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Ombudspersons and Persons of Similar Status: Recommendations for Universities

Centralised development project of the Ministry for Education, Youth and Sports: Prevention of Unethical Behaviour in Academia and Support of Competencies in Care for Victims, 2023

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In recent years universities in the Czech Republic have started to pay increased attention to the prevention and handling of unethical behaviour. Many universities have decided to establish the concept of ombudsman or -woman or person of similar status. The processes for the creation of these positions and the delineation of their status and function took place, to a certain extent, spontaneously and with highly varying processes at individual universities. As part of the Prevention of Unethical Behaviour in Academia and Support of Competencies in Care for Victims centralised development project (CDP), which was supported in 2023 by the Ministry for Education, Youth and Sports and in which 26 Czech public universities were involved, we therefore decided to tackle this topic in a systematic way – also with regard to the unique opportunity for comparison that this inter-university project offers.

One of the outputs of the project are the recommendations for universities for the functioning of ombudspersons and persons of similar status. Universities in the Czech Republic are currently at different stages of the process: some are only now legislating for the position, and some have already had ombudspersons in place for a number of years. Now therefore seems like an opportune moment to consider how such a position could or should function, and why.

These recommendations can help the management of universities and their units to orientate themselves in the area, consider individual aspects of the activities of an ombudsperson and, perhaps, also clarify what can be expected from the work of an ombudsperson, and what not. While the text certainly does not cover all the issues related to such work, it does present a basic overview that can serve as a guide when considering a specific procedure at a specific university or unit thereof.

The following text is based, on the one hand, on a content analysis of available documents and websites governing the functions of the position of ombudspersons or persons of similar status, and on the other, on interviews conducted with them by the head of the project group as part of a focus group, as well as from data gathered from participating universities and the findings of project teams during realisation of the CDP project or during the sharing of best practices from both the Czech Republic and abroad.

For the sake of greater clarity, we will use the term “ombudsperson” in the text; however, the same recommendations also apply to other persons with similar status, which here include, for example, protectors of students’ rights, contact persons or social care coordinators, etc., although for some of these it cannot be expected that their positions will be formalised to such an extent.



Recommendations for universities

The key first step when considering the creation of the position of ombudsperson should be to clarify the management's expectations of such a position (be it the management of a university or unit thereof). For whom is the person and their assistance to be available? What will their tasks be? What type of work will the management expect from them beyond the handling of individual suggestions? What kind of staffing and finances will they have at their disposal? What form will communication between them and management or other institutional bodies take? Only after these fundamental questions have been clarified is it possible to define the requirements for the person in question and the procedure to select them.

One mistaken assumption is that an ombudsperson will resolve unpleasant situations, or even "scandals", on behalf of the management. Current practice shows that, on the contrary, an ombudsperson will often consult management with new suggestions and situations for resolution, either at individual or conceptual level. It is also true that, if the university community trusts the ombudsperson and their "services" are promoted, an increase in suggestions concerning issues that management (or even the general public) otherwise wouldn't find out about in the first place can be anticipated. To a certain extent, it can appear as if the ombudsperson is "creating extra problems" for management or "rocking the boat"; nonetheless, this can be a sign that they are doing their job well and helping to improve the environment at the university.

In practice, ombudspersons are confronted with very high expectations for positive change in terms of improvements – either objective or perceived – in working and study conditions. It should be emphasised that such changes do not take place overnight, and are rather a long-term process. Furthermore, expectations are often in opposition to one another, as students, teachers and management have different expectations, with even more radical differences between the actors in individual suggestions. It is clear that these expectations can be highly contrary and place considerable demands on the work of an ombudsperson.

Enshrinement of the position in legislation

The first recommendation which, according to current experience, can significantly strengthen the position of ombudsperson, is the enshrinement of their function (position) in the university's regulations, typically through a rector's or dean's measure, directive or decree. Such a regulation should, in particular, stipulate the means of filling the position, its tasks and basic principles of functioning, integration within the institution's organisational structure (the relevant statute or rules for internal governance can also be modified with respect to this), and also delineate cooperation with other bodies (for example, the rector, dean, academic senate, ethics commission, etc.).

Unfortunately, in the Czech Republic ombudspersons frequently do not enjoy such support. If the position isn't bindingly enshrined in legislation, their standing is significantly weakened: What is the basis of their



actions? What is expected of them? What is their mandate? What happens when the management changes? All of these open questions significantly impair their effective functioning in practice.

