarantee that, the data will not be used for any purpose other than that established in the contract, nor will they be conveyed to other companies or persons.

Companies should not repeatedly contact citizens/customers in a generalized way, as potential customers, by telephone, post or e-mail, or visits to their homes. Even if citizens'/customers' data are public, the principle of non-interference should be respected.

14. Access to Information

a. Best practices in the provision of information services

Companies should duly inform citizens/customers of their rights and obligations with regard to the service provided.

The company should be proactive in the dissemination of information to avoid subsequent demands for information, clarification or claims.

Companies should provide information (charters of service) prior to service delivery, define the objectives of the service and make a commitment to their citizens/customers. These are the main tools that will make it possible to guarantee transparency in service provision.

Companies should guarantee information and communication mechanisms suited to the needs of citizens/customers, depending on their individual circumstances.

Companies should implement formulas to improve coordination among their departments, or auxiliary companies delivering the same service or family of services, so that citizens do not have to repeatedly provide their personal data.

15. The Right to Compensation

a. Best practices regarding compensation mechanisms

Companies should proactively compensate for damages caused to citizens/customers as soon as they detect poor service provision.

Companies should not require users to produce evidence beyond what

would reasonably be considered sufficient and essential.

16. The Right to Participation

a. Best practices to promote participation

The company should promote the participation of citizens/customers in decision-making processes that could affect them, in order to boost the legitimization of company activities and as a means of preventing and resolving conflicts.

B. CODE of Best Practices: Criteria Linked to Service Provision

1. Criteria for Service Promotion and Marketing

Marketing and promotion should be regulated by strict ethical codes, under which companies will refrain from making statements that any sector of society may find offensive.

Commercial information should centre on specificities; the advantages and quality of the company's services, and not focus on accessory elements.

When advertising their services, companies should express prices in a clear, visible and simple manner, and as far as possible, avoid establishing conditions and exceptions.

2. Service Contracting Criteria

Companies should provide every convenience for citizens to be able to contract their services, with a broad range of contracting systems, especially in cases in which the services offered do not operate in competition with other service providers.

Expediency in contracting procedures, along with the guarantee of rights, are essential criteria.

Information relative to the contracting process should be clear, brief and simple. This also applies to the document signed as a contract.

Contracts should set very clear rules on conditions, quality and prices that avoid the generation of exceptions or clarifications.

Contracts should be written in easily-understood language. If technical terms are used, their meaning must be indicated in parentheses, and in no case should this lead to confusion.

When contracting parties repeatedly ask the same question, the company should take the initiative to make the necessary improvements to avoid the need for such clarifications in the future.

3. Service Provision Criteria: Production

Companies should regularly validate their services through satisfaction surveys and quality controls carried out through online, written and telephone communication with their users.

Companies should return calls made by citizens/customers that could not be duly handled for technical reasons, or because additional information was required that did not allow for prompt resolution of the citizen/customer's query. Companies should avoid, as far as possible, unnecessary telephone waiting times.

When the contracted service cannot satisfy the citizen/customer according to the agreed conditions, the company should directly and personally contact the citizen/customer to propose alternatives to the service conditions.

Companies should inform loyal citizens/customers in a timely manner of the possible promotions that the company may be carrying out, and which improve the quality and service of the contracted service.

Companies should provide a personalized service to the citizen/customer from the standpoint of the citizen/customer who has contracted the service. In other words, companies should avoid resorting to explanations that focus on how the company is structured, organized or provides services to justify not resolving the problem.

Companies should have personalized service points for citizens/customers that are equitably distributed throughout the territory, regardless of the existence of telematic services.

Companies should include a clearly visible toll-free telephone number for customer service and information in all their communication materials with citizens/customers (invoices, websites, etc.) in order to facilitate claims.

Transfers of citizen/customer telephone calls need to be as agile and fast as possible. In any event, a system that allows personalized service needs to be established.

Whenever there is a shortfall in the provision of a service, the company should immediately notify citizens/customers that, such an incident has occurred, inform them that it will be rectified, and how this will be done.

4. Service Provision Criteria: Billing

Bills must have a simple appearance, with the basic information of interest to the citizen/customer clearly indicated, with a contact telephone number should the citizen/customer require clarification.

Under no circumstances should citizens/customers be billed for

elements that have not been contracted, unless the citizen/customer has received prior notification, and indicated express acceptance of such elements.

Billing complaints should be handled immediately. If such complaints cannot be resolved during the first contact, the person in charge of contacting the user in future should be identified.

In the event of a service billing error, companies should proactively contact the customer to inform them of this matter and clearly explain to them how the faulty billing procedure will be modified.

5. Criteria for Service Termination or Suspension

The procedural steps to cancel a service should be as quick and agile as those used to contract a service, and virtual media should be prioritized over face-to-face contact.

Services can only be cancelled once the citizen/customer has been informed and their consent received. The company should make every effort to contact the customer and inform them, and may only in exceptional or extreme cases terminate a service without previously informing the customer, and only when they can prove that, every possible attempt has been made to contact the citizen/customer beforehand.

CONCLUSION

In conclusion, the constellation of administrative institutions that regulate and supervise the system suffer fragmentation and a lack of a cross-disciplinary vision, which leaves many areas in which there are gaps in effective protection for the users of these kinds of services. In light of these reasons, it may be the case that supervision by the Ombudsman of Catalonia might provide greater added value in the defence of consumers' rights (and in a broader sense, of citizens, as rights are affected).

Taking this into account, establishing a general code of best practices for private companies providing services of general interest seems the more effective soft institutionalization tool that Ombudsmen have in order to protect citizens' rights. Consequently, taking into account that, there is no great difference between public and private management of services of general interest and, therefore, best practices can and should be transferred from the public to the private sector, the Ombudsman of Catalonia's experience and expertise in this conceptual migration seems relevant to analyse and export to other Ombudsmen.