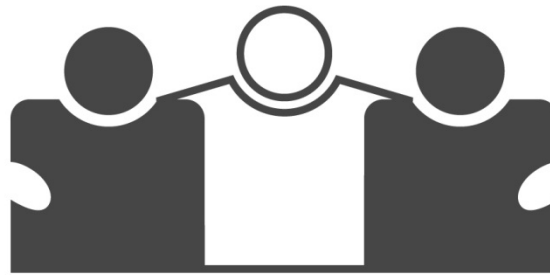


The State Ombudsman of Tyrol

Dr. Josef Hauser



LANDESVOLKSANWALT
Organ des Tiroler Landtages



Historical development and designation

- the designations „Bürgerbeauftragter“ in Germany, “Mediator” in France, “Difensore Civico” in Italy and “Volksanwalt” in Austria are various names that can be found for those institutions in the European States, which are generally called “ombudsman”
- 1809 establishment of the parliamentary ombudsman in Sweden
- 1919 and 1954 similar institutions in Finland and Denmark
- 1974 establishment of the ombudsman in Rheinland-Pfalz (Germany)
- 1977 establishment of the Ombudsman of the Federation in Austria
- 1992 by the treaty of Maastricht the European Ombudsman is embodied in law



The Ombudsman in Austria

- the Ombudsman's office (of the Federation) has its seat in Vienna and consists of three members, one of which leads each of the presidency
- the three mandated strongest parties in the National Council have the right to propose the election of members of the Ombudsman's office by the National Council
- in accordance with article 148i constitutional law the states (provinces) may declare the Ombudsman's office of the Federation responsible for, or choose an own Ombudsman
- only the states (provinces) of Vorarlberg (1985) and Tyrol (1989) have chosen their own regional Ombudsman
- for the state authorities of the other seven states (provinces) also the Ombudsman's office of the Federation is responsible



The State Ombudsman of Tyrol

Dr. Josef Hauser since 01.04.2004

- legal ground:

article 59 Tyrolean State Order 1989, LGBl. Nr. 61/1988 in the valid form and article 148i Constitutional Law!

- implementation law, LGBl. Nr. 66/2014

in this implementation law, the tasks of the State Ombudsman, rights and workflows are regulated in more detail



**State Constitutional Act of 21 September 1988 on the Constitutional of the state of
Tyrol
(Tyrolean State Order)
article 59
The State Ombudsman**

- (1) The State Ombudsman is competent to perform the functions enumerated in paragraph 2.
- (2) The State Ombudsman must counsel any person or hear complaints in matters relating to the administration of the State, the intermediate administration of federal matters by the State and in matters of federal assets of which the administration has been delegated to the Governor of the State. The State Ombudsman must examine each complaint immediately and in so far as he is not able to resolve the case on the basis of the information provided by the complainant, he must ask the competent authority to provide an explanation or remedy and communicate the result of these efforts as soon as possible to the complainant. The State Ombudsman must submit an annual report of his activities to the State Diet (provincial parliament).



**State Constitutional Act of 21 September 1988 on the Constitutional of the state of Tyrol
(Tyrolean State Order)**

article 59

The State Ombudsman

- (3) The State Ombudsman is an organ of the State Diet. He reports directly to the State Diet and is only accountable to it and is independent of the State Government. If there arise disagreements between the State Ombudsman and the State Government on the jurisdiction of the State Ombudsman, the Constitutional Court decides about this of petition for the State Ombudsman or the State Government.
- (4) The State Ombudsman's office is located in Innsbruck. In so far as it is appropriate for fulfilling his functions, the State Ombudsman may have office hours outside the State capital Innsbruck.
- (5) The State Ombudsman is elected by the State Diet on the proposal of the President of the State Diet for a six year term of office. Only a person possessing the necessary personal and professional skills may be appointed to the office of State Ombudsman. The State Ombudsman must not be a member of the Federal Government, the State Government or a member of general representative assembly.



**State Constitutional Act of 21 September 1988 on the Constitutional of the state of
Tyrol
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article 59
The State Ombudsman**

- (6) On the proposal of the President of the State Diet, the State Diet must remove the State Ombudsman from office before the end of the term pursuant to paragraph 5 first sentence if he does not meet the requirements any more laid down in paragraph 5 sentences two and three.
- (7) The State Government, after hearing the President of the State Diet, must provide the necessary non-monetary and monetary means which the State Ombudsman needs to perform his functions and must put the necessary number of State employees according to the State roster at the State Ombudsman's disposal. The President of the State Diet is responsible for the exercise of the State Government otherwise entitled to service sovereignty over the State Ombudsman and the state employees, with the exception of the enactment of regulations.



**State Constitutional Act of 21 September 1988 on the Constitutional of the state of
Tyrol
(Tyrolean State Order)
article 59
The State Ombudsman**

- (8) The State Ombudsman is the superior of the state employees in his office. He is competent to instruct them.
- (9) All organs of the State and of the municipalities must support the State Ombudsman in his functions, allow him to inspect files and inform him at his request. Official secrecy cannot be invoked as against the State Ombudsman. The State Ombudsman is bound to official secrecy to the same degree as the organ which he has addressed in performing his functions.
- (10) For in article 148a paragraph 3 of the Federal Constitutional Act on the protection and promotion of human rights provided for control and monitoring tasks, the Ombudsman's office of the Federation is declared to be in charge of the state administration.



Tasks of the State Ombudsman

- the State Ombudsman must counsel every person or hear complaints
- the State Ombudsman can be called during a pending action (for example complaints over the duration, delivery defects, withhold information or rudeness of staff)
- the State Ombudsman's task is, to examine alleged or suspected maladministration. Through its inspection procedures assist those citizens should be given the suspect a defective or unjust procedure of authorities. The State Ombudsman is independent in its audits. He must submit an annual report of his activities to the State Diet.



The State Ombudsman of Tyrol

- is an organ of the State Diet, he reports directly to the State Diet and is only accountable to it; the State Ombudsman is independent of the State Government – freedom of directives (article 59 paragraph 3 Tyrolean State Order)
- must hear complaints in matters relating to the administration of the State (private enterprise administration or sovereignty administration), must examine them and has work towards remedy, if necessary (article 59 paragraph 2 Tyrolean State Order)
- just as in the intermediate administration (constitutionally problematic!)
- must counsel every person in the above administrative matters (article 59 paragraph 2 Tyrolean State Order)



The State Ombudsman of Tyrol

- has an unlimited right of inspection of files and unlimited right of information
- must submit an annual report of his activities to the State Diet (article 59 paragraph 2 Tyrolean State Order)
- has the right to appeal regulations at the Constitutional Court (BGBl. I Nr. 51/2012)
- has the ability to enter into ongoing process (because there is no legal regulation)
- since 1999 there has been an own contact for handicapped persons at the State Ombudsman



Jurisdiction of the State Ombudsman

The State Ombudsman is essentially responsible for those administrative matters with which the municipalities, the district council, the municipal council of Innsbruck and the office of the State Government of Tyrol are involved.

By order of the State Diet an own focal point for the disabled sector has been established, where disabled people get help and information.

The State Ombudsman has no jurisdiction for Federal Administrative Affairs (for example inland revenue office, surveyor's office), matters of the jurisdiction (criminal law, civil law), as well as legal issues and problems in relation with private insurance companies and financial institutions.



How to contact the State Ombudsman?

You can either contact the State Ombudsman

- in writing,
- by phone or
- by contact in person.

Written submissions may be introduced completely formless.

For a contact in person phone appointment is advantageous but not required.

The job of the State Ombudsman and his team is for the citizens free of charge.



Where is the State Ombudsman achievable?

Contact in person:

The State Ombudsman's office is located in Innsbruck, Meraner Straße 5, 2nd floor.

Address:

State Ombudsman of Tyrol
Meraner Straße 5
6020 Innsbruck

Phone: 0512/508-3052 or 0810/006200 at local rates from all over Austria

Fax: 0512/508-743055

E-Mail: landesvolksanwalt@tirol.gv.at

homepage: www.tirol.gv.at/landesvolksanwalt



When is the State Ombudsman achievable?

