

# The Electronic Ombudsman

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## ABSTRACT

The paper approaches the figure of the Ombudsman, from the optics of its nature of authority of the State and its functionality of control of the Administration and protection of Human Rights, which links it with the Alternative Dispute Resolution processes. The character of extra-power authority places the Ombudsman in a favoured situation opposite to a tutelary and peacemaker function. Moreover, with a suitable technical (legal) characteristic, it would be possible to transform it in a tool of advance towards an electronic administration for better service to citizens.

This work proposes to explore the development of the 'Electronic Ombudsman', a figure with certain degree of specialization, useful in the linkage administration - citizens - technologies.

In the meanwhile, the quiet elements lead to a theoretical analysis of circumstances that appear as opportunities and risks in the way of advance towards the Information Society. In a deeply complex society, the Electronic Ombudsman's objective clear up as soon as we visualize and focus in its protection object -the citizen and his Human Rights-.

## Keywords

E Government, Alternative Dispute Resolution (ADR), Human Rights, Information Communication Technologies (ICT).

## 1.INTRODUCTION

The Ombudsman is an institution with functional potential in the development of e-Government. Within its purpose we count the role of protecting citizens from abuse, mistakes and shortcomings of the administration and legitimate for keeping the good public service. Its inclusion in several Constitutions shows that it should also be considered as an institute that seeks to strengthen democratic principles and human rights protection.

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The particularity of its history, nature and function compared to the branches of government (Executive, Legislative and Judicial), calls for a jealous guardian of the citizens' rights. For administrators, its figure represents a trustworthy institution, with functional autonomy and absolute objectivity, to which citizens can transfer the calls and comments, in order too solve problems that arise in their relationship with the State. The Ombudsman's growing importance as a means of conflict resolution in the particular relationship 'State – citizens' arises from these facts.

Moreover, the relationship 'citizens – State' presently raises several complex issues derived from the use of Information and Communication Technologies (ICT). On the one hand, to reach flexible, secure and high quality stages of e-government. But on the other, unquestionable essential rights inherent to the human condition can be put at risk while laws and better systems are explored. Emphasizing this, Muñoz de Alba Medrano says that "in the contemporary technological situation, the citizens are exposed to violations of their intimacy carried out by certain technologic abuses because the meddling of computers in areas that correspond to individuals and their relationships is increasingly extended, diffuse and implacable" [1].

That is why an extra-power<sup>1</sup> institution as the Ombudsman, spread so soon from its Scandinavian origin to different legal systems. In the process, it gained particular characteristics, consistent with the rights that, in each case, appeared necessary to be defended. It has recently been incorporated in modern laws of e-Government and citizen access to public services, such as in Spain<sup>2</sup>. The figure can also be found in the organizational chart of the Internet Corporation for Assigned Names and Numbers (ICANN)<sup>3</sup>.

Therefore, the approach to the topic shall be done here starting from some features and elements of e-Government and administrative services. We shall, then, look briefly at the value of personal data collected and kept in the e-Government context. Finally, we will analyze the nature of the Ombudsman, searching to shape a new legal and technical instrument, focused on the protection of Human Rights and other rights, guarantees and interests protected by law.

## 2. ELECTRONIC ADMINISTRATION

There is plenty of specialized literature on public administration and its relationship with citizens through ICT. This new phenomenon of integration of technological advances within the government, its development in public services, as well as the deep change in the State's modernization, are included in the concepts of what is called electronic government, E-Government or e-Gov (from now onwards, we will use 'e-Gov').

This new challenge the State takes, in a framework imposed by globalization, the demands of the system and the development of ICT, among other factors, has led the States to push forward reforms and new regulations in order to put the administrations at the height of the demands of Civil Society and Market. But, as Erkki Liikanen said, "ICT can help the governments to handle the challenges they face. However, governments should not focus on the ICT but in the usage of such technologies in a context of organizational change and new methods to improve public services, democratic processes and public policies." [2]

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<sup>1</sup> The concept of extra-power institution the Argentine constitutional doctrine uses as regards this figure means that it does not belong to conventional schemes of Executive, Legislative and Judicial Powers. This idea, however, is useful to indicate the place from which the Ombudsman builds its functions.

