

VOLKSANWALTSCHAFT



Tasks
Responsibilities
Investigative
Proceedings

Austrian Ombudsman Board

The Austrian Ombudsman Board has been controlling Austria's entire public administration for more than 30 years. It checks the legality of decisions by authorities. This public control is important because everybody has a right to transparent and fair administration.

This brochure gives an overview of tasks and responsibilities of the Austrian Ombudsman Board. It describes the course and results of investigative proceedings and offers interested readers a comprehensive illustration of the legal bases.

Dr. Peter Kostelka
Dr. Gertrude Brinek
Mag.^a Terezija Stoisits

Vienna, July 2010

Table of Contents

Tasks.....	4
Responsibilities	5
History	6
Organisation	7
Dr. Peter Kostelka	8
Dr. Gertrude Brinek.....	9
Mag. ^a Terezija Stoitsits	10
Key Figures	11
Complaints.....	12
Investigations.....	13
Results.....	14
Reports.....	16
Legal Bases.....	17
Contact.....	26

Tasks

The Austrian Ombudsman Board has been independently monitoring and controlling Austria's entire public administration since 1977 by order of the Federal Constitution. It **checks the legality of decisions by authorities** and examines possible cases of maladministration in the public administration. The Ombudsman Board stands for fair dealings with citizens by the administration and exercises public control to serve the rule of law and democracy.

Everybody can turn to the Ombudsman Board when having problems with **Austrian authorities**. The complainants do not have to be Austrian citizens or of full age. Enterprises, businesses, and associations can also turn to the Ombudsman Board. Investigative proceedings can only be initiated after the administrative proceedings have been concluded and there is no further legal remedy against the grievance.

The Ombudspersons can also **act on their own** if they suspect grievances or irregularities. They can challenge ordinances and issue recommendations. The members also participate in handling the petitions and citizens' initiatives directed to the National Council.

Through its daily work, the Ombudsman Board knows exactly how laws affect people's daily lives. For this reason, it not only monitors the implementation of the laws, but **points out problematic legal provisions** on the federal and state level and suggests improvements.

Responsibilities

The Ombudsman Board examines the entire **public administration**, i.e. all authorities, administrative offices, and departments. Whenever you have the impression that you are not being treated correctly by an administrative authority, you can turn to the Ombudsman Board. The Ombudspersons examine the case, make enquiries on their own, inspect files and inform the persons concerned of the result of their efforts.

The Austrian Ombudsman controls the **direct and indirect federal administration**. This extends from the financial administration to riparian rights and social insurance issues. It also controls the **administration of the private sector**. While the Ombudsman Board examines suspected grievances due to the implementation of federal laws, there are many other cases examined outside the Federal Ministries as well – for example the job centre.

Seven of Austria's nine states have also mandated the Ombudsman Board with monitoring the entire **state, regional and municipal administration**. In the Tyrol and Vorarlberg, state ombudspersons are appointed by the regional parliaments; in these states, the Ombudsman Board only deals with complaints about the federal administration.

The Ombudsman Board is **not responsible** for legal issues and problems resulting between individuals or between individuals and enterprises. The Ombudsman Board cannot help with problems concerning enterprises or banks. Rulings by the independent courts are not subject to the Ombudsman Board's examination. The Ombudsman Board cannot act as a lawyer for the complainant.

History

Already in the years after World War II, several politicians requested the implementation of an "Ombudsperson". Mostly, Scandinavian countries served as a model. In 1970, the new control body was specifically announced for the first time in the government declaration of Federal Chancellor Kreisky.

A **draft amendment of the Federal Constitution** included the creation of a new Federal Ombudsman Board in February 1971 and unleashed an intensive public and political debate. The following government bill included the term „*Volksanwaltschaft*“ but never became law since the political parties could not agree on the number of Ombudspersons.

The government made another attempt in 1975 and in **February 1977** the members of the National Council voted unanimously on the Federal Law on the Austrian Ombudsman Board. However, **the legal basis was limited to six years**. The first three Ombudsmen Robert Weisz, Franz Bauer and Gustav Zeillinger began their work on 1 July 1977. In January 1983, the Austrian Ombudsman Board moved to its current location in Singerstraße.