Office hours:

Monday: 08:00 a.m. to 12:00 a.m.
02:00 p.m. to 04:00 p.m.

Tuesday to Friday: 08:00 a.m. to 12:00 a.m.

If necessary a contact in person is also possible with an appointment in the evening!



Office hours outside the State capital Innsbruck

In spring and autumn office hours are held by the State Ombudsman at the district headquarters as well as in larger municipalities. Place and time will be announced through the media and by posting in the municipalities.



Investigation of complaints

- the complainant's allegations is by phone, answered in a personal meeting or in writing
- in the sequence, the concerned authority is confronted with the complaint argument and asked for the opinion
- upon receipt of an official opinion the facts are checked
- exist an instance of maladministration by the administration, the concerned authority is stopped by the state ombudsman to counteract this situation – the complainant will be notified
- there is no administrative maladministration, the complainant will also be notified in writing and give him also an explanation, why the administrative enforcement is not objectionable

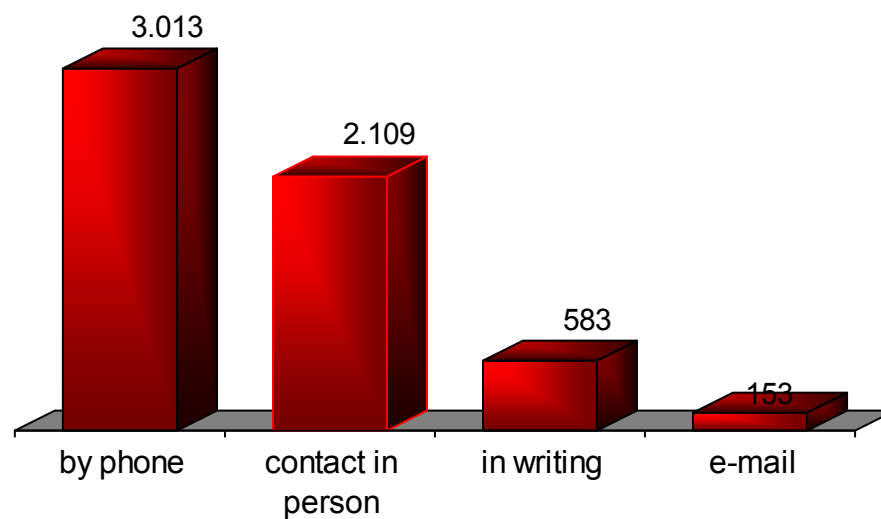


Annual report to the State Diet

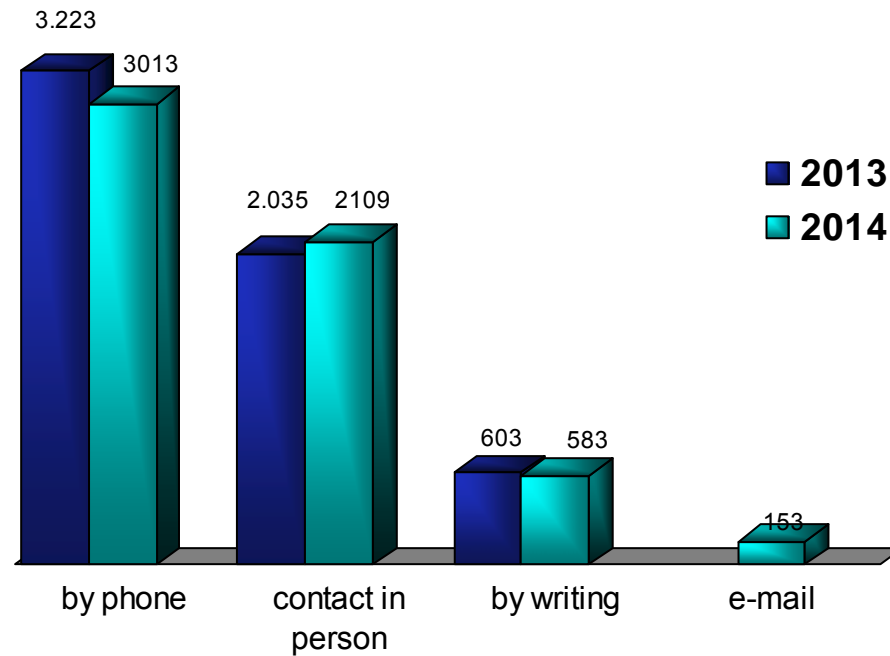
- the annual report to the State Diet contains the following topics:
 - statistical figures on the mobilization of the State Ombudsman and his staff
 - concrete examples of complaints and their processing
 - a report of the Disability contact
 - suggestions to the legislature and the administration
 - national and international contacts
- the annual report is discussed in detail in State Diet and taken note with decision



