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Ombuds in the digital Age: Navigating Challenges and Opportunities

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Dear colleagues!

I would like to take this opportunity to share some thoughts with you on the topic of digitalisation and ombudsman services.

Although my topic is "Legal and Ethical Questions", please do not expect a legal treatise. We all know that in many places, both on national and international levels, governments and legislators create legal frameworks for the use of digital systems and the protection of the users. However, sometimes I fear that our traditional instruments of governance are not sufficient for this. The present is already overtaking the future and we are thinking about regulating the past. And technical development is always one step ahead.

Nevertheless, we have to face the challenges. But first of all: there is no reason to be pessimistic.

Let us think back for a moment. Not that long ago, the question for ombudsman institutions was whether our activities should be presented on a homepage and which results may or shall be published. Then there was discussion about the extent to which complaints should be admissible via e-mail versus the protection of data. Both are now a matter of course for all ombuds and are considered to be a question of contemporary service. Many of us have already joined social media networks or think about it. Some perhaps even to join TikTok for spreading information about their services.

In relation to these issues, previous speakers have already set out the framework for privacy protection and secure communication.

I would like to talk about the biggest current challenge that we are already facing, namely the use of artificial intelligence.

We are increasingly concerned with the question of whether or not artificial intelligence should be used. We no longer need to think about the answer. It already determines our daily lives. In medical research, in the support of people in need, in our consumer behaviour, in the preparation of legal expertises, in literature and art. In the meantime, artificial intelligence modulates itself and develops itself further.

Authorities are also already using artificial intelligence in many cases. In Austria, the tax return must be filed electronically and the decision is issued electronically. Original documents such as invoices are only requested from the taxpayer on a random basis. Of course, the selection is based on an algorithm. However, it is not the algorithm that stands before me or addresses our institution, but the selected citizen concerned.

Let's do a little mind game:

A complainant writes his complaint with the help of ChatGPt. In the complaint, he refers to extensive legal literature and court decisions. In particular, he claims that the authority used artificial intelligence in an inadmissible way. Of course, he submits the complaint to our ombudsman chatbot, as is already widely possible and used with private companies as a service. The authority, also using artificial intelligence, rejects the accusations. The ombudsman's employee, also using ChatGPT, submits the draft settlement to the ombudsman for signature. This takes into account, thanks to the use of artificial intelligence, all the published and unpublished decisions of the ombudsman institution on comparable cases.

My little example raises the whole range of questions:

Do our decisions now depend only on which databases are networked and programmed and how?

Should we set up chatbot systems as a service to be available day and night?

How do we even recognise as an institution whether artificial intelligence has been used?

What, if we don't agree with the outcome?

Should we perhaps develop an "Open AI" for ombudsmen?

What scope for decision-making do we ombudsmen have left at all?

Our primary task is to control the state administration. However, the challenge will also be whether we as an institution are equipped financially, in terms of personnel, but especially technically, to be able to control the use of artificial intelligence at all. Many colleagues are already struggling for the necessary basic equipment. But that only concerns the organisational side of our work.

It will be much more difficult for us to assess the permissibility of the use of artificial intelligence. Has the state administration adhered to its own national and international framework conditions? If there are none, what criteria do we use to decide? You still remember my example with the tax return. What if disabled persons are asked to submit original receipts? This group of taxpayers depend very often on personal help, both electronically and manually. Should we now recommend that the algorithm should consider this and not be applied for this group of people because we consider it unethical? The example also shows another dilemma. After all, the algorithm is also supposed to prevent an employee of the tax authority from arbitrarily harassing certain people with orders. But isn`t a differentiation necessary, not least in view of the Convention on the Rights of Persons with Disabilities?

Let us return to the issues that concern us as an ombudsman institution organisationally. We all try to give as much understandable information as possible about what we are responsible for, and when we can help. Nevertheless, very many people turn to us with questions that are outside our competence. Family law issues, difficulties with private companies, decisions by independent courts. The effort to

then point out which office could help or where people can turn to with their problem is considerable. An "Ombuds-Chatbot" set up by telephone and electronically could therefore save us a lot of work. In the meantime, chatbots could even be given a voice deceptively similar to that of the ombudsman.

How much research can our employees save with the increased use of artificial intelligence? Just think about the time saved alone. Law firms are already using electronic systems to draw up contracts. We could have our own assessments and recommendations virtually written. Moreover, the systems don't make mistakes either, they don't leave anything out and they take everything into account.

Of course, we should use the latest technologies. Of course, we should use digital achievements. Otherwise, there would be no webinar possible. Remember. How many were dependent on digital communication in times of the pandemic - also we as ombudsman institutions.

What is actually at stake in the question of whether and to what extent we ourselves use digital systems. The systems themselves have no ethics, even though science is already working on the development on digital emotional behaviour.

Does the question of ethics arise for us at all?

The Austrian philosopher Konrad Paul Liessmann has stated on the subject: "The triumph of apparatuses can only be explained by one motive: we want to deal less and less with people in our lives." (Konrad Paul Liessmann, "Lauter Lügen und andere Wahrheiten", Paul Zsolnay Verlag, 2023, p 42)

This is precisely what does not correspond to the ethics of ombudsman institutions. The model and concept of the ombudsman has survived for centuries since 1809, and not only by tradition. It is still modern and, especially in view of increasing digitalisation, more topical than ever. Because the motive for our activity is, "we want and should deal with more people in life."

The very fact that we are no courts and administrative authorities opens up enormous scope for us. If we identify maladministration, it is usually a violation of the law. However, it does not have to be. We can make a recommendation even if the authority itself has acted in accordance with the law. We can overrule the findings of Artificial Intelligence if the state action does not comply with the principles of equity. These are then definitely not decisions based on 0/1.

Ever since, we had to be careful applying this wide decision-making scope. We have to give good reasons for our recommendations and suggestions and do our best to convince authorities and sometimes legislators to act differently. And we must ensure an open, direct access to us for all those seeking advice and help. The motto "for people, by people" may be a kind of guideline for us.

To return to the beginning of my sketch on the subject. There is indeed no reason for pessimism. Because one thing artificial intelligence is not: Human. But our greatest challenge will possibly be to accompany increased digitalisation with an increased offer of personal contact with us.

However, I would like to conclude my remarks by pointing out that the translation of my contribution is based on the digital translation programme "Deepl"!

Thank you for your attention!