

**Conference on**  
**“The Ombudsman and the Protection of Social Rights”**

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**Keynote Speech - Dr. Günther Kräuter**

**“A voice for the voiceless” – International, national and local perspectives**

Your Excellencies, dear State Comptroller and Ombudsman, dear Matanjahu,  
distinguished guests, Ladies and Gentlemen,

It is a great pleasure and privilege for me to speak to you at this remarkable event.

And I am again, deeply impressed by Israel and especially Jerusalem. Why again?

When I was quite a young member of the Austrian Parliament in the year 1992, my very first international political delegation brought me to Israel.

I had meetings with politicians at the Knesset, got together with many interesting personalities, and I remember a lot of exciting impressions.... However, I would like to mention two unforgettable moments in Jerusalem.

Firstly, I visited Yad Vashem, it was a very, very emotional experience for our delegation and deeply moving....

It was therefore very happy that I had the opportunity to visit the new Yad Vashem Museum on the slopes of the Mount of Remembrance yesterday. It is

a very impressive and special place. In my view everybody who comes to Israel should visit this impressive sight!

Secondly, I had, with my colleagues from the Austrian Parliament an audience with Teddy Kolleg, the legendary Mayor of Jerusalem.

This was in the last year of his long term of office in this city. By the way, he was honoured in Austria when he received the citizenship in the year 2002 and he was given the freedom of the city of Vienna in the year before....

Ladies and gentlemen, in my keynote speech with the theme “voice for the voiceless” I would like to

introduce to you

- The basics of the Austrian Ombudsman Board
- the specific tools, which are used beyond the traditional complaint handling in Austria, national and local, to protect and promote voiceless people
- and on the international level, the efforts of the International Ombudsman Institut.

As you may know, the I.O.I. is the one and only global organisation of independent ombudsinstitutions, since 2009 the headquarters has been situated in Vienna. The state comptroler and ombudsman of Israel has been a member since 2005.

The Austrian Ombudsman Board (AOB) was established in 1977 and it is enshrined in the Austrian Constitution.

The AOB consists of 3 members who are elected by Parliament for a 6-year-term. They can be re-elected once; they cannot be voted out of office or relieved from their position.

Why three Ombudsman?

The AOB is an “assistance body” to the Parliament. When it all began in 1977 there were only three political parties in Parliament, so each of them got the right to nominate one candidate.

Nowadays the situation is different of course. So as a consequence, the three strongest parties get the possibility to nominate one candidate each for a period of six years.

Are there any disadvantages with this system?

Well, I can only say: it works, and in more than 40 years there was only one serious conflict...

As an OM institution the AOB:

- independently controls public administration;  
that means that no authority, politicians or administrative officials have the right to control or influence the work of the AOB! Only the slightest attempt would already lead to an uproar in Austria...
- receives and investigates complaints;
- may also carry out own initiative investigations;

- investigates complaints about delays of Courts to take procedural steps;
- makes recommendations to the legislator;
- reports annually to Parliament;
- protects and promotes human rights;

Anyone – regardless of age, nationality or residence – can contact the AOB and file a complaint about Austrian public administration if they feel that they have been wrongly treated.

No formal requirements exist for submitting a complaint to the AOB. It can be done online, in writing, by phone or in personal talks with the Ombudsman and – most importantly – completely free of charge.

The AOB cannot handle complaints about court rulings. It can only investigate if courts are delayed in taking procedural steps.

To give you a rough idea about the AOB's annual workload in 2018:

- 16,263 people turned to the AOB; it is quite similar to the Israeli institution
- 212 consultation days were held with thousands of personal contacts;
- in 48 % of all complaints the AOB initiated detailed investigations,
- 30% of the complaints concerned the areas of Labour, Social Affairs and Health; 23% the internal security sector

The three Ombudsmen hold consultation days all over Austria on a regular basis, where people can meet the Ombudsman in person and talk about their concerns and the problems they have with a public authority.

During the investigative proceedings, the AOB views all the relevant documents and materials to gain insight into the case. It keeps the complainants informed about the progress and results of the investigative proceedings.

When investigating a complaint, the AOB has the right to obtain information from all responsible parties and to gather statements from the competent authorities and the highest administrative entities (Federal Ministries).

The AOB has the right to access all files and authorities are obliged to disclose all relevant information!

No administrative body may invoke official secrecy in dealings with the AOB! The files of the AOB however, are confidential, not accessible and not disclosed to public authorities.

When the complaint is justified, the AOB determines a formal case of maladministration and issues recommendations to the authorities.

Within a certain deadline the authority concerned must either conform to the recommendations and inform the AOB accordingly, or explain in writing why the recommendation has not been complied with.

Only a very low percentage of the AOB's recommendations are refused or not met; not more than 1 or 2 a year.

It is different when it comes to general advice, such as the AOB's constant demand for more highly qualified nurses in homes for elderly.

Once a year the AOB reports about its work and observations to Parliament; this report also includes recommendations to the Legislature. The reports are published on the AOB website.

The AOB just celebrated its 41<sup>st</sup> anniversary. It is a well-established and highly regarded institution in Austria (by politicians as well as by the general public); a fact which is also an impact of the AOB's weekly TV show – but I will get to that a little bit later.

Ladies and gentlemen, let us now turn to “voiceless persons” ....

The AOