

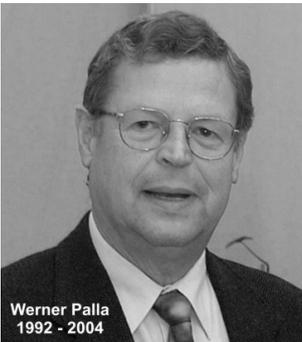


Volksanwaltschaft  
Difesa civica  
Defenüda zivica

## 30 Years of the Office of the Ombudsman in South Tyrol



*"If this makes citizens realize that the government is really "theirs," then I have acted consistent with the intentions of those who founded the Office of the Ombudsman."  
Dr. Heino Stöger (1985 – 1991)"*



*"The Ombudsman should seek solutions to problems – not people to blame."  
Dr. Werner Palla (1992 – 2004)"*



*"We have a duty to listen to the citizens, take their problems seriously, and use our authority and investigatory resources to achieve a balance between them and the government – which the people often perceive as being overly powerful."  
Dr. Burgi Volgger (2004 – 2014)"*

## **1. The Birth of the Office of the Ombudsman**

The history of the Office of the Ombudsman in South Tyrol began on February 23, 1983. At that time, Legislative Bill No. 291 was approved in the South Tyrolean Provincial Parliament under the presidency of Provincial Parliamentary President Giuseppe Sfondrini (PSI) and Vice President Matthias Ladurner-Parthanes (SVP). The purpose of this law was to create the Office of the Ombudsman in South Tyrol. 18 MPs voted for its creation, five MPs handed in a white ballot. The Office of the Ombudsman in South Tyrol was thus born.

The idea of the Office of the Ombudsman is, of course, much older. Generally speaking, Sweden is viewed as the cradle of the Office of the Ombudsman. The first ombudsman was installed in Sweden back in 1809. He was an independent ombudsman appointed by the Parliament, and had the task of monitoring the King's civil servants and of reporting to the Parliament about the government. After Sweden, the neighboring country of Finland established the ombudsman as an agency to monitor the government.

During the first half of the 20<sup>th</sup> Century, the Swedish idea gained widespread currency. Especially during the 1980s and 1990s, a great number of ombudsman institutions were created. There were variously referred to as "Parliamentary Commissioners," "Médiateurs," "Bürgerbeauftragter," "Volksanwalt," "Difensore civico," "Defensor del Pueblo," "Provedor de justiça," or "Commissioner for Human Rights" – yet essentially, they were all ombudsmen.

In Italy, Tuscany was the first region in which this idea gained traction. In 1975, the first "Difensore civico" was appointed here. Twelve additional regions and autonomous provinces followed. In 1983, it was finally South Tyrol's turn. In the years previous to that, there had been a steady effort to create this institution in South Tyrol. In 1973, the idea of a "Ombudsman" was an election issue raised by the candidate Hans Rubner (SVP). The establishment of an Office of the Ombudsman was actively promoted by the Provincial Parliament Members Willi Erschbaumer (SPS) and Luigi Costalbano (NL/NS), who drafted corresponding legislative bills. However, these bills did not garner the necessary majorities. This was shortly before the establishment of an "Autonomous Section of the Administrative Law Court" in Bozen / Bolzano. Many politicians believed that the establishment of this agency would suffice to better evaluate the complaints of the citizenry. After the establishment of the Administrative Law Court was repeatedly delayed, the Provincial Parliament nevertheless decided in favor of creating an Office of the Ombudsman. But the establishment of the Office of the Ombudsman was not without problems. The first law was rejected by the National Government in Rome because the Ombudsman would have received powers extending beyond the jurisdiction of the Provincial Government. Consequently, the bill was reformulated in the 1<sup>st</sup> Legislative Commission under the chair of SVP MP Klaus Dubis. It was only then that the law received the National Government's approval, whereupon it was published in the Official Publications and came into effect as Law No. 15 of June 9, 1983.

## **2. The Beginnings**

The Ombudsman Law of 1983 was comprised of a total of 14 articles. The establishment of the office, its purview, the appointment process, duration, duties, personnel, and financial remuneration were all regulated. It was decided at that time that the official location of the Ombudsman would be with the Provincial administration. But the powers and duties of the Ombudsman were reformulated so as to be greatly limited. Accordingly, the Ombudsman was to act only at the request of interested parties, and he was to be able to examine only administrative acts of the Provincial administration. Over the years, these were both significantly modified.

The next important step was to find the right person for this new office. The new Ombudsman ought to have an understanding of jurisprudence, and should be familiar with the workings of the Provincial administration. Furthermore, the new Ombudsman should have political clout so as to ensure that the new institution is immediately taken seriously by the public. Ultimately, Heinold Steger was chosen. Steger had worked almost 30 years as a high-ranking civil servant in the regional administration, and had been the director of the Federation of Farmers and agricultural assessor. After his retirement, Steger was elected as the first Ombudsman on March 15, 1985. His name, which had high recognition value in provincial politics and in administrative offices, gave the new office prestige. On April 1, Heinold Steger began working in his new office. Steger had accepted the office with a

certain degree of skepticism, as he wrote in the 1988 Annual Report. But he familiarized himself with this office and *"found satisfaction, because the work and commitment are appreciated and I have the impression that it is possible to help in particular the weaker segments of the populace."* Ombudsman Steger didn't view himself as an "inspector" in charge of monitoring the Provincial administration's activities, as some had postulated "off the record." Rather, Steger considered himself to be a moderator who sought to find compromises between the concerns and requirements of the public on one side and government bureaucracy on the other – thus obviating the need to appeal to courts of law.

At the end of each year, the Ombudsman is required to present an Annual Report describing the work the office has accomplished to the Provincial Parliament and the Provincial Government. Especially in the early years, the Annual Reports were used to propose improvements. Thus, Steger's first Annual Report concluded with practical tips on how the work of the Ombudsman could be made even more efficient. By law, he was authorized to intervene only when requested to do so by interested parties. Indeed, the exact manner in which this was to be done is regulated by Article 3 of the law. This article says: *"Citizens who have matters pending before a corporation or legal entity specified in Article 2 are entitled to inform themselves either in writing or verbally from these agencies about the current status of the matter. If they receive no reply within 20 days of their inquiry or if the reply is not satisfactory, they can apply for the aid of the Ombudsman."* For Ombudsman Steger, this clause was much too restrictive. *"If one were to comply with these regulations, the work would be reduced to such an extent that one could legitimately raise doubts about the necessity of this institution,"* Steger writes in his first Annual Report. He advises that *"any party with an issue concerning the Provincial Government should be able to address himself to the Ombudsman either in writing, verbally, or even by telephone, and the Ombudsman himself should be able to obtain information informally."* Steger continues that this practice (easier access) is already in place in his office, even if it is not quite in conformance with the law. For Steger, it would have been inadequate to wait until he was approached. He was sometimes already aware of a case, but could not go into action as long as no one approached the Office of the Ombudsman and asked for help. Steger mentions the example of the long waiting lists in the area of sanitation. Furthermore, Steger criticized the fact that the Office of the Ombudsman is assigned to the Provincial Government, but has no influence of any kind on the Provincial Government's work.

In the beginning, it was necessary to exactly delineate the new office's sphere of responsibility. Steger made note of the fact that his office was approached in a wide variety of matters: *"Some of the parties were of the opinion that the Ombudsman could replace private attorneys and undertake litigation on behalf of the economically disadvantaged. Still others believe that, in the case of private disputes, the Ombudsman could replace judges. And then there were others who came with complaints against police action."* But Steger never sent anyone away without trying to help. *"Only a small part of these cases were included in the statistics. In most cases, it was possible to resolve the matter by talking with the concerned parties – though I never failed to point out that it would be better to obtain representation elsewhere."* All in all, the Office of the Ombudsman registered 491 cases in the first eight months of its operation. Only in the tiniest percentage of cases was the official procedure adhered to. In the first year of the office's operation, most of the problems brought before him already pertained to the area of urban development. Housing issues, subventions for affordable housing, and the promotion of home-ownership were then and still remain major topics for the citizens of South Tyrol. Steger demanded for his office the option of ordering expert opinions from outside agencies in order to settle legal disputes.

### **3. Work Begins**

By law, the Ombudsman is required to submit a yearly Final Report about the previous year. The Annual Reports are distributed to the Provincial Governor and all of the Members of the Provincial Parliament. Even if the subsequent Ombudsman, Werner Palla, commented on the *"negligible interest of politicians"* in the yearly reports, these reports are nonetheless important historical documents, because they reflect the worries and problems of the populace of South Tyrol in the given year. From the very beginning, complaints in the areas of housing and health were of outstanding importance.

In the beginning, Steger's suggestions for improvement found little echo, which disappointed the Ombudsman. In the Final Report of his second year in office, he therefore reiterated his demands. *"The extremely restricted radius*

*of action of the Ombudsman is a hindrance,"* Steger writes. At first, he and his coworkers encountered skepticism from the Provincial Government. Only gradually was he able to establish a climate of mutual respect. In contrast, the community of Leifers / Laives was unusually forward-looking. As early as 1986, the community tried to secure the services of the Ombudsman and thus anticipated developments which would be realized only much later, in the 1990s. The community of Leifers / Laives had hoped to secure the services of the Provincial Ombudsman and had addressed a letter to the Provincial Governor. However, the Governor rejected the community's plan. The legal prerequisites for such a double-function of the Provincial Ombudsman had not yet been fulfilled.

From the very beginning, the South Tyrolean Ombudsman attended conferences and discussions at home and abroad. There was a vigorous exchange in particular with the European Ombudsman Academy in Innsbruck. In South Tyrol, too, Steger was constantly traveling, and attempted to hold as many lectures as possible in order to raise the awareness of the populace for the institution of the Office of the Ombudsman throughout the province. He met with success. In his second year of office, 650 cases were registered. Like in the first year of reporting, most cases had to do with Department V of the Provincial government administration – i.e., zoning, the promotion of the housing construction, and economic programs. 150 cases pertained to this area alone. For the first time, Steger tabulated a sort of balance-sheet of interventions. In 445 cases, it was possible to achieve a positive outcome. 121 were negative, and 82 were still open at the time of the publication of the brochure. In the following year, for the first time, more than 1,000 citizens called upon the Ombudsman. Again, the most cases concerned Department V. This is undoubtedly attributable to the importance and the responsibilities of this department. The most-frequent inquiries pertained to the acquisition of land for construction, loans for housing construction, and the transportation sector. In the latter case, citizens complained foremost about the poor accessibility of rural settlements. Interventions with the state bureaucracy also increased – foremost with the National Institute for Social Welfare (NIFS). In his Final Report, Steger repeatedly notes that this institute is not within his purview – nevertheless, he was always willing to provide information.

#### **4. First Interim Balance Sheet**

In the 1988 Final Report, Steger submitted an interim balance sheet on his first three years in office. According to Steger, the office met with *"absolutely positive acceptance and was in any case a benefit for the province."* However, some issues still had to be resolved. Administrative agencies must not perceive a citizen's enlisting the help of the Ombudsman as an affront, he added; approaching the Office of the Ombudsman should always yield more benefit than harm. Besides this, he finds the behavior of some provincial civil servants disturbing. He therefore writes: *"Is the civil servant there for the citizen, or the citizen for the civil servant? Again and again, people complain that civil servants behave in a harsh and inappropriate manner towards citizens. The departmental directors must take steps to put this to a stop."* Again, Steger criticizes the Ombudsman Law as being unmodern. Especially Article 2 (the passive right of intervention) and Article 3 (the bureaucratic procedures) should be changed as soon as possible. Three years after the office was created, many regard the Ombudsman as a free lawyer, and contact him seeking aid for private legal issues. People call, demanding answers to questions relating to property line issues, encroachments and easements, leases, guardianships, etc., etc. Steger instructed the citizens to avail themselves of assistance from the proper agencies.

Steger favors reducing the number of provincial laws because in particular the many revisions make it difficult to keep track of and understand them. Further, he feels that the contents should be simplified and made more uniform. One negative example he cites for this is the area of urban development and housing construction. The establishment of the Office of the Ombudsman was also an indirect result of the great variety of powers which were transferred to the province by the National and Regional Governments. For this reason Steger was wont to compare the Provincial Government with a small workshop which had evolved into a giant industrial company, with a large workforce, in just a few years. At that time, 6,500 workers were employed in the Provincial Government's apparatus. Of course, a "growth" of this kind does not always run smoothly. There are unavoidable difficulties and a certain degree of opaqueness when distributing responsibilities. Steger therefore welcomed the reform of the Provincial Government's bureaucracy, initial steps of which began in 1989.

#### **5. New Tasks**

In the late-1980s, the areas of responsibility of the Office of the Ombudsman were expanded. With Law No. 33, Article 15 of August 18, 1988, the Provincial Parliament called upon the Ombudsman to be active in the area of public health, too. In the first years, there were constant complaints pertaining to the area of public health: Medical malpractice, difficulties in finding proper facilities for long-term patients, and problems in certifying patients as invalids. Additionally, Steger called upon the Provincial Parliament to expand his powers to include local governments, which had already been the case in the neighboring province of Trento. National Law No. 142, Article 8, Paragraph 1 of June 8, 1990 titled "The Ordering of Local Government Bodies" approached this issue: *"The provincial and the municipal statute may institute the office of the ombudsman, whose role is to ensure the impartiality and good performance of the municipal or provincial public administration and to report, on his own initiative, on the abuses, dysfunctional processes, deficiencies, and delays on the part of the administration towards the citizenry."*

At the local level, each community should have its own Ombudsman. Steger referred to the 2<sup>nd</sup> European Congress of Ombudsmen as the high-point of the year. *"The protection of the rights of the citizens in a democracy is gaining in importance."* In the future, the harmony between the citizenry and the government will be of decisive importance, because the public is becoming less and less accepting of the unilateral decisions of government authorities. Steger cited the Provincial Association of Businessmen as a positive example. At the 1990 Mustermesse in Bozen / Bolzano, this association demanded the establishment of a consumer's advocate similar to the Swedish model in order to improve relations between the commercial sector and consumers.

On May 9, 1989, Steger was confirmed as Ombudsman for an additional legislative period. The 1990 Annual Report was the last one authored by Heinold Steger. The first Ombudsman of South Tyrol died in April of 1991. At the Provincial Parliament's session of April 11, 1991, Provincial Parliamentary President Rosa Franzelin-Werth praised the former Member of Parliament in the following words:

*"On February 18, 1985, Dr. Heinold Steger was appointed the first Ombudsman of South Tyrol by resolution of the Provincial Government. (...) With the election of Dr. Heinold Steger as Ombudsman, the Provincial Parliament of South Tyrol has made a good choice. He has succeeded, in the shortest time, in transforming the newly established institution, under the auspices of the law, into a place where simple citizens can come to express their dissatisfaction and discuss their problems. As Ombudsman, he demonstrated his considerable tenacity in employing all of the means at his disposal on behalf of the rights of the citizens in their struggle against the faceless bureaucracy of public agencies. Dr. Steger has fulfilled this task – which became a concern close to his heart – with great care and with the experience and sensitivity which he had acquired in the high offices which he had held in the course of his life in politics and public administration. For that, he now deserves the recognition and honest thanks of the South Tyrolean Provincial Parliament."*

## **6. The Term of Office of Palla Begins**

After Steger's passing, it took almost ten months for a successor to be appointed. It was only as of February 1, 1992 that Werner Palla was able to begin his work. The student of law and Municipal Secretary worked almost 20 years at the Provincial Agency for Subsidized Housing Construction. After that, he was a functionary with the Hypothekenbank *Trentino-Südtirol*. Palla wrote his first Annual Report in January of 1993. In it, he described his concept of the office and how it should be run: *"The Ombudsman is often the proverbial "last hope" – i.e., the worried citizen has already tried all of the other official channels, without success, and his last chance is to approach the Ombudsman."* But frequently, the Ombudsman has no other option than to explain to the citizen the impracticability of his request. That, too, is an important step, since the citizen then understands that he and his problem are being taken seriously, and that he is being listened to. Palla is convinced that it isn't the Ombudsman's job to look for someone to blame, but rather to find solutions.

At the start of his term, Palla, too, was contacted in many cases (he estimates about 650) by lower and middle class citizens who requested legal advice with regards to inheritance law, family law, and property rights. *"Among them were many helpless, desperate, and sick people reluctant to deal with public agencies, and who viewed the Ombudsman as their natural partner,"* he writes in his first Annual Report. *"It would have been inhuman to turn*

*these people away. To listen to them is not necessarily in the purview of the Ombudsman, but it is his responsibility. When he was unable to reply and had no advice, he availed himself of the know-how of judges and attorneys in his circle of acquaintances and friends," Palla writes.*

The Office of the Ombudsman was relocated for the first time in 1992. It was relocated from the Raiffeisen Building in Raiffeisenstrasse 2 to Crispistrasse 6, in the second floor of Landhauses II. From the very beginning, these new rooms were viewed only as an interim solution since they were obviously too small for the heavy traffic of petitioners which the Office of the Ombudsman had to deal with. Furthermore, these offices were located in a mansion and thus did not correspond with the image of neutrality which Ombudsman Palla wished to project.

Provincial Law No. 10 of April 23, 1992, the reformation of the Provincial Government bureaucracy – which had been long overdue – was enacted. Offices were restructured and new departments created but the problems of the people were the same as ever. Most petitions still concerned the area of housing construction. The number of citizens seeking a subsidy for housing construction continued at a high level. The statutory regulations and laws pertaining to this area were likewise still considered difficult to understand and were often subject to different interpretation.

## **7. The Purview of the Ombudsman Is Expanded**

The 1993 marked the first time that more than 1,500 citizens contacted the Office of the Ombudsman looking for assistance. In one-third of the cases, the citizens had difficulties with Municipal Regional Governments or the National Government – i.e., with government bodies beyond the actual purview of the Ombudsman. But for Palla, that was of subordinate importance. For him, it was more important *"that every citizen of South Tyrol finding himself in conflict with his own Municipal Government be able to come to an impartial advocate for assistance."* Since there was no Ombudsman on a National, Regional, or Municipal level, the citizens thus came to the Ombudsman. A judicial decision of Section II of the Regional Administrative Court (Judgement No. 24 of Feb. 18, 1993) of Liguria confirmed this situation. According to this judgement, not only offices of the Regional Government must cooperate with the Ombudsman, but also all other governmental bodies and institutions in the region are required to cooperate.

With Article 8 of National Law No. 142/1990, the decision was made to allow provinces and municipalities to establish their own Ombudsmans. In South Tyrol, there was a discussion about the establishment of a Municipal Ombudsman. This advocate would operate on the municipal level vis-à-vis the Municipal administrative offices in the manner of the Ombudsmans already working in several large Italian cities. But from the very beginning, this proposal seemed difficult to implement in South Tyrol; most of the municipalities were simply too small for this to be feasible. The political authorities wanted to extend the purview of the Provincial Ombudsman to include the municipal level. The geographical distance to the citizens in remote valleys was to be compensated for by additional business hours in the more-distant districts. With Regional Law No. 1 of January 4, 1993, new by-laws were passed for the municipalities. According to these new regulations, the Ombudsman was to provide support to the citizens in municipal affairs. In 96 of 116 municipalities, the Ombudsman was included in the new municipal by-laws. But in the end, the implementation of this requirement proved slow, taking more than 20 years in some communities. By the time Palla turned over the office to his successor in 2004, there was the following situation: In the by-laws of 97 communities, interventions by the Ombudsman was provided for; in 19, it was not provided for; the Municipality of Rodeneck / Rodengo even went so far as to expressly reject it. Of these 97 municipalities, only 56 had concluded the necessary convention with the Office of the Ombudsman; the remaining 41 municipalities have not fulfilled the obligations they agreed to in approving the by-laws.

Like his predecessor Steger, Palla, too, was constantly thinking about how the Law on the Provincial Ombudsman could be reformed and modernized. He proposed that his office be relocated to the Provincial Parliament – because the Ombudsman is appointed by the Provincial Parliament. He felt that the law should explicitly include a clause stating that the Ombudsman should not only check complaints, but also be allowed to provide consulting services. Consequently, a request submitted by a citizen should not be bound by a formal set of procedures, as the law had previously required. The recommendations of the Office of the Ombudsman should be given greater

weight. Its recommendations should be followed, and any failure to do so should be justified in writing. Additionally, the Ombudsman should be allowed to be heard in various different committees (especially the Housing Construction Committee and the Housing Assignment Commission). This ought to enable many misunderstandings and problems to be avoided from the very beginning.

## **8. The New 1996 Law on the Ombudsman**

The good arguments of the Ombudsmans Steger and Palla finally gained ground. The 1983 Provincial Law on the Office of the Ombudsman was replaced by a more-modern law. An international congress held on March 28, 1996 in Bozen / Bolzano and organized by South Tyrolean Provincial Parliamentary President Sabina Kasslatter Mur was a major factor for this development. The topic of this congress was as follows: "The Office of the Ombudsman, from its function as a general contact for complaints all the way up to the representation of specific interests." With Provincial Law No. 14 of July 10, 1996, the foundations were laid for a new Office of the Ombudsman. A few demands of the former and current Ombudsman were put into practice. Thus, the institution was relocated to the Provincial Parliament. The law recognized the responsibilities and powers of the Ombudsman in municipal matters. The purview of the Ombudsman was expanded. In the future, he was to be explicitly responsible for the areas of public health, nature and environmental protection, as well as children and youths. In this regard, the new law provided that the Ombudsman would be able to entrust individual agents assigned to him with specific tasks. Additionally, the Ombudsman was accorded the right to commission the preparation of legal opinions by independent agents.

But the currently serving Ombudsman, Palla, felt that this reform did not go far enough. He requested various subsequent improvements. The very bureaucratic operational procedures of the Office of the Ombudsman were retained by the law although in the previous 19 years of the Office's work, these procedures had never been observed, and were instead viewed as "procedural shackles." The term of office of the Ombudsman was to finally be decoupled from the legislative period so as to prevent "*a climate of dependence from being created, or at least to prevent the appearance of such.*" Palla saw the law's biggest weakness in the hiring of the personnel. "*The Provincial Parliament should assign personnel to the Ombudsman without his involvement.*" In January of 1997, a new clause was introduced, but it quickly created some uproar. At that time, the Provincial Parliament had decided that the municipalities must remunerate the Ombudsman for his services (Paragraph 2 *bis*). The regulation remained very vague and resulted just a few years later in an open dispute between Ombudsman Palla and then Provincial Parliamentary President Thaler.

However, Law No. 127 (Bassanini II) of May 15, 1997 expanded the purview of the Ombudsman. According to this law, the regional Ombudsmans are entitled to act as Ombudsmans vis-à-vis the government authorities operating in the given region as long as no National Office of the Ombudsman has been set up. The only exceptions are the areas of defense, public safety, and justice.

The Ombudsman's office facilities were again relocated. They were relocated from the crowded and non-neutral offices in the Crispi-Strasse into the heart of the Old Town, in the third story of Lauben-Haus No. 22.

## **9. Public Awareness of the Office of the Ombudsman Continues to Grow**

The Annual Report of the Ombudsman was omitted in 1997, and Palla was able to submit it only a year later, in 1998. He cited the small size of his staff as a justification for this. But at the same time, the Ombudsman also complained that his Annual Report enjoyed "*inadequate interest on the part of politicians and administrators.*" In 1998, more than 2,000 persons contacted the staff of the Office of the Ombudsman. Palla attributed this on one hand to the rising public awareness of his office. Because of his frequently holding lectures, the Ombudsman and his duties had become more and more familiar to the people of South Tyrol. "*On the other hand, the continuing increase in the number of initial contacts with the Office of the Ombudsman also explainable by the expansion of its purview,*" writes Palla in his Annual Report. When Article 16 of National Law No. 127/97 came into effect, the Offices of the Ombudsman of the regions and of the autonomous provinces were declared responsible also for the peripheral state administrative bodies, with the exception of defense, public safety, and justice. Of course, the Ombudsman had always intervened with state authorities, though with little impact and effect. This new National Law had now legitimized this situation.

In the 1998 Annual Report, a term appeared for the first time that was to later become very common: "mobbing." More and more people who work for the Provincial Government offices are suffering from psychological problems. For this reason, in 1998, Palla recommended the establishment of an "in-house psychological service."

Those civil servants and government bureaucrats who simply refused to work with the Office of the Ombudsman were a thorn in Palla's side. In some cases, he would have liked to initiate disciplinary procedures against the offending personnel and imposed punitive measures, as provided for by law. But Palla refrained from doing so. That was because he felt that, especially in this point, there was a case of unequal treatment. For while it was possible to initiate disciplinary measures against civil servants, it was not possible to do so against the Provincial parliamentarians responsible for that area. In most instances, the civil servants were only carrying out the orders of the responsible politician, who was immune to action for his uncooperative behavior. Palla repeatedly called for mandatory continuing education courses for the civil servants in the administrative offices. Palla was convinced that it was possible to learn the proper way to deal with people. In the final analysis, many cases were attributable to a lack of understanding for the citizens' situation and problems. *"Civil servants often lack empathy. They can't understand the citizens' situation. Friendliness isn't enough. Professional competency is needed. That's because a friendly, but inaccurate statement can be just as destructive. Information can be both friendly and factually correct, but that may still be not enough if it is provided in 'officialese,'"* writes Palla in his 1995 Annual Report. The citizen is not a subject of the state; instead, he is a partner of public administration. On March 3, 1999, Palla was confirmed as Ombudsman for the duration of an additional legislative period.

In the year 2000, another open conflict erupted between Ombudsman Palla and Provincial Parliamentary President Hermann Thaler (SVP). In July of 2000, Thaler wanted to push through several amendments to the Law on the Ombudsman. His efforts focused on the purview of the Ombudsman over Municipal Governments. Thaler wanted the Provincial Parliamentary President (rather than the Ombudsman, which had been previously the case) to conclude the convention with the municipalities. But Palla objected to this point, citing the fact that the Law, as passed by the Provincial Parliament, stated *"The Ombudsman (...) can conclude an agreement (...) with the Municipalities."* Furthermore, Thaler wanted the Municipalities to pay for the services of the Ombudsman. The regulation which had been valid up until then provided that the South Tyrolean Provincial Parliament could fix such a fee. Palla feared that, *"if the Municipalities have to pay for the work of the Ombudsman, then they might forego his services – and that would certainly not be in the interests of the citizens of this province."* After lengthy debate, Thaler withdrew the proposed amendments.

## **10. Closer to the Citizens**

During his entire term of office, Ombudsman Palla devoted all of his efforts to the concerns of the citizens. Thus, the fact that, in the year 2000, it was possible for the first time to also meet with citizens in the hospitals of Brixen / Bressanone and Bruneck / Brunico represented a decisive step forward for the work of the Office of the Ombudsman. Provincial Parliamentary President Thaler again attempted to intervene. In a letter to the Ombudsman, he called upon Palla to "reconsider the suitability of this decision." Palla then stopped making the hospital visits. This led to media uproar, and after three weeks, Palla was again allowed to meet with citizens in the hospitals. Appointments were then arranged in hospitals in Bozen / Bolzano and Meran / Merano. But there, the Office of the Ombudsman encountered initial difficulties in reaching an agreement with the hospital managements. The area of public health, and especially complaints pertaining to malpractice, were among the most-frequent complaints raised by citizens in the beginning. For this reason, Palla argued for the establishment of a mediation agency to deal with issues relating to the liability of physicians, but the responsible Provincial Councilmember, Otto Saurer (SVP), rejected this.

In the year 2000, a trilingual information brochure on the duties of the Ombudsman also appeared for the first time. This brochure, as well as the many lectures, helped increase public awareness of the Office of the Ombudsman. Palla also argued in favor of including the Office of the Ombudsman and/or the Ombudsman in the curriculum of South Tyrol's schools. Two to four hours of instruction dealing with the duties of the Ombudsman were to be included in social studies classes. But his call went unheard.

As the result of the constitutional reform of 2001, the Provincial Government lost almost all of its powers to monitor resolutions of Municipal Governments. Prior to that, Municipal Governments had to submit all – starting in 1998, only the most-important – resolutions to the department for "Local Government Bodies" for evaluation. The termination of this monitoring authority unavoidably led to an increase in the demand for the services of the Ombudsman. In the year 2003, alone, the number of cases pertaining to municipal issues rose by 37 percent. In 2002, there had been only 274 cases recorded; one year later, this had risen to 739 cases.

Werner Palla's last day in office was April 4, 2004. In the course of this almost twelve years of service in this office, approx. 25,000 persons had called upon the Ombudsman for assistance. Exactly 8,674 cases had been opened. More than 71 percent of these cases were resolved to the satisfaction of the complainant, i.e., of the citizen.

During Palla's time in office, too, complaints relating to urban development and housing construction continued to dominate. The issue of mandatory inoculation was a new topic. The Office of the Ombudsman had been dealing with this topic since 1994, the year it was introduced. The Ombudsman, too, couldn't grasp the logic of the regulation that disallowed small children who were unable to prove that they had been vaccinated against Hepatitis-B from attending state schools or taking their final examinations. Ultimately, it was necessary for the Italian President to intervene. By Decree (No. 355 of January 26, 1999), it was resolved that failure to present a confirmation of vaccination could not justify disallowing a schoolchild to attend school or to take examinations. In recent years, complaints pertaining to noise pollution likewise rose. Between 2001 and 2003, alone, 30 mass-action suits were filed by affected neighbors – usually to no avail. Palla's recommendations and suggestions for legal amendments found little support among the responsible politicians. But his efforts to reform the Provincial Law on the Office of the Ombudsman were crowned with success, as Palla gladly reported in his Final Report for 2001-2003.

#### **11. For the First Time, a Woman Heads the Office of the Ombudsman**

After Werner Palla, a woman – Burgi Volgger – was appointed South Tyrolean Ombudsman for the first time. The expert of jurisprudence, high school teacher, and trained mediator in criminal matters gained fame as the president of the association "la strada – The Street." This association managed group homes for youths, youth centers, and a therapy group for drug addicts. Burgi Volgger took office in April of 2004. From the beginning, she emphasized the role of the Office of the Ombudsman as a mediator. Volgger took immediate steps to improve communication with government offices and civil servants. Volgger attempted to show new ways and open new doors. Her persuasiveness and hard work helped gradually break down prejudices against the Office of the Ombudsman and reduce tensions. The cooperation with public health officials was the first to benefit from this. In 2004, work groups were introduced in the public health organizations of Bozen / Bolzano and Meran / Merano. These work groups concerned themselves with the complaints which had been addressed to the Office of the Ombudsman. Further, a coworker of the Office of the Ombudsman whom Volgger had appointed as an expert for patients' matters at the Office of the Ombudsman took part in these meetings.

In her first year in office, more than 2,500 citizens had approached the Office of the Ombudsman with their problems. One-third of them had felt unfairly or improperly treated by public officials and sought support from the Ombudsman. The number of citizens seeking help rose from year to year. Another third were citizens looking for information and advice – people who often wanted nothing more than quick and neutral consulting from the Office of the Ombudsman.

The final third of petitioners consisted of two groups. There were those citizens who had already gone through all the agencies and politicians and who then, in desperation, addressed themselves to the Office of the Ombudsman as a last resort. In her Annual Report, Volgger writes *"that these are usually hopeless cases."* In such cases, the task of the Office of the Ombudsman was to make it clear to these citizens that it was not possible to settle their problems and provide them with the outcome they wished. The second group was made up of people with private problems who – often through no fault of their own – had slid into a personal disaster. In such cases, the goal was not so much to provide legal advice as to supply tangible aid. The Office of the Ombudsman maintains a solid

relationship with numerous public agencies and private charitable organizations, and these citizens were given individual support and referred to the appropriate agencies. In 2007, for the first time, more than 3,000 persons had called upon the Ombudsman for assistance.

In her first year in office, three more municipalities entered into the agreement with the Office of the Ombudsman. Thus, for the first time, more than 50 percent of all the municipalities and more than 70 percent of the population had access to a Municipal Ombudsman. Support for this area continued at a high level. Cases involving noise pollution emanating from public gatherings and due to increasing street traffic rose in number. Not only citizens approached the Ombudsman; city mayors, too, requested information from the Office of the Ombudsman in order to act more quickly and cut through bureaucratic red tape in certain cases.

## **12. A Profile for the Future for the South Tyrolean Office of the Ombudsman**

In the summer of 2004, a work group was established to deal with the topic of advocacy for children and youths. Ombudsman Volgger, too, belonged to this group. According to Law No. 14 of July 10, 1996, the Ombudsman can entrust specific duties to coworkers. Such specialists were intended for the area of the environment, public health, and children and youths. But until then, only one coworker was placed in charge of patients' issues. Not a single coworker had been assigned to the area of children and youths. The National Government had undertaken as yet no activities in this sector, so a few Regional Governments had taken the initiative and installed an Advocate for Children and Youths on the regional level. It was a long-harbored desire of the Youth Ring that an independent Advocate for Children and Youths similar to the Austrian example be installed in South Tyrol, too. Volgger was of the opinion that the Office of the Ombudsman was by all means capable of effectively advocating for children and youths.

As additional interest groups spoke up and likewise demanded a Ombudsman for their specific concerns, the Ombudsman was faced with *"the question as to how she could address these various different special interests without fragmenting the Office of the Ombudsman."* Volgger authored a "Profile for the Future of the South Tyrolean Office of the Ombudsman." She envisaged solution to reconcile these different demands: A "House of the Office of the Ombudsman" which – under a common organizational umbrella – would include specialized areas for patients' concerns and the interests of children and youths. If needed, additional specialized departments could be set up in the Office of the Ombudsman – e.g., for senior citizens, people with disabilities, and immigrants. *"The goal is to address the concerns in a comprehensive manner to the benefit of the citizens which is consistent with the need to have individual specializations,"* writes Volgger. *"Parallel activity by multiple structures should be avoided; there should be a single, uniform address for all citizens where they can come with problems related to public agencies."*

First steps towards creating specialized departments were taken. There is one coworker who is solely responsible for patients' issues, and who works as a kind of patients' advocate. She also has monthly office hours in the hospitals of Bozen / Bolzano and Meran / Merano, but is still subordinate to the Ombudsman. Additionally, in response to the insistence of Ombudsman Volgger, the legal basis for the establishment of the position of mediator for medical liability questions was created. The Office of the Ombudsman had long hoped to set up a mediator's position. Ombudsman Palla had already frequently referred to the importance of such a position. Especially in the case of purported malpractice, such a mediator's position could be advantageous to both parties in a conflict. The concept was worked out together with the department for health, the patients' representative of the hospital in Innsbruck, and the physicians' chamber.

On October 3, 2005, Ombudsman Volgger invited participants to an international conference on the topic of "The Office of the Ombudsman in Europe – Future Perspectives in South Tyrol" held in Bozen / Bolzano. Besides the Advocate for Children and Youths of Tyrol, the Advocate for Youths of the Region of Friaul Julisch Venezia, the Ombudsman of the Region of Tuscany, the Patients' Advocate of Tyrol, the Austrian Ombudsman, and the Ombudsman of the Canton of Zürich also attended. Finally, the findings of the countries represented at the conference also helped South Tyrol get its own Advocate for Children and Youths. Provincial Law No. 3 of June 26, 2009 created the Children's and Youths' Advocate in South Tyrol. On May 6, 2010, the South Tyrolean Provincial Parliament elected Simon Tschager the first South Tyrolean Children's and Youths' Advocate.

The "House of the Ombudsmans" was implemented in part. In November of 2010 the Office of the Ombudsman moved to its current location at Cavourstrasse 23. The spacious and cheerful offices are in the second story. The Advocate for Children and Youths has his office in the first story of the same building. The Provincial Council for Communication is likewise located in this building. This concept has proven itself, and the cooperation between these three offices functions smoothly – due in part to their being so close to each other.

### **13. Convincing Arguments**

Since 1993, South Tyrolean municipalities have the option of signing a convention with the Office of the Ombudsman. On the basis of this agreement, citizens of the municipalities can address the Office of the Ombudsman with questions relating to administrative problems. But at the beginning of Volgger's term of office, only about half of all municipalities had signed this convention. In 2006, a reform of the municipal by-laws was scheduled. Volgger launched a general offensive by sending a letter to all town mayors. *"Especially in municipalities – where there the community is held together in part by close family ties – citizens have no reluctance to turn to the Office of the Ombudsman, because they view it as an independent agency not caught up in local affairs. As you know, a Municipal Government can be as close to its citizens and can observe proper procedure as best it can – and there will still be citizens who question every statement made by the local authorities,"* wrote Volgger. The result was that all 116 Municipal Governments of South Tyrol decided to include the establishment of the Office of the Ombudsman in their by-laws.

Volgger has spent a lot of time to win the trust of the municipalities. In innumerable personal conversations with town mayors, municipal clerks, and municipal secretaries, she has attempted to explain the advantages of a cooperation of this kind. *"Only after the local governments comprehended an intervention of the Office of the Ombudsman as an opportunity for improving administrative activities and enhancing relations with the citizens was constructive cooperation possible,"* emphasizes Volgger in her 2006 Annual Report. In that year, a total of 36 of the 116 municipalities signed the convention. In 2007, another ten communities followed. In 2010, Lajen / Laion (on April 14) and Taufers / Campo Tures in the Münstertal Valley (on May 13) were the last two municipalities to join the convention. Today, all of the municipalities have committed themselves to cooperating with the Ombudsman. In the event of a dispute with local authorities, every citizen is entitled to turn to the Office of the Ombudsman for assistance. In recent years, the number of cases rose constantly as a consequence. Frequently, citizens turn to the Ombudsman because they have not been allowed to view official files. In local matters, not only legal problems, but sometimes also personal animosities can complicate the situation. It is then especially advantageous for all the parties to the matter to hear the objective, unemotional viewpoint of an impartial outsider. In the large South Tyrolean cities of Bozen / Bolzano, Brixen / Bressanone, and Meran / Merano, especially qualified persons were chosen to maintain contact with the Office of the Ombudsman. This practice has proven itself, and the cooperation with these administrative organs has significantly improved.

### **14. Appropriate Public Relations Work**

Since the Office of the Ombudsman was founded, South Tyrol has changed considerably. In the meantime, the position has become firmly anchored, and the Office of the Ombudsman is familiar to all. According to an ASTAT poll carried out in the year 2007, three out of four inhabitants of South Tyrol know of the Office of the Ombudsman, while more than half understood its duties. But many citizens still come to the Ombudsman with the wrong idea. They see the Ombudsman as a free attorney in all manner of disputes. In order to dispel such misconceptions and to better explain the purpose of the Office of the Ombudsman, a brochure has been published since the year 2000. Volgger revised her brochure titled "Your Good Right" on the occasion of the 25<sup>th</sup> anniversary of the Office. She had the brochure illustrated with some caricatures by the South Tyrolean artist Hanspeter Demetz and sent to 55,000 South Tyrolean households. *"The Office of the Ombudsman can efficiently fulfill its official function only if it is well known, and if the citizens understand its duties and responsibilities,"* writes Volgger in the 2008 Final Report.

Besides the trilingual brochure, a new, user-friendly Internet portal was set up for the Office of the Ombudsman. This new portal now offers for the first time the option of submitting complaints online. Since the Office was established, the manner in which contact could be made has morphed appreciably. In the early stages, citizens almost always came personally to present their problems. Over the years, more and more citizens contacted the Office by phone. In 2005, for the first time, more people telephoned with the Office of the Ombudsman than came personally. Starting in 2006, it was also possible to send complaints and inquiries to the Office by e-mail. The new option of submitting online complaints proved very popular. In 2007, the Office of the Ombudsman registered more complaints submitted online than by conventional mail for the first time. Thus, help from the Ombudsman is easier to obtain than ever. Citizens can contact the Office personally, by telephone, by regular mail, by fax, by e-mail, or online. Besides the daily business hours in Bozen / Bolzano, the Ombudsman has regular office hours in Brixen / Bressanone, Bruneck / Brunico, Meran / Merano, Neumarkt / Egna, Schlanders / Silandro, Sterzing / Vipiteno, St. Ulrich in Gröden / Ortisei, and St. Martin in Thurn / San Martino in Badia.

The Ombudsman also appeared in the daily newspapers. Since 2006, a column titled "A Case for the Office of the Ombudsman" has appeared twice monthly in the newspaper "Dolomiten." On the basis of actual cases, Volgger shares an insider's view in the work of her Office. In 2008, this service was also offered to the paper's Italian readers. In the daily paper "Alto Adige," a column titled "Il difensore civico risponde" (it's now called "La Difesa civica per te"). All of these measures had the welcome effect of increasing the notoriety of the Office of the Ombudsman. This had a direct effect upon the Office's work. In 2008, for the first time, more than 3,000 people called upon the Office of the Ombudsman, and more than 1,000 case files were opened.

### **15. New Law Regulates the Tasks of the Ombudsman**

Article 5 of the Provincial Law of June 10, 2008 again supplemented the Law on the Ombudsman. A regulation on "Programming and Performance of Activities" was added. This regulation states that the Ombudsman must present an activity plan together with a corresponding price estimate for the subsequent year to the Presidency of the Provincial Parliament by September 15 of each year. The Presidency of the Provincial Parliament must agree to this plan; only then will it be included in the provincial budget and presented to the entire Provincial Parliament for approval. The work of the Office of the Ombudsman was thus given significantly more weight. Previously, the Ombudsman was forced to submit a request to the Provincial Parliamentary President for every disbursement of funds; only then was the Office able to go into action. The new regulation was thus a major step towards the financial independence of the Office of the Ombudsman from the Parliamentary Government. *"The Office's independence, autonomy, and freedom in issuing directives are insufficient if it lacks the necessary concomitant financial independence,"* said Volgger.

On February 4, 2010, the 1996 Law had finally become completely obsolete, and was hence replaced by a new Law on the Ombudsman. In an unusual instance of non-partisanship, the new law was passed unanimously by the South Tyrolean Provincial Parliament, with only two abstentions. The salient innovations pertain to the way in which the Ombudsman is selected and elected. The purview of the Office of the Ombudsman was likewise expanded. As of that date, the Office became responsible for the concessionaires of the province's public sector. The Office can also exercise its right to access files and documents. The term of office of the Ombudsman was decoupled from the legislative period – a regulation that was, unfortunately, rescinded a year later. The presentation of the annual report on the Office's activities was made mandatory, and henceforth, it would have to be presented to the Provincial Parliament. The selection of the Office's personnel was likewise made more flexible. The personnel is assigned by the Provincial Parliament in agreement with the Ombudsman, and the Ombudsman is now allowed to recruit its personnel from all public sector authorities for the Office of the Ombudsman is responsible. If these public sector authorities within the purview of the Office of the Ombudsman exceed the amount of time allowed for deciding on any individual case or if they do not share the recommendations and views of the Ombudsman, in the future, they will have to justify this.