Representation on the type of use in 2014

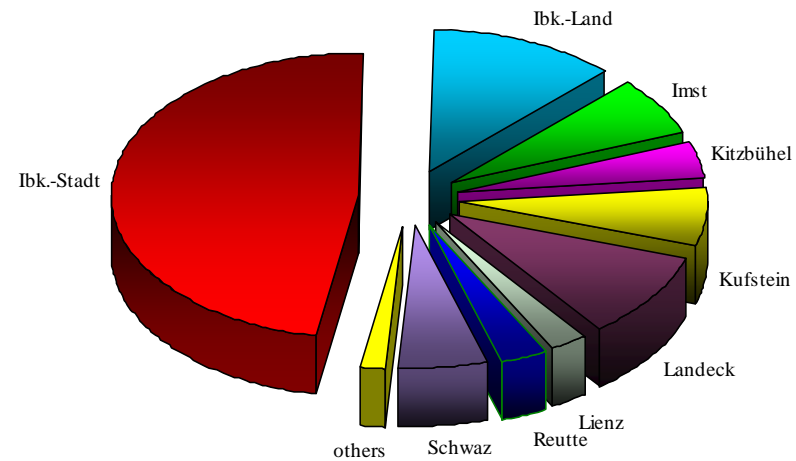


Use, in relation to the previous year



Distribution of advice and complaints to the individual districts in 2014

Ibk-Stadt	2.794
Ibk-Land	713
Imst	394
Kitzbüchel	239
Kufstein	394
Landeck	568
Lienz	140
Reutte	190
Schwaz	345
others	<u>81</u>
	5.858



Distribution of advice and complaints by matters in 2014

the mobilization of the State Ombudsman refers to frequency selected in the following areas of law:

state tax code	17	immigration law	130
agrarian law, forestry, hunting and fishing	116	municipal law, plants	158
construction law and regional planning	761	land transaction law	26
disability matters	929	child and youth welfare	76
service law	33	hospital affairs, hospital acts	9
financial law – Federal Government	29	automotive law, road traffic act, drivers's license law	116
promotion beings, generally	15	state police act	14