Four years after its creation, the Austrian Ombudsman Board passed its performance test. In **July 1981**, the Federal Constitution was changed and the provisions on the Austrian Ombudsman Board became a permanent part of the Austrian Federal Constitution.

Organisation

The Ombudsman Board consists of **three members** who work together as **colleagues**. They are elected by Parliament for a term of six years and can be re-elected once. Before their election, the three strongest parties have the right to nominate a member. This right of participation by the political parties does however not lead to a dependence of the Ombudspersons on a specific political group.

The members of the Austrian Ombudsman Board are **independent** in the exercise of their actions. They cannot be deselected, recalled, or divested of office. The Ombudspersons are sworn in by the Federal President. The **chair** of the Ombudsman Board changes every year at the end of June. The chair directs the administration of the house; however, all important matters are deliberated and decided jointly.

At the beginning of their term of office, the members of the Ombudsman Board agree on an **allocation of duties**. In doing so, each Ombudsperson takes over a certain sphere of business and is thus responsible for predefined issues. More than 30 experienced case handlers assist the members in their work. Apart from the administration, the information service and the secretariats of the Ombudspersons care for concerns of the citizens. Since September 2009, the Austrian Ombudsman Board is the seat of the General Secretariat of the **International Ombudsman Institute (I.O.I.)**, the only globally active representation of the interests of independent administrative monitoring bodies.

Dr. Peter Kostelka

Ombudsperson Dr. Peter Kostelka was born on 1 May 1946 in Bleiberg (Carinthia). He completed his school education in Klagenfurt and then obtained a degree in law from the University of Vienna. He was an Assistant Professor at the Institute of State and Administrative Law of the University of Vienna for two years.

In 1990, Peter Kostelka became a member of the Federal Council, from 1990 to 1994 he was a state secretary in the Office of the Federal Chancellor and from 1994 to 2001 a member of the **National Council**. Among other functions, he was the vice-president of the "Austrian Convention". Kostelka has been an Ombudsperson since **1 July 2001** and has also been active in the International Ombudsman Institute (I.O.I.) since 2004, first as chair of the European region, and since June 2009 as the Institute's Secretary General.

At the federal level, Ombudsperson Dr. Peter Kostelka is among other things responsible for **social matters**. These include **health, pension and accident insurance** as well as matters concerning **handicapped persons and the labour-market administration**. The fields of **youth and family, national defence, railways, postal administration, and health** are also within his remit. At the state level, he monitors the **social and health administration, youth welfare services, animal welfare, and veterinary matters**.

Dr. Gertrude Brinek

Ombudswoman Dr. Gertrude Brinek was born on 4 February 1952 in Hollabrunn (Lower Austria). She completed her education at the Federal College of Education and the University of Vienna, where she obtained a doctorate in education, psychology, and art history. After teaching at Viennese elementary and secondary schools for ten years, Brinek moved her professional focus to the University of Vienna in 1983, where she lastly was an assistant professor at the Institute of Educational Science.

From 1988 to 1990 and from 1994 to 2008, Gertrude Brinek was a member of the **National Council** with a focus on science policy. Gertrude Brinek was sworn in as an ombudswoman by the Federal President on 14 July 2008.

At the federal level, Ombudswoman Dr. Gertrude Brinek is responsible for **taxes, fees, duties, the administration of justice, and public prosecution**. At the state level, Brinek monitors **local governments and all communal matters** (land use planning, building legislation, housing and settlement, state and rural roads) as well as cemetery administration and communal or municipal transport services.

Mag.^a Terezija Stoitsits

Ombudswoman Mag.^a Terezija Stoitsits was born on 14 November 1958 in Stinatz/Stinjaki (Burgenland). She completed her school education in the state of Burgenland and studied law at the University of Vienna. She then directed a department in the Federal Ministry for Education, Arts and Sports.

Stoitsits began her political career in 1990 as a member of the **National Council**, where she held office without interruption until 2007. Her core themes were justice, minorities, migration, and human rights. She chaired the parliamentary committee on human rights for eight years, was a member of the Parliamentary Assembly of the Council of Europe, and participated in the "Austrian Convention".

Stoitsits is on the Board of Trustees of the National Fund of the Republic of Austria for Victims of National Socialism and also Vice President of the Austrian League for Human Rights. Mag.^a Stoitsits has been an ombudswoman since 1 July 2007.