If a legislative basis is in place for the work of an ombudsperson, the content of this can be highly heterogeneous. Some regulations focus primarily on the selection process for an ombudsperson (particularly with regard to election), while others give a detailed job description for the position or its relationship to other bodies or office holders. The areas that we recommend covering in the regulation are dealt with in greater detail in this text.

However, the fact that the position of ombudsperson is in some way enshrined in legislation does not mean that it should be unchanging. On the contrary, after some time has passed (e.g. one year) we recommend reviewing, in cooperation with the ombudsperson, experience so far and amending the regulation. This is also connected with the necessity of assessing the real-world functioning of the ongoing practice and working conditions of the ombudsperson.

Ombudspersons in the Czech Republic can be categorised into the following three general groups:

- persons who work on a full-time or nearly full-time basis,
- persons who perform the work of an ombudsperson in addition to their normal job at the relevant university (whether these are academics or administrative staff, usually from the HR office), and in rare cases in addition to their studies (if the ombudsperson is a student),
- persons who perform the work of an ombudsperson as an external contractor – be it on the basis of non-employment work contracts (DPČ, DPP), on a self-employed basis or with very short working hours.

Currently, the largest group, constituting about half of all ombudspersons, consists of those for whom ombudsperson activities are “extra work” that is generally assigned to them on an “honorary” basis, even though they receive (sometimes symbolic) remuneration for their work. The advantage of this type of ombudsperson is that they are well acquainted with the environment that they work in. On the other hand, the nature of their employment can give rise to doubts as to their independence as they are an integral part of the organisational structures of the relevant university or unit thereof; for example, they work at a specific faculty, institute, etc. A further logical problem arising from the situation is a lack of time for their work as an ombudsperson due to their everyday commitments in their teaching, research, administrative or professional role. From this perspective, the situation for the person in question is a precarious one because they do not have sufficient capacity to perform all the tasks expected of them by management, students and their colleagues, or their professional development in their primary job is jeopardised.

A similar problem can affect external contractors, who do not spend so much time at the relevant institution and usually perform some other job elsewhere (be it in an academic or a completely unrelated environment). On the other hand, they have the advantage of having greater independence due to the nature of their employment status.



From this perspective, then, it is clear that the best solution is for the ombudsperson to be able to fully devote themselves to their work, without any other commitments. This also permits the professionalisation of the position and advanced training. Nonetheless, this solution does incur greater expenditure and it is open to question as to whether there would be an adequate number of suitable candidates for such positions if they were introduced at all universities and their units.

Students who become ombudspersons and must defend the interests of other students are also in a special position. Due to the nature of their employment relationship, they are in a much weaker position with respect to teachers and management and their work is far more dependent on the willingness of management and individuals within management to listen to them. Furthermore, student representatives must also, to an extent, fulfil this role in academic senates.

In general, the position of ombudsperson is occupied by only one person; nonetheless, at several institutions it is occupied by two people in tandem, frequently (but not always) by a man and a woman. In such cases, the positions are formally described as an ombudsperson and their representative, although their status is essentially comparable. In our opinion, if these persons are de facto equal partners, their job titles should reflect this.

The advantage of such collective performance of the function is the possibility of mutual consultation on cases, the possibility of deputising for or supporting one another, or better prospects for the expansion of activities. From the perspective of clients, there is the possibility of choosing who to consult with their suggestions, be it based on gender, work profile or personal affinity. On the other hand, this arrangement is more demanding in terms of cost and finding the right candidates.

A further specific issue is the creation of ombudsperson positions at both university-wide and faculty level. Both variants, and their combination, can be found in the Czech environment. Of course, while it is advisable to coordinate activities at both levels, this is not always possible, and in practice, the positions are sometimes created spontaneously. In such cases, the mutual relationship should be clarified, and it should also be specified when which target group can and should consult which ombudsperson, or how the ombudspersons should escalate cases. Faculty ombudspersons are in all cases closer to people at their faculty than ombudspersons with university-wide authority; however, this can be seen as both an advantage and a disadvantage. A further important factor is the size of the university. If multiple ombudspersons work at a single institution, it is also useful to organise joint training courses or experience-sharing events in order to achieve, as much as possible, a similar standard of work so that people from the various units of the university receive comparable “services”.

Integration within the organisational structure and financing

A further important aspect for an ombudsperson is their integration into the structure of the university or the unit that they work at. Typically, they should be as close as possible to management and should have a similar status to, for example, the data protection officer so that they are as independent as possible. In this regard, we recommend enshrining the position of ombudsperson directly in the



institution's constitution or rules for internal governance. In the Czech context, ombudspersons are most frequently assigned to the office of the management (rector or dean), the counselling centre or the HR department. However, they are often not assigned to anywhere, particularly in cases where they perform the duties of ombudsperson in addition to their normal job, and remain assigned solely to their original workplace.

A related topic is the financing of ombudspersons' activities – not only of payroll, but also of other expenditure associated with their activities. These may include consultation, expert opinions, their own training, conferences, trips abroad, or the organisation of awareness-raising activities for universities. A self-evident component of the financing of the work of an ombudsperson should also be the possibility of organising monitoring. The conditions for financing, including sources of funds, should be clearly delineated: the workplace from whose budget funds can be taken, and to what amount, while taking into account in particular independence so that the restriction of financial resources cannot be used as a toll to exert pressure on that person.

An ombudsperson should also have a support structure – both administrative (for example, to assist with administrative tasks related to the performance of activities) and specialist – in place. One option is to set up a standing or ad hoc advisory group for the ombudsperson, in which important operational specialist areas that the ombudsperson will work with are represented. These advisory groups typically include specialists in HR, study and legal matters, data protection, counselling, internal audits, etc. If no provisions for such a group exist, the ombudsperson should at least have access to all those specialists throughout the structure of the university or its units such that they are able to consult them on their processes and individual suggestions. In practice, ombudspersons also frequently work with other bodies such as, for example, the equal opportunities commission/board or the ethical commission, with which they can share their experience or discuss possible conceptual changes.

Recruitment process for the position

There are two key phases in the recruitment process for the position of ombudsperson: the selection of a suitable person for the position and the initiation or change of the employment relationship.

In general Czech practice there exist three basic options for recruiting a suitable candidate for the position of ombudsperson:

- election,
- (open) competitive recruitment procedure, or
- appointment by management.

For both elections and competitive hiring procedures, careful consideration should be taken of who will influence the selection: who will have an active vote? And who will sit on the selection commission? Every institution should also consider the process with regard to who the ombudsperson's "clients" will be: typically, for example, an ombudsperson for students alone will only be elected by students. Even



competitive hiring procedures should take into account the role of academic self-governance, for example the academic senate, which should have some input into the selection process (e.g., approval of the job ad stating the selection criteria, nomination of a representative for the selection commission or the presentation of a candidate at a meeting of the commission prior to the conclusion of an employment contract). The simplest means of recruitment is for management to choose someone at its own discretion.

An election, in which potential future clients themselves elect an ombudsperson, certainly gives them a strong mandate. Furthermore, it can be assumed that the university community will have greater trust in the ombudsperson when it has itself participated in their selection. On the other hand, with the other two options it is the management that has greater influence. Whereas, in the case of the competitive hiring procedure, several persons will be able to influence the choice, the final decision rests with the rector or dean. The selection commission can include specialists whose influence on the selection gives the chosen ombudsperson a stronger mandate. However, in this case, and particularly in the case where the ombudsperson is appointed by the management, the position is open to doubts about its independence and potential clients may be afraid that the ombudsperson will be too “cosy” with management.

In general, a person becomes an ombudsperson by concluding an employment contract (if they are not already employed at the university) or an amendment to their contract (if they are already employed), which is something that must be agreed on by the employer and the employee. Persons can be both employed, i.e. they work on the basis of an employment contract, and they can perform work on the basis of an agreement on work outside their main employment (DPP, DPČ). However, such agreements are not suitable for such positions from the perspective of certainty for both parties.

It should be emphasised here that, under the Labour Code, it is not possible to nominate (and subsequently dismiss) an ombudsperson. Appointment as a unilateral legal act is possible only for positions permitted by law (be it the Labour Code or the Higher Education Act), which does not apply in this case. Nevertheless, this approach has been taken at some universities; likewise, in some cases the holding of the position has no basis in labour law (e.g. in the case of persons who perform the role in addition to their standard academic work and their job description or agreed type of work has not been modified in any way).