With the new selection method in place, Burgi Volgger was confirmed in office with a two-thirds majority on November 10, 2010.

## 16. Social Problems Rise in South Tyrol

The number of people who feel squeezed out of our competitive society is rising. Since the Office of the Ombudsman was established in South Tyrol, citizens have been turning to it with the same complaints again and again. According to Volgger, these complaints can all be listed under the heading "basic necessities." Thus, the petitioners have problems in the areas of housing, work, and health. Consequently, the most-frequent interventions were in the departments for personnel, housing construction, and health. And the number of people who can't find their way through the maze of government offices is rising, too. Volgger cites several reasons behind this. The burgeoning number of statutory regulations and tightening government budgets are likewise contributing to the exacerbation of the problem. These problems are often worsened by the complicated "legalese" used by bureaucrats in their written communications. Nowadays, citizens usually receive information from the government offices, but in a bureaucratic jargon which is virtually unintelligible to laymen. Lengthy run-on sentences, poor translations from other languages, and complicated formulations drive many a citizen to despair, and impair efficient administration.

More and more socially disadvantaged citizens, non-E.U.-citizens, as well as old and invalid people are approaching the Office of the Ombudsman for help. The Office of the Ombudsman also receives many complaints about possible deceptions perpetrated by other citizens concerning their personal situations and incomes. It can be noted that attitudes about this have evolved in South Tyrol. False declarations are no longer viewed as a "gentlemen's offence." In times of crisis, social envy rises appreciably. Unfortunately, there are still many prejudices about immigrants. Citizens often suspect immigrants of receiving the lion's share of public assistance, with the native populace getting only the crumbs. On the other hand, many non-E.U.-citizens feel harassed by governmental regulations – even legitimate ones. One new phenomenon is that young people are now often submitting complaints. They have fears about the future, are worried about job security. Complaints about competitive bidding processes and the awarding of public works contracts are rising. Every facet of the crisis is reflected in the complaints and concerns of the citizens. The number of applications for welfare has shown a sharp rise. Citizens now turn to the Office to complain about only minor administrative penalties. In earlier times, citizens would simply pay the fines in order to wipe their slate clean and forget about the problem. Now, they question the legitimacy of the penalties. In the past, people complained about politicians who *"make only empty promises"* as well as about government offices which *"work contrary to the best interests of the public and only want to enrich themselves at the cost of individual citizens."* In such a climate of increasing radicalization and intolerance, the Ombudsman is increasingly striving to act as a mediator between the public and government agencies. In this context, Volgger applauds the establishment of the Agency for Social and Economic Development (ASWE). The establishment of this one service agency for the submission of applications and for the payment of social aid, pensions for invalids, family assistance, housewife pensions, and care assistance has made the administration significantly more efficient. The introduction of the Uniform Income and Assets Declaration (EVE) and the establishment of a central database both pursue the goal of providing citizens seeking public assistance with fair and equal treatment.

South Tyrol undoubtedly has an extensive network of public assistance programs. There is state aid, care assistance, family assistance, housing subsidies, unemployment assistance, mobility subsidies, social security payments, civil invalidity pensions, and other forms of public assistance. Nevertheless, according to an ASTAT survey, in 2010, 17.9 percent of all South Tyrolean households were in acute danger of sliding into poverty. Approximately 36,000 households have a net annual income of less than 10,250 Euros. Without social aid, 50,700 households would be endangered. In light of these figures, it becomes plain that a review of rejected applications or reductions in social aid is vehemently demanded. In the 2012 Annual Report, the Ombudsman refers explicitly to the difficult economic situation of some South Tyroleans. There are families in South Tyrol who have to live from the pension and care assistance their old, invalid mother receives because the head of the household has lost his job. A reduction of this care assistance would represent an existential danger for the whole family. In the 2012 report year, for the first time, older workers who – despite considerable efforts – had still found no work sought advice from the Office of the Ombudsman and asked the Ombudsman for direct intervention with potential employers.

## 17. The Future

The future of the parliamentary Ombudsman is without a doubt to be found in Europe. Today, practically all of the Member States of the E.U. and of the European Council have firmly established the institution of the ombudsman – which is also often anchored in the constitution. In fact, the European Union itself has created such an office with the establishment of the European Ombudsman.

All of the Ombudsmans of South Tyrol have maintained intensive contact with other ombudsmen in Italy and abroad. The continued development of the idea of the ombudsman was and remains a crucial issue. In 1998, the European Ombudsman Institute (EOI) was founded. The EOI is a non-profit scientific association whose aim is to scientifically examine topics relating to human rights, civil safety, and ombudsman issues and to conduct research in this field, and to promote the idea of the ombudsman. The EOI developed out of the European Ombudsman Academy at the University of Innsbruck and is today still based in Innsbruck. Ombudsman Heinold Steger was one of the founding members and was chairman of the institute from 1989 till 1991. Ombudsman Werner Palla was president of the EOI from 2002 till 2004. On April 2, 2010 Ombudsman Burgi Volgger was the first woman to assume the office of president of the European Ombudsman Institute (EOI). On September 24, 2011, she was confirmed in office. Today, virtually all of the ombudsmen in Europe belong to the EOI. At present, the European network has 101 members.

In recent years, the EOI has been very concerned about strengthening the role of the regional ombudsmen in Europe. As president of the EOI, Volgger spoke at the Congress of Municipalities and Regions of the European Council (CEMR) in Strasbourg and emphasized the necessity of establishing European-wide minimum standards for all regional ombudsmen in Europe. Ultimately, the Congress addressed this concern with Resolution 327/2011 and Recommendation 309/2011. In her debate contribution, Volgger explained: *"For the whole of Europe, the ombudsmen are the only legal protective institutions with the goal of regaining, by virtue of their successful mediation activities, the trust of the citizenry in public administration and strengthening their understanding of public agencies. So what arguments favor the European trend towards regional ombudsmen? The most important argument is their closeness to the citizens – and then courteous and friendly service as well as efficient and prompt, onsite treatment of the citizens' issues. It may sound overly ambitious today, when public administration agencies are subject to increasing budgetary constraints, to call for a further expansion of regional ombudsman offices in Europe. As the Ombudsman of South Tyrol, I am profoundly convinced that especially a regional ombudsman could make a great contribution to good administration in Europe's many regions."*