At the federal level, she is responsible for **internal affairs** (police law, law relating to aliens, legislation on asylum), the **environment, agriculture and forestry, trade and operational facilities, motorways, schools, universities, arts and culture**. At the state level, she monitors road traffic, citizenship, duties and public subsidies, nursery schools, nature conservation, and agrarian matters.

Key Figures

Around **15,000** people turn to the Austrian Ombudsman Board each year with their concerns and problems. In 2009, almost 10,000 persons complained of having been treated poorly or having been inadequately informed by a public authority. In **60 percent** of all complaints, the Austrian Ombudsman Board initiated a **detailed investigation**. In approximately 4,000 cases the Austrian Ombudsman Board could not determine a case of maladministration but provided additional data and gave legal information. This was also done in 4,500 cases dealing with complaints outside of the scope of the Austrian Ombudsman Board's investigative duties.

Traditionally, most of the complaints concern the area of **social welfare**. Also in the **justice system** there is an increasing interest of people who search for clearance at the Austrian Ombudsman Board, although the independent jurisdiction (verdicts, orders) is excluded of its investigative duties. The number of cases in the area of **internal affairs** has been continuously high over the years.

Altogether, **6,700** of the cases of 2008 and 2009 could be closed in 2009. The members determined a case of maladministration in **15 percent** of the initiated investigative proceedings.

The Austrian Ombudsman Board is in close contact with the persons concerned to help them receive their rights: About 13,000 letters and e-mails are sent to the Austrian Ombudsman Board each year, 8,000 people turn to the information service. More than 1,000 personal talks with members take place at the **consultation days**. Altogether, up to 23,000 documents are needed each year to help parties concerned.

Complaints

The Austrian Ombudsman Board lends its support to everybody, **regardless of age, nationality, or residence**, whenever a case of maladministration within the Austrian authorities is suspected. A complaint can be made at any time and entails **no expense**. Everybody can turn to the Austrian Ombudsman Board if:

- they are directly concerned by a case of maladministration in the administration or if they want to complain in the name of a person they are responsible for,
- proceedings are closed and there is no legal remedy left to eliminate the case of maladministration.

Complaints should contain information about the person **who** is complaining or in whose name the person concerned turns to the Austrian Ombudsman Board. Furthermore, it should be clear **which authorities** are concerned and for **which reason**. The files of the Austrian Ombudsman Board are not publicly accessible and are not disclosed to public authorities.

If the Ombudspersons suspect a case of maladministration, they can also **get active ex officio**, without a concrete complaint. In investigative proceedings, the Austrian Ombudsman Board often determines cases of maladministration which reach far beyond the individual case. In this case, a control ex officio could be necessary.

Complaints do not always lead to investigative proceedings. If the Austrian Ombudsman Board is not or not yet responsible for a complaint, general information is provided.

Investigations

The Austrian Ombudsman Board opens **investigative proceedings** if it suspects a case of maladministration. Based on the available documents and material, it tries to get an overview, confronts the authority concerned with the complaint and asks for a statement within a certain time.

All federal agencies, as well as state and local authorities **are obliged to disclose all relevant information** to the Austrian Ombudsman Board. The Austrian Ombudsman Board can gather evidence on its own in the course of the investigative proceedings. It has the right to hear witnesses and to contract authorised experts. The Austrian Ombudsman Board meets regularly with the authorities it controls. The Ombudspersons can therefore for example clarify the details of investigative proceedings in talks with the members of the government.

The Ombudspersons always **set a time limit for statements** by the authority to be able to close the investigative proceedings as fast as possible. Some complaints are very complex. The Austrian Ombudsman Board keeps the complainants informed about progress and results of the investigative proceedings.

The Austrian Ombudsman Board monitors if authorities implement legislation correctly. It is not its duty to carry a specific personal interest through. Therefore, it does not intervene for a specific outcome but asks for a **fair and transparent administrative action**.

Results

Complainants are informed in written and detailed form about the results of the control by the Ombudspersons. Investigative proceedings by the Austrian Ombudsman Board can lead to various results.

Sometimes the complaint is not justified, since the administrative action was authorised by the law in force. Especially in those cases it is important to clear out misunderstandings and to explain the legislation to the complainant.