<sup>2</sup> The legislation provides the figure of the Spanish "Defensor del Ciudadano Electrónico" within the Law for electronic access of citizens to public services (Law 11/2007). Such law develops both the concept of 'e-citizen' and the figure of the Ombudsman for the Electronic Citizen, whose duties are primarily to ensure citizens' rights recognized in this legal framework (Art. 7).

<sup>3</sup> "The Ombudsman's function is to act as an Alternative Dispute Resolution (ADR) office for the ICANN community who may wish to lodge a complaint about a staff or board decision, action or inaction. The purpose of the office is to ensure that the members of the ICANN community have been treated fairly. The Ombudsman will act as impartial officer and will attempt to resolve complaints about unfair treatment by ICANN using ADR techniques." [www.icann.org/ombudsman](http://www.icann.org/ombudsman)

The e-Gov scheme raises, among other things, a profound change in the pyramid chart that is typical of the traditional administration, to a horizontal plane of development and work<sup>4</sup>. This is aimed to optimize the administration's internal management (another order of bureaucratization), for the State to become an actor in the modern Information Society. In this way, closely linked to the concept of public services, the administration is led to a 'service society', where businesses, administrations and citizens make the same efforts to simplify and speed up operations and processes, ultimately achieving a better quality of public service.

### 2.1 Public Services in the Information Society

By means of the application of ICT, many governments aim today at providing a public service capable of meeting quality requirements and required aspects of the current economic and social framework. This is supposed to ensure more comfortable, fast and easy access to information<sup>5</sup> [3].

This is one of the new features of service management information. Combining technology and the right information, citizens can be related to the administration from the most varied aspects of that relationship: from making a tax affidavit to pay for a few hours of parking, or dealing with scholarships, grants, even voting. The immediacy of having access to e-Gov from the comfort of home or work, and the simplicity that ICT allow, lead the citizen to do paperwork, data entry and perform legal acts from any point around the world that has access to Internet.

This linkage among citizen, technology and government is so relevant that some laws, alike the Spanish, enlisting themselves at the forefront of the tendency, recognize the citizens' right to interact electronically with the government<sup>6</sup>.

### 2.2 The Subject of e-Government

But e-Gov, as we know, does not exhaust itself in the relationship Government - Citizens. Thus, from the Administration to the various actors with whom it relates, we can distinguish:

- Government to Citizen (G2C): groups and initiatives aimed at the citizen's relationship with the Administration. This is the recipient of public services, administrative and / or transaction.
- Government to Business (G2B): includes policy initiatives aimed at providing public services, information and / or transaction to the companies. This includes obtaining licenses and permits, filling forms, procedures and tax issues.

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<sup>4</sup>About these issues, many authors speak of a 'reengineering' of public administration

<sup>5</sup>"Traditional concepts of space and time are extended, as the citizen, as a result of new information services, will not have to travel to any action or follow fixed schedules, access to information becomes more comfortable, easy and fast, because with a single click, he may get all the information you need, and not only through the computer, but through any device, such as mobile". (Gomez Camarero, 2003)

<sup>6</sup>Spain, Ley 11/2007 de Acceso Electrónico de los Ciudadanos a los Servicios Públicos, Art. 1.

- Government to Government (G2G): includes actions aimed to establish and facilitate intra and intergovernmental linkages, geared to meet the requirements of coordination. Deserves mention the relevance of principles of interoperability and collaboration between public administrations that inspire some legislations.

- Government to Employee (G2E): covers those actions that are aimed at providing services and / or train public servants.

### 2.3 The Stages of e-Government

Most studies distinguish four stages in the development of e-Gov policies beyond the degree of computerization of a given administration<sup>7</sup>. The degree of progress is determined by the possibilities of two-way communication and the level of dependence on paperbacked processing. These stadiums are 'information', 'interaction', 'electronic management' and 'transaction'. These are conceptual categories, and each new phase of development involves the accumulation of previous advances [4].

The stage of 'transaction' is the highest level of development of e-Gov. It involves online initiation, monitoring and the completion of the process, with no need to move or use papers. Citizens can interact with the Administration more broadly, make payments, contract electronically, obtain licenses, etc., through electronic means. The development of this electronic delivery service requires administration re-engineering, plus a technology advanced and complex big investment. To integrate all services and offer new, as it is necessary at this stage, requires a change in the usual administration's management.

According to some authors, this stage demands three technologic elements, crucial to its development:

- 1- The ability to make online electronic payments through various mechanisms.
- 2- To be able to identify the citizen, for which the digital signature is essential.
- 3- To grant confidentiality and privacy, which demand the adoption of various security mechanisms.

## 3. THE HUMAN RIGHTS IN THE INFORMATION SOCIETY

Among the dimensions comprised in the concept of human rights, we include those of the individuals in their capacity as such, emerging from the very nature of mankind and making their dignity. These rights, far from being a grant of political society, are enshrined and guaranteed by all States. This scope includes the right to life, liberty, honor, privacy, prohibition of torture and humiliation –first generation-, as well as economic, social and cultural rights –second generation-, or the right to a healthy environment, peace and the like –third generation-, and even technological environment oriented human rights -fourth generation- [6].

<sup>7</sup> Being aware that some authors use different designations and or describe other phases, we find the referred studies expressive as regards this work.

However, beyond being inherent in mankind, the human rights development, as a theoretical category, has often been linked to historical, political, social and economic contexts. Moreover, since its inception, it has been the result of mankind achievements over forces and interests that threaten human life and dignity.

### 3.1 Custody of Personal Data and Privacy Protection

The accelerated technological development and the need to protect various private aspects regarding individuals have caused the right to privacy to be considered "one of the most dynamic existing rights" [7]. The value the right to privacy has is linked to personal freedom. The freedom to be, to self determine in one's own private sphere, and without interference or disruption neither of the State nor of any other third party; what the German doctrine recognizes as a fundamental value bound to the concept of free development of personality (*Freie Entfaltung der Persönlichkeit*)<sup>8</sup>.

The ICT expand and multiply the sources of knowledge and information of those who use them, hindering the possibilities of defending those who want to defend themselves from outside interference or monitoring. Thus, the right to privacy is not set simply as an individual's defense as a member of society, but as a social right to freedom, not only the right to deny personal information but also the right to know the kind and extent of his information kept in data bases, to preserve his computer identity (ID), consent, control and, if necessary, rectify the data concerning himself.

### 3.2 Informational Self Determination

By Informational Self Determination (or Computational Freedom) is meant, following Murillo, the ability the individuals have -or should have- to preserve their identity by controlling the disclosure and use of data concerning themselves, and to protect themselves from the unlimited capacity to store, transmit and connect by computer.

This right combines different meanings [9], briefly mentioned below:

- Right to information: the possibility of knowing the existence of a file or database of personal information;

- Right of access to personal information: such as suitability of the content of those automated databases aimed at storage and handling of personal information;

-Right to update: whereby the individual may require the correction of certain data;

<sup>8</sup> This value is broken down, according to Adalbert Podlech, in two basic freedoms: on the one side, freedom of action, understood as freedom to decide the performance of certain acts or omissions, and the right to behave or act in accordance with this decision, and on the other, self-report, which concerns the freedom to determine who, what and for what occasion information pertaining to each subject may be disclosed. The right to informational self-determination, developed by German doctrine and jurisprudence, is the equivalent to computing freedom, and is crucial in technological societies of today (Muñoz de Alba Medrano, 1998).

- Right of privacy: as the power of citizens to demand that the information provided by others stay aware of others;
- Right of exclusion: by means of which, given the nature of the information, the individual may cancel or remove or request the destruction of sensitive information.

### 3.3 Personal Data and the its Economic Value

There have been identified certain characteristics of the personal data, that differentiate them from other legal categories. Some examples of this statement are:

- Personal data is information;
- The information loses its value if it is not true, or is false or outdated;
- Lack of accurate and real information increases the transaction costs in the economy.

However, according to Puente de la Mora [10]:

- The personal data generate information, by themselves or through cross-linking; and that information has value.
- The value is related to the truthfulness of the information.
- The economy as a whole requires accurate information.

This brief analysis leads us to reconsider the importance and economic value of the personal data provided to the public administration. The full accuracy of the information should be guaranteed (either because they belong to official records or have been provided by the citizen to government). The management and treatment of such information requires a fundamental protection from administration and citizens, providing adequate tools for its custody and control.

### 3.4 Electronic Administrations and the Custody of Citizens' Data

The strict protection of citizens' personal data is a common denominator in all policy areas concerning e Gov. It is essential for a safe and prudent advance, where citizens' privacy and property are protected, to provide a high quality public service, consistent with the demands the Information Society poses. Such rules should not exhaust themselves in discourses at a theoretical level; they should rather be operative as regards citizenship. Thus, it is necessary to mention, even if briefly, the prospects of this kind of legal protection.

Some authors find the right to personal data protection as the citizens' legal protection as regards the processing of their personal data, or against the possible use of their personal data by third parties in an unauthorized manner, or to establish information that, being identifiable with them, might affect their personal, social or professional environment [11]. Others consider that the individuals' rights to consent the knowledge, collection and use of their personal data are principal features of the content and definition of this fundamental right [12].

However, as Puente de la Mora stated, "looking at this position we should note that when discussing the control individuals have over the use made of data collected in databases, we are saying

that the individual possesses the necessary tools and ability to learn the information kept in certain databases and then decide if they would like to modify it or not. That is to impose the individual rather an obligation than a right in order to be aware of what is kept in the large number of databases where our information is integrated moment by moment".

## 4. THE OMBUDSMAN

This figure comes from the Scandinavian Law and extends its origins to the Crusades. At that time the King, concerned about good governance in his domains during his absence at the Crusades, appointed a trusted person to control his kingdom. The origin of the word is found in Old Norse, '*umbuds man*', meaning representative. The first preserved use in Swedish is from 1552. It is also used in the other Scandinavian languages such as the Icelandic '*umboðsmaður*', the Norwegian '*ombudsmann*' and the Danish '*ombudsmand*'. The Ombudsman was created as a guardian of good administration and so evolved independently. By 1713, King Charles XII of Sweden created the official *höste Ombudsmenn* by decree. His role was to monitor the operation of the Administration, to control the observance of the ordinances and the enforcement of obligations of each staff member. Later on, in 1719, it happens to held accounts to Parliament in case of the violation of constitutional rules (changing its name to the Chancellor of Justice -*Justitie Kansler*-) [13]. By 1809 it is included in the constitution of Sweden as a representative or delegate of the Parliament to monitor administrative authorities' or courts' compliance with the law.

The Ombudsman finds its basis in the principle of protection of rights, and the figures presented as a safeguard against errors and abuses of public administration. Its authority, in theory, is guaranteed because it is vested by the Legislature, which warrants a democratic system and the relationship between citizens and the State. Thus, positively included in various legal systems, it takes different names in its development, resulting in further adjustments to the legal systems in which it is incorporated<sup>9</sup>. In all cases, the figure is associated with concepts of **defense, control, confidence, good governance, resolution of issues** involving Human Rights.

While received by Latin American constitutionalism from the Spanish legal system, the idea of the People's Defender deepened, appearing as the Citizen Defender or, from its original root, as Ombudsman.

This protection of rights against abuse, mistakes and lack of control of the administration, public services and even users and consumers, led it to acquire constitutional significance in Argentina with the constitutional reform of 1994, alike those of Spain in 1978, Guatemala in 1985 and Colombia in 1991, among other cases.

### 4.1 Authority Outside State Branches

It is important to establish some particularities of the Ombudsman's role in protecting the citizen and the administration and controlling public services that place him out of the Executive, Legislative and Judicial Branches of Government; this is, in an extra-branch position. The Ombudsman is aimed to

<sup>9</sup>Canciller de Justicia, Defensor del Pueblo, Síndic, Mediateur, Comisionado, Procurador.

protect, investigate, monitor and report, but lacks power of coercion, the threat of a sanction for failure. Even though, it has constitutional legal standing to act.

This special situation that deprives the Ombudsman of power to sanction provides him the power to monitor, detect malfunctions and defend rights, reporting to the legislature, and/or directly to the judiciary. Then, the idea of power turns into a notion of authority and trust as regards the same State and citizen. Authority as a constitutional body with broad powers to control and confidence in the wisdom and advocacy that is inherent to the figure.

So the Ombudsman relationship with the branches of the State is as follows:

- coated with functional independence and impartiality, emerges and informs the legislature the denounced dysfunctions of the administration and public services;
- in relation to the judiciary, he may also take legal action to defend and protect Human Rights.

Thus, we can conclude that, not having power to create law, the Ombudsman can influence in the control and quality of public administration. We can infer, therefore, that a figure that detects errors, abuses and risks in the relationship between government and citizens, can be a strategic tool, efficient and useful in building an efficient, safe and legitimate e-Gov.

## 4.2 The Ombudsman's Ability to Prevent, Manage and Solve Conflicts

Moreover, the Ombudsman faces the conflicts in the initial stage of the claim. Thus it is often presented as an alternative to prosecution. He listens to the citizen that requests his intervention. This is an ideal point for the early detection of deficiencies or dysfunctions of the administrations and public services. It must be emphasized that the citizens must feel that 'their problem' will go, after being heard by the Ombudsman, directly, as applicable, either to the lawmakers or the judge once the case has been attended at the Administration.

The Ombudsman is, therefore, institutionalized as an agent within the frame of society's pacification. This, in Paul Werh's scheme [14], indicates some kind of safety valve or controller of the 'third side'. Involved in the management and resolution, Werh identifies the role of the auditor of the 'third side'. He explains that the 'third side', often referred to as 'third party', consists of those actors who are not directly involved in the conflict and who are called to intervene and move the conflict towards de-escalation and settlement. They must be fair to those in conflict in order to let them be confident that their intervention will be just [15]. The Ombudsman's intervention, together with the concepts of Human Rights, puts him in a position of objective impartiality.

These ideas can be included among the benefits and profits the Alternative Dispute Resolution (ADR) have acquired in recent years<sup>10</sup>. But unlike other ADR, the Ombudsman's specific role is

<sup>10</sup> From a social point of view, it can be mentioned the possibilities of reducing the litigation itself, of the parties arising to an agreement that ends their conflict, of building collaborative solutions, of vastly reducing the conflict resolution time, among

not to solve disputes or conflicts between individuals but to grant the full and effective public administration [16]. This shall allow, in our case, the development of a dynamic technological environment that, at the same time, scores the rights of citizens.

## 4.3 Different Ombudsmen. Same Fundamentals

The institution of the Ombudsman appears with similar functions in different legal orders, either local, provincial<sup>11</sup> –state- or national<sup>12</sup> levels and even at community level, such as the European Ombudsman<sup>13</sup>, created in the Maastricht Treaty.

It should be stressed that, because of the complexity of circumstances of conflict and the need for protection of the Human Rights, this figure's 'object of custody' becomes increasingly specialized, appearing Ombudsmen dedicated to emerging issues or involved in an area or specific social sector (consumers, children, people with disabilities, among others).

This is due to the need to protect rights in a complex and globalized world, where technical expertise is a golden rule for the development of an efficient and effective development of a social role. Parallel to this development, which promises great benefits for mankind, but also significant risks, the means of protection of rights should be developed, so as to act with legal authority and sufficient technical capacity in line with those risks.