Employment or an amendment to conditions of employment can be agreed for both a definite and an indefinite period of time. However, if you want to employ a person in the position only temporarily, it should be borne in mind that in such a case a maximum of three consecutive three-year periods is permitted, as under the Labour Code it is not possible to string fixed periods of employment together for longer. In the Czech environment around half of ombudspersons have a set “term of office” and half do not, i.e., there is no time restriction on their time in the position.

From the point of view of the length of term of office, it is also important to be aware that the resolution of some individual suggestions can last a year or more, never mind the overall cultivation of the university environment. A further important factor is awareness of and trust in the specific person in the role of ombudsperson. If the person in the position is replaced too often, there is a risk that it will take the new person some time to adjust to the job and people to become accustomed to them. On the other hand, a



shorter term of office can motivate the ombudsperson to exert greater pressure for systemic changes or the faster resolution of individual issues so that the results of their work are visible before the end of their mandate.

A further critical factor are the entry requirements for the ombudsperson, which must correspond to the expectations placed on them. In our opinion, candidates should have experience in case work, therapy, counselling, mediation, conflict resolution, leadership of people, antidiscrimination issues or similar areas. For example, if we choose solely from current academics, there is a risk that they will not have competence or a professional background in the areas required for the work of ombudsperson. If we assume that an ombudsperson's services will also be used by international students and employees, candidates should also be required to have the necessary language skills. Great emphasis should be placed on moral credit, communication skills and other soft skills. Ombudspersons themselves see the ability to resist pressure (which can come not just from individuals who submit suggestions, but also from management, or even the media), mediation and negotiation skills and good time management as highly important. In practice, the rules for requirements are contradictory; ombudspersons have to deal with this and be able to back their point of view.

When calibrating the conditions for an ombudsperson's work, it is also advisable to define who cannot be an ombudsperson, i.e., define the incompatibility of the position with other positions, particularly with regard to their impartiality. By definition, the position cannot be occupied by any-one in an executive position, member of the management of the university, one of its units or of a workplace. An ombudsperson should further not be a member of a self-governing academic body or other significant body (e.g. the ethical or disciplinary commission).

Clients (target groups) of the ombudsperson

The university must clearly define who the position of ombudsperson is established for. In some cases, ombudspersons are for students only; in the majority of cases, however, they are also for employees.

We recommend that the target group be defined as broadly and explicitly as possible. Ombudspersons should be accessible not only to students, but also to all employees (academic, research, teaching and administrative staff) and, for example, to applicants for study or employment, and participants in rigorous procedures, lifelong learning, summer schools, etc.

Due to the continuing internationalisation of higher education, accessibility for international students, exchange students and foreign employees should also be taken into account. This should be reflected in the language skills of the successful candidate and English versions of available information.

Other important areas that should be clarified before the ombudsperson starts work include the handling of anonymous suggestions where it cannot be determined whether they have been submitted a student, member of staff, or someone from "outside", as well as the handling of suggestions by former students who, although they are no longer part of the ombudsperson's target group, did belong to that group when the situation that they want to discuss occurred. While the ombudsperson should certainly accept and



record these suggestions, it is up to the management of the university or unit as to whether they will also resolve it.

Anonymous suggestions carry a greater risk of having some ulterior motive behind them, and matters are further complicated when it is not possible to contact the person concerned and discuss the suggestion with them, ask about details and so on. On the other hand, they naturally give the submitter greater protection. Problematic aspects of unethical behaviour that happened further back in the past include its resolution after an extended period of time has passed and the fact that, for example, both the subjective and general perception of (un)ethical behaviour at the time may differ from their perception now. In both cases it is more difficult to draw conclusions from such suggestions.

Activities

On the international scale we encounter two basic approaches to the activities performed by ombudspersons: on the one hand, they provide preventive measures, mediation and counselling, and on the other, they are the institute of last resort after other remedial options have been exhausted. It should be pointed out here that the second function is, essentially, incompatible with the Czech legal system in higher education: admissions procedures and study are governed by the Administrative Procedure Code and, as is the case with employees, all powers under labour law lie with rectors and deans, and ombudspersons are not able to influence these as they can only issue opinions or recommendations.

In the Czech context, the primary task of ombudspersons is therefore the resolution of specific suggestions concerning individual situations. An ombudsperson should be one step ahead and submit to university management recommendations for changes in processes, internal regulations and so on, so as to generally improve the quality of the whole university environment. For example, due to their membership of advisory bodies to management, some ombudspersons have the opportunity to comment on all key documents discussed by those bodies.