In other cases, the reason for the complaint lapsed or was cleared. Sometimes authorities react very fast and correct their mistakes as soon as the Austrian Ombudsman Board implements investigative proceedings. The investigation will be closed as soon as the citizen received his or her rights.

If the investigative proceedings reveal that **the complaint was justified**, the Ombudspersons can take different measures:

- The Austrian Ombudsman Board asks the authority concerned to **correct its mistake**, but some administrative decisions are irreversible and a resumption of proceedings is not possible.
- If the Austrian Ombudsman Board arrives at the result that an **ordinance** contradicts the law, it can apply for its **repeal** at the Austrian Constitutional Court.

- If the administration made a substantial mistake, the members of the Austrian Ombudsman Board determine a **formal case of maladministration** as colleagues. They also recommend what the authority should do in this present case to act correctly and to avoid similar mistakes in the future. Within eight weeks, the authority has to implement this recommendation or to explain why it does not follow the opinion of the Austrian Ombudsman Board.
- If the Austrian Ombudsman Board determines **overlong durations of proceedings** at the courts or at the Asylum Court, it can make a request that a time limit to deal with a court's delay be set and supervisory measures be taken.

The Austrian Ombudsman Board wants to sustainably fight mistakes in the application of law and therefore interacts with the leading actors of Austrian public administration, for example the **members of the government, the Governors of the Austrian states or the district commissioners**. They have the opportunity to issue instructions to their agencies, departments and units.

Reports

The Federal Constitution foresees that the Austrian Ombudsman Board submits a comprehensive annual report **once a year**. For the members of Parliament, this report presents **all important focal points** on the federal level and contains recommendations of the Austrian Ombudsman Board regarding necessary changes of laws. Several of these recommendations have been urgent concerns of the Austrian Ombudsman Board for years.

Weaknesses concerning the **protection of fundamental rights** are addressed in depth. On the basis of the annual report and the following debate in the National and Federal Council, the legislator has the possibility to draw consequences. Due to the input of the Austrian Ombudsman Board, members of parliament can abolish problematic regulations.

In seven federal states, the Austrian Ombudsman Board does not only control the daily work of all authorities implementing federal law, but also the whole state and municipal administration. With the exception of Vorarlberg and the Tyrol, it regularly presents the results of its investigations to the **regional parliaments**.

Apart from the official reports to the National and Federal Council as well as to the state parliaments, the Austrian Ombudsman Board continuously informs the public about its activities. The website of the Austrian Ombudsman Board registers more than 1,4 pageviews each year. Each week, up to 420,000 people watch the TV show "Bürgeranwalt" ("Advocate for the people"), where members of the Austrian Ombudsman Board present striking cases.

Legal Bases

The establishment of the Austrian Ombudsman Board and its legal position is based on article 148a to 148j of the Austrian Federal Constitution (B-VG) and the Federal Law on the Austrian Ombudsman Board (Volksanwaltschaftsgesetz 1982 - VolksanwG).

Chapter 8 of the Austrian Federal Constitution Austrian Ombudsman Board

Art. 148a

(1) Everyone can lodge complaint with the ombudsman board (Commission for Complaints from the Public) against alleged maladministration by the Federation, including its activity as a holder of private rights, provided that they are affected by such maladministration and in so far as they do not or no longer have recourse to legal remedy. All such complaints must be investigated by the ombudsman board. The complainant shall be informed of the investigation's outcome and what action, if necessary, has been taken.

(2) The ombudsman board is ex officio entitled to investigate its suspicions of maladministration by the Federation including its activity as a holder of private rights.

(3) Irrespective of para. 1 everyone can lodge complaint with the Volksanwaltschaft in respect of a court's alleged delay in carrying out a procedural act, provided that they are affected by the delay. Para. 2 applies by analogy.

(4) The ombudsman board also shall cooperate in dealing with petitions and initiatives of citizens lodged with the National Council. Detailed provisions about this cooperation shall be made by the federal law about the Standing Orders of the National Council.

(5) The ombudsman board is independent in the exercise of its authority.

Art. 148b

(1) All Federal, Laender, and municipal authorities shall support the ombudsman board in the performance of its tasks, allow it inspection of its records, and upon request furnish the information required. Official secrecy is inoperative in the case of the ombudsman board.

(2) The ombudsman board must observe official secrecy to the same degree as the authority whom it has approached in the fulfilment of its tasks. The ombudsman board is however bound by the observation of official secrecy in its reports to the National Council only in so far as this is requisite on behalf of the interest of the parties concerned or of national security.

Art. 148c

The ombudsman board can issue to the authorities entrusted with the Federation's highest administrative business recommendations on measures to be taken in or by reason of a particular case. In matters of autonomous administration or of administration by agents not subject to directives the ombudsman board can issue recommendations to the autonomous administrative authority or to the agency not subject to directives; the Federation's highest administrative authority shall likewise

have its attention drawn to such recommendations, the authority concerned must within a deadline to be settled by Federal law either conform to the recommendations and inform the ombudsman board accordingly or state in writing why the recommendations have not been complied with. In or by reason of a particular case the Volksanwaltschaft can make a request that a time limit to deal with a court's delay be set and supervisory measures be taken.

Art. 148d

The ombudsman board shall annually render the National Council and the Federal Council a report on its activity. The members of the ombudsman board are entitled to participate in the debates by the National Council and the Federal Council and by their committees (sub-committees) on the ombudsman board's reports and on each occasion to be given at their request a hearing. The members of the ombudsman board shall have this right also in respect of the debates by the National Council and its committees (sub-committees) on the draft Federal Finance Act's sections concerning the ombudsman board. Details are stipulated in the Federal law on the National Council's Standing Orders and the Standing Orders of the Federal Council.

Art. 148e

On application by the ombudsman board the Constitutional Court pronounces on the illegality of ordinances by a Federal authority.

Art. 148f

If differences of opinion arise between the ombudsman board and the Federal Government or a Federal Minister on the interpretation of legal provisions, the Constitutional Court on application by the Federal Government or the ombudsman board decides the matter in closed proceedings.

Art. 148g

(1) The ombudsman board has its seat in Vienna and consists of three members one of whom acts in turn as chairman. The term of office lasts six years. Reelection of the ombudsman board's members more than once is inadmissible.

(2) Ombudsman board members are elected by the National Council on the basis of a joint recommendation drawn up by the Main Committee in the presence of at least half its members. Each of the three parties with the largest number of votes in the National Council is entitled to nominate one member for this recommendation. The members of the ombudsman board render an affirmation to the Federal President before their assumption of office.

(3) The ombudsman board chairmanship rotates annually between the members in the sequence of the voting strength possessed by the parties who have nominated them. This sequence remains unchanged during the ombudsman board's term of office.

(4) Should an ombudsman board member retire prematurely, the party represented in the National Council who nominated this member shall nominate a new member. The new election for the remaining term of office shall be effected pursuant to para. 2 above.

(5) Ombudsman board members must be eligible for the National Council; during their service in office they may belong neither to the Federal Government nor to a Land government nor to any general representative body and they may not practise any other profession.

Art. 148h

(1) Ombudsman board officials are appointed by the Federal President on the recommendation and with the countersignature of the ombudsman board chairman. The Federal President can, however, authorize him to appoint officials in certain categories. Auxiliary personnel is appointed by the chairman who is to this extent the highest administrative authority and exercises these powers in his own right.

(2) The Federation's service prerogative with regard to ombudsman board employees is exercised by the ombudsman board chairman.

(3) The ombudsman board determines its Standing Orders and an allocation of business that regulates which tasks shall be autonomously performed by its members. The adoption of the Standing Orders and the allocation of business requires the unanimous vote of the ombudsman board's members.

Art. 148i

(1) The Laender can by Land constitutional law declare the ombudsman board competent also in the sphere of the particular Land's administration. In such case Arts. 148e and 148f shall apply by analogy.

(2) If Laender create agencies in the sphere of Land administration with tasks similar to the ombudsman board, Land constitutional law can prescribe a provision corresponding to Arts. 148e and 148f above.

Art. 148j

Detailed provisions relating to the implementation of this chapter shall be made by Federal law.

Extract from the

Federal Law on the Austrian Ombudsman Board

(Ombudsman Board Act 1982 - VolksanwG)

I. Chapter Organisation of the Ombudsman Board

Section 1

(1) A quorum of all members of the Ombudsman Board is required for adopting resolutions in this panel. The Internal Rules may determine rules on the representation of a member of the Ombudsman Board in matters which require panel resolutions. Unless provided differently by constitutional law, resolutions shall be adopted with the majority of votes, abstention is not admissible.