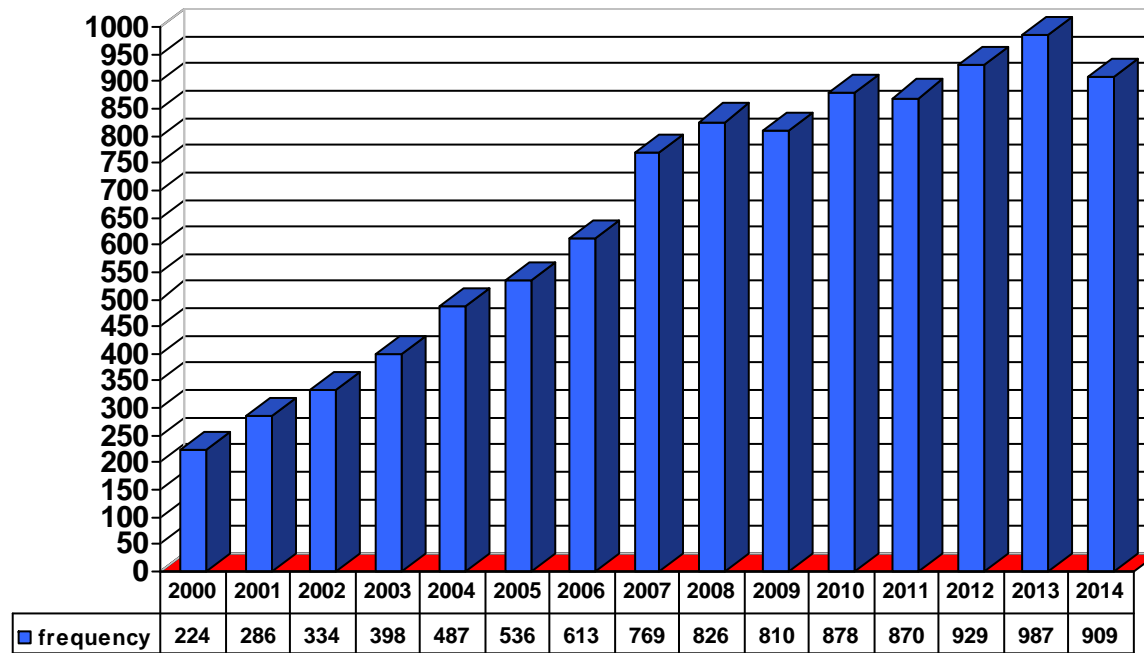
Distribution of advice and complaints by matters in 2014

the mobilization of the State Ombudsman refers to frequency selected in the following areas of law:

Pension rights and matters of jurisdiction	719	transport legislation	125
school system	60	tourism, sports being	15
security forces	16	environmental protection, nature protection	49
others	97	administrative procedure acts	71
social justice	1.479	water rights	122
citizenship, civil status	25	housing subsidy	104
evictions (since 2010)	397		
TOTAL SUM			5.858



Contacts Disability Ombudsman



Code of a good administrative behaviour

- ✓ scope (article 1, 2 + 3)
- ✓ lawfulness (article 4)
- ✓ absence of discrimination (article 5)
- ✓ proportionality (article 6)
- ✓ absence of abuse of powers (article 7)
- ✓ impartiality and independence (article 8)
- ✓ objectivity (article 9)
- ✓ legitimate expectations , consistency (article 10)
- ✓ fairness (article 11)
- ✓ courtesy (article 12)
- ✓ reply to letters in the language of the citizen (article 13)



Code of a good administrative behaviour

- ✓ acknowledgement of receipt and indication of the competent official (article 14)
- ✓ obligation to transfer to the competent service of the Foundation (article 15)
- ✓ right to be heard and to make statements (article 16)
- ✓ reasonable time for taking decisions (article 17)
- ✓ duty to state the grounds of decisions (article 18)
- ✓ indication of the possibilities of appeal (article 19)
- ✓ notification of the decision (article 20)
- ✓ data protection (article 21)
- ✓ requests for information (article 22)
- ✓ requests for public access to documents (article 23)
- ✓ keeping of adequate records (article 24)
- ✓ (articles 25, 26 + 27 are EU-specific)



International contacts

- European Ombudsman – Institut (EOI)
The EOI was founded in 1988 in Innsbruck and is an association under Austrian Law, where more than 100 ombudsman - institutions across Europe and beyond belong to. Purpose of the association is primarily the mutual exchange of experiences and learning about different ways of working. The EOI has an office in Innsbruck, which is passed by Dr. Josef Siegele (employees at LVA) as Secretary.
- European Network of Ombudsmen
About this network, which is established by the European Ombudsman in Strasbourg, all ombudsmen are regularly supplied with valuable information from Europe. Moreover, the ombudsmen arrange annually a seminar in a different country (2010 Tirol).



Fundamental considerations in the activities of the (State) Ombudsman

- justice and equity
- taking people seriously
- explain administrative action
- preventive and lasting impact
- access and availability





**Thank you for your
attention**