One of the key tasks of ombudspersons should be to support prevention: i.e., to ensure as far as possible that unethical behaviour does not occur in the first place and to spread awareness so that people at the university know where the boundaries lie and why it is important to devote attention to the topic of academic ethics and social welfare. To this end, we recommend organising awareness-raising events, workshops, training and debates, as well as informing people through university media and social media. Ombudspersons also frequently participate in events for first-year students (e.g. introductory courses or registration for study) and the on-boarding of new employees. This is also a tool for spreading awareness of the role of ombudsperson: when potential clients see the ombudsperson or read interviews with them, the person in question is more trust-worthy and they will be more likely to approach them with suggestions. However, it should be emphasised that the ombudsperson cannot organise such activities on their own, but should rather contribute to or participate in them. In the Czech environment, too, we come across cases where the ombudsperson's "only" responsibility is to deal with individual suggestions. The time they then devote to the role reflects this.



Speed of action, deadlines for the investigation of suggestions

Experience shows that it is important to deal with important suggestions relatively quickly and not let them “lie” – also because, in the situations with which clients consult the ombudsperson, there is often some risk to them if there is any delay. Ombudspersons should therefore deal with suggestions without undue delay. We therefore recommend setting very short deadlines, no more than a few working days, following which the ombudsperson must contact the client following the receipt of a suggestion or initial contact.

Further, a deadline should be set for the resolution of suggestions. From the point of view of persons who consult the ombudsperson, it is important that they have an idea of how long the matter will take to resolve. This could typically be a period of 60 days, or 90 days for more complicated cases. Obviously, it is also possible that the complicated nature of the situation and, for example, the need for further investigation, and expert opinions, or further meetings, necessitates the extension of this period. Nonetheless, during the initial period it should become clear how the suggestion will be dealt with and what the result will be. When stating deadlines, we therefore recommend adding that this is the “general” time period required to deal with suggestions.

Outcomes, presentation of results of work and supervision of activities

Ombudspersons should regularly inform the statutory bodies of the relevant university or faculty about their activities. This is, partially, a tool for monitoring their activities and another possibility for conveying their own conceptual recommendations to academic bodies. For this reason, it is advisable to place on ombudspersons and obligation to submit regular, e.g. annual, reports on their activities to management (the rector’s or dean’s board) and the relevant academic senate.

Of course, ombudspersons cannot breach the confidentiality of information to which they gain access in the course of their activities, so they cannot disclose specific circumstances of individual cases. Nonetheless, it should be clear from the report how many suggestions they have dealt with, the types of these suggestions (or in which areas), which clients groups suggestions originated from, how many of these suggestions were resolved and, if applicable, how, again while only stating categories. Ombudspersons should also report on the awareness-raising activities, training, conferences etc. that they have participated in. a special section should be devoted to suggestions for systemic changes.



Conclusion

Before the recruitment process begins, institutions should clarify what is expected of the position:

- Which topics will it be possible to consult the ombudsperson about?
- Who will have access to the ombudsperson?
- What do we expect from them with regard to systemic changes?
- What will their options for promoting their proposals be?
- Which tools, funding and support are we prepared to provide?
- What are we looking for? What are our requirements?

The university, or unit thereof, should then formulate all basic principles in a legal text and discuss them in a variety of forums and academic bodies. The university can only start the recruitment process for the position when the initial concept for the position of ombudsperson has been established and enshrined in legislation.

The majority of universities are only starting out with the concept and have relatively little experience with ombudspersons or persons of similar status; therefore, after the person has been in position for a certain period of time, for example a year, we recommend opening a discussion on whether the conditions in place suit both the institution and the person performing the role. Regulations can then be amended based on this discussion and experience. It is likely that, in the course of their actual work, they will be confronted with various restrictions, but also opportunities for developing the operational area, so they will need to further define and modify their role. This is a routine process when introducing new institutions or roles, and there is no need for everything to work perfectly from the off.

While every institution is different and has its own specific needs, it has been shown that cooperation between universities is a positive approach to take for the work of ombudspersons. Such cooperation can be both formal and informal: the sharing of good (and bad) practice, meetings, preparation of shared processes, cooperation through professional groups, joint training, invitation of experts from abroad, and so on.



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