(2) Subject to panel resolutions of the Ombudsman Board are such matters as reserved by the Internal Rules or by the allocation of business, in any case the Internal Rules and the allocation of business itself, as well as resolutions on reports to the National Council and on resorting to the Constitutional Court in cases of Art. 148e and 148f Federal Constitution Act.

(3) The mutual representation of members of the Ombudsman Board in handling duties conferred upon them for taking care of on an independent basis in case of being temporarily prevented and permanent carrying out of the office is subject to the provisions of the Ombudsman Board's Internal Rules.

(4) Except for their salaries, the members of the Ombudsman Board rank equal with a Deputy Minister with an agenda of specific duties to be handled.

Section 2

In case a member of the Ombudsman Board is resigning from office before expiry of his term of office, the Chairman shall inform the President of the National Council accordingly without delay.

Section 3

Each member of the Ombudsman Board whose opinion on the contents of a report addressed to the National Council has not obtained a majority of the votes, has the right to attach a dissenting opinion to such report.

Section 4

(1) The Internal Rules may provide that matters recurring on a regular basis and serving to prepare measures to be taken shall be handled by the office.

(2) Internal Rules and allocation of business of the Ombudsman Board shall be published in the Federal Law Gazette.

II Chapter Proceedings before the Ombudsman Board

Section 5

In proceedings before the Ombudsman Board, the §§ 6, 7, 10, 13, 14, 16, 18 para 1, para 3 second and third clause and para 4 through 6, 21, 22, 32, 33, 45 para 1 and 2, 46 through 51, 52, 53, 54, 55 AVG (General Administrative Procedure Act) and the Service of Documents Act, F. L. G. No. 200/1982, shall apply accordingly.

Section 6

The Federal organs responsible for handling the supreme administrative matters are obligated to comply with recommendations addressed to them by the Ombudsman Board within a term of eight weeks and to inform the Ombudsman Board accordingly or to give the reasons in writing why the recommendation has not been complied with. The Ombudsman Board may extend this term upon a justified request. The complainant shall be informed of the information.

Section 7

To the extent submissions with authorities and offices are admissible in a different language from German, such submissions may also be filed with the Ombudsman Board in such language.

Section 8

If the Ombudsman Board deems investigations necessary for ascertaining the facts on which a complaint is based, the Federation shall assume the costs arising for this purpose.

Section 9

Submissions to the Ombudsman Board and all other briefs prepared for being used in a proceeding before the Ombudsman Board shall be exempt from stamp duties.

Contact

Do you want to complain about an authority or need information? You can reach the Ombudsman Board by telephone, in writing, and personally.

Austrian Ombudsman Board

(Volksanwaltschaft)

1015 Vienna, Postfach 20

Free service number: **0800/223 223**

Phone: +43 / (0)1 / 515 05-0

Fax: +43 / (0)1 / 515 05-190

E-Mail: post@volksanw.gv.at

Please indicate: **who** is contacting the Ombudsman Board and/or on whose behalf this is being done, **which authority** you want to complain about, and for **which reason**. For fast processing of your concern, it is particularly helpful if you enclose copies of documents at hand. **No fees or costs** for return postage will be incurred for your complaint.

Of course, you can also deliver your documents personally. The Ombudsman Board is right in the centre of Vienna and can be easily reached in a few minutes from the Stephansplatz U-Bahn station. The staff will be happy to attend to your concern on **weekdays** from 8 a.m. to 4 p.m.

You can, however, discuss your complaint with the Ombudpersons directly on a **consultation day**. Please understand that it is imperative that an appointment is made in advance for this purpose. Consultation days regularly take place at the Ombudsman Board in Vienna and in the state capitals as well as at district authorities or municipal councils of larger cities. Consultation days are also announced on our website www.volksanw.gv.at.

Editor

Austrian Ombudsman Board
(Volksanwaltschaft)
Singerstraße 17
1015 Vienna

Phone +43 (0)1 51505-0

Fax. +43 (0)1 51505-190

<http://www.volksanw.gv.at>

post@volksanw.gv.at

Toll-free Service Number:

0800 223 223 *

*(*can not be accessed from abroad)*

Vienna, July 2010