## 5 THE ELECTRONIC OMBUDSMAN

"Globalization is beyond the management capacity of nation-states. It does not neglect them entirely, but requires them, in each country, to guide their policy on the instrumental adaptation of systems to merge the global flows. In doing so, States have to sacrifice interests hitherto protected by them. When the State has to attend, primarily, to the dynamics of global flows, its action towards the Civil Society becomes secondary, and therefore the

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many others. From an operational point of view the decongestion of the judiciary, the possibility of increasing access to justice, the better distribution of human resources, and social peacefulness should be mentioned among other advantages. These systems of conflict resolution justification are also justified for substantive reasons, as it generally considered that the solutions they reach are of higher quality than those arose at the courts.

<sup>11</sup> Ley 13.834, Provincia de Buenos Aires, Argentina

<sup>12</sup> Ley 24.284, modificada por ley 24.374, Argentina

<sup>13</sup> When the European Ombudsman investigates whether there is maladministration, the first and most essential task is to establish whether the Community institution or body has acted lawfully. It can never be good administration to fail to act in accordance with the law.... In a society governed by the rule of law, the courts are naturally the main protection for the rights of individuals. The ombudsman is a non judicial institution, something extra, who helps citizens when they have difficulties with the administration. At the moment, ..., there is no provision in the Treaties which informs European citizens of the vital role played by national courts in ensuring respect for Community law. <http://www.ombudsman.europa.eu/speeches/en/ljub1.htm>

principle of citizenship issues an increasingly weak significance for the public.” [17]

The evidence gathered in this work lead us to make a theoretical analysis of circumstances that are presented as opportunities and risks in the way towards the Information Society. To visualize and focus on the subject of the citizen-protection and Human Rights leads us to see more clearly the objectives and to make stronger steps in a deeply complex society.

We attend at crucial developments as regards Market, Society and State. New institutions, habits and behaviors appear, develop and transform themselves. Many paradigms that gave support to the legal sciences are changing. The needs and interests that inspired the recognition of rights stay but there appear new needs, those of appropriate rights to the Information Society and the Knowledge Economy.

ICT, especially the Internet, have penetrated into various spheres of human life. They have, not without conflicts, become a cornerstone within a profound change. This change imposes the need of adaptation to the new social, political, economic and cultural context, where the law has lost its capacity for timely response and reaction before the dynamics of a deeply tech society.

ICT have become the vehicle and meeting point of common, complementary and antagonistic interests. Common as regards the agility, dynamics and benefits they offer as a tool for humanity. Complementary to those of the various actors involved in the Information Society, where the interests of Civil Society are complemented by the interests of the State and the Market; and these integrated with those. The need to have optimum levels of security and cooperation in the players operation's dynamics reflects those complementarities. Moreover, antagonistic interests are inevitable and there appear conflict dynamics where some players find interests that matter to them threatened by the specific interests of others.

Thus, in the search for balance and advocacy, it is necessary to find tools -computing and legal- that do not appear to increase bureaucracy, but on the contrary, work horizontally as regards the Administration. Such tools should work as safety valves for the problems that occur in the joints of the system; but they should also have enough operational capacity to use the powers of the State -elements of this system- to ensure cleaning it up and provide the citizenship with a better public service.

Only by means of early detection of errors, defects or abuses there shall be refined –technologically and normative- an e-Gov system where the beta versions belong to the system and not the citizen. Born from G2C policies, but directly connected to G2G and G2B, in case these last were public services providers.

Throughout the scheme of given interests, there is the need to generate sufficient momentum for:

- Giving priority to Human Rights. This identified as a basic principle and objective of development of Public Administration. Further recourse to international consensus, based on fundamentals of recognition to the human condition, aimed at developing a just and comprehensive Information Society.

- Creating legal mechanisms that do not enter the ‘natural’ administrative hierarchy, but work from the horizontality of the spectrum, in order to pursue the immediacy of the problem and the simplicity the citizens need for and their rights at stake.

- Achieving the agility technological means demand without overcoming fundamental values or exhausting it at the theoretical level. On the contrary, it should become operative at the global inter-operability the ICT permit.

- Assuring that the agility demanded by technological means is not obtained by means of overcoming fundamental values, or exhausted at the theoretical level. But on the contrary, invigorate and become operational at the global and inter-operability that ICT allow.

Because of these reasons we propose the development of an Electronic Ombudsman. A body provided with sufficient technical capacity so as to identify critical points in various stages within the development of e-Government and defend the people against the dysfunctions and imperfections that the incompatibility of a system can cause.

## 5.1 Outlining the e-Ombudsman

The E-Ombudsman is an institute with the legal and political standing of the traditional Ombudsman. The duties he shall take on demand an officer with a high moral authority, suitable for the job, upright, and with the necessary agility in handling the affairs of its own. Therefore, it should be a unipersonal position. The figure should be enriched with the particularities of each legal system that adopts it<sup>14</sup>, though remaining independent of the traditional Ombudsman. In other words, its function and activity will not be a degree of specialization of the Ombudsman in each state that adopts it, but a self-contained figure in the new concept of public administration involved in e-Gov. It should undoubtedly have an intimate and direct link with other Ombudsmen, but has *sui generis* characteristics inherent to the new electronic administration.

We must emphasize, however, that beyond the technical and legislative special features of the proposed figure, with an area of special rights to guard and a high specialization degree, the E-Ombudsman shall not be alien to claims, complaints or disputes over other rights<sup>15</sup>. We believe that if the E-Ombudsman can investigate, monitor and address what is specific to him, may also attend the general claims and, in any case, steer the mechanisms to work them out. We reach, then, a critical point. A network logic -the one that must necessarily link the different Ombudsmen-

<sup>14</sup> According to Mireille Roccatti, the record shows that the evolution of the Ombudsman is not a movement of extra-logic imitation, but addresses the concern of each country to find a solution to the demands of citizens in order to safeguard their fundamental rights. [http://www.razonypalabra.org.mx/antiores/n22/22\\_mroccatti.html](http://www.razonypalabra.org.mx/antiores/n22/22_mroccatti.html)

<sup>15</sup> Note that we do not speak of ‘competency’ in the traditional legal sense, since we believe that at some point, this term might be incompatible with a globalized environment.

shall allow citizens to direct complaints to one of these Ombudsmen. Then this one will turn them feasible through the specific Ombudsman<sup>16</sup>.

Therefore, alike each and any Ombudsman, the E-Ombudsman shall report regularly to the legislature that appoints him, and from that power shall have access to all the information that flows along the public administration and the public service providers, which, in the end, constitute a State concession. This is transcendental to this figure, since in an electronic environment, with unimaginable amounts of information and data flowing through the government and public service providers, the success of the E-Ombudsman depends on his possibility to meet and implement the information systems developed by the government, questioning their logic and physical designs, languages and database management systems, to develop database applications (such as image databases), to control and make use of appropriate methods to search and retrieve information (data mining for instance), among others<sup>17</sup>. Not neglecting, at any time, the necessary technological neutrality<sup>18</sup> that appears to be one of e-Gov's fundamentals.

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<sup>16</sup> We must also be aware that the Ombudsman does not penalize nor punish, but investigates, monitors and attempts to solve the issue in the frame of his abilities. Moreover, he shall always render a detailed report of its activities to the legislature. So, before a problem that at some point affects the rights involved in the Electronic Ombudsman's affairs but that, in substance, the bulk of the case violates other rights or regulations, in a multiple mechanism of quality control, the alleged errors or abuses of government are investigated and controlled from different perspectives, all of them attempting to solve the problem and report it to counterbalance the power of the Government (regardless the Ombudsman's lawful authority to use the judiciary to protect rights).

<sup>17</sup> It must be made clear to the Ombudsman should have access to electronic information, but shall not publish it if confidential, and only to the extent that is necessary for a proper evaluation of the complaint, the control of information and search for satisfactory solutions to the citizen and to improve the quality of administration.

<sup>18</sup> Technology neutrality has long been held up as a guiding principle for the proper regulation of technology, particularly the information and communications technologies. The liberalisation of the telecommunications market, first in the US and then in Europe, led to calls for the new regulatory regimes to be technology neutral, and technology neutrality has continued to be a pervasive concept in that field, influencing among others the debates on convergence with broadcasting, voice over IP, universal service, spectrum allocation and net neutrality. Chris Reed. Taking Sides on Technology Neutrality. Script-ed, Vol.4, Issue 3, September 2007. <http://www.law.ed.ac.uk/ahrc/script-ed/vol4-3/reed.asp>

Thus, the E-Ombudsman's outline will emerge from the State legal system, which consists of:

1) Different forms and powers of each Ombudsman (national, provincial –state-, local and / or regional), according to the laws that lay down his faculties, powers, duties and, generally, regulate their operation and development<sup>19</sup>.

2) Particular rules and systems of public administration, pointing to technical architecture issues, network systems, interoperability, database management, information storage and retrieval, and to mechanisms that steer e-Gov within the states<sup>20</sup>.

3) Finally, the E-Ombudsman's legal and technological plexus should be composed of rules and principles that guarantee the privacy and personal data protection, acknowledging them the category of fundamental human rights; but should also have sufficient authority to defend and protect those rights in the Information Society.

Then, the E-Ombudsman may be a tool with a dual capacity in systems that boost e-Gov or those where it has reached the highest level e-Gov. On the one hand, in the latter, in addition to protecting human rights, the E-Ombudsman must ensure and safeguard the exercise of rights and principles settled in e-Gov laws. On the other, the development of a figure like this, in administrations that are on their way to higher e-Gov levels, and do not count with special categories such as that of e-Citizen<sup>21</sup>, where individuals are ordinary citizens who become users of a system that the administration uses to carry out its function, this

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<sup>19</sup>According to the International Ombudsman Institute, by 1996, 75 countries had this institute in different levels of organization: 27 in Europe, 16 in Africa, 14 in Latin America, 8 in Asia and in Asia and South Pacific; 8 in the Provinces of Canada, 5 in the U.S. States and in Puerto Rico and Guatemala. Furthermore, September 1995, the European Union counts on a European Ombudsman, whereas the European Parliament has its own, and therefore, the first supranational ombudsman of the World. It is also instrumented at communal and regional levels.

The development of this figure in the orbit of the ICANN can also be mentioned (Article V of the bylaws of ICANN <http://www.icann.org/general/bylaws.htm#V>)

<sup>20</sup>Recognize citizens' rights and impose duties, obligations and best practices to management regimes. Thus, particular emphasis on the integration and coexistence of legal and technical computing should be paid, since many times, according to the stage of e-Gov development, coexist traditional bureaucracies and e-Gov (old and new legal institutions).

<sup>21</sup>Such as Spain, where there are specific laws on high level e-Gov (Law 11/2007 on Electronic Access of Citizens to Public Services, Law 15/1999 on the Protection of Personal Data, etc.) that have developed a concept of citizenship related or likely to be related to e-Gov (Law 11/2007, inc. Annex h, Definitions).

figure may encourage the control and quality of service and strengthen citizens confidence in the new system.

## 6. CONCLUSION

The Information and Communication Technologies are tools to serve mankind. In exercising its functions and trying to provide better public services while seeking higher profits, governments use these technologies, to the extent that their resources enable. The citizen, the user, is the direct beneficiary by means of comfort, opportunities for participation, quality of service and other benefits. So the State tries to achieve a more active and dynamic role in the Information Society, which enables its interaction with Civil Society and Market, citizens and business. Therein the value of data increases as the large flows of information do –by moving data from various interlocking databases and points of the administration or public services enterprises-. Points that acquire a face while being identified by the Administration, much more in a context of e-gov. On the other hand, the public has confidence in the proper care and use the State gives the data obtained either originally or by the cross-linking of its own databases.

Given the potential of these resources, the mere possibility of small human or technical errors, bad intentions or abuse can lead to terrible consequences in the lives, property and happiness of people. Therefore, people who electronically interact with the Administration should count on direct instruments with technical and legal capacity to protect their basic rights, ensuring that the rights, guarantees and interests are not exhausted in a mere ideal expression.

The instrument hereby proposed, the electronic Ombudsman, can be an effective intermediary, able to ensure citizens the proper administration, use and security of the information in the orbit of the Public Administration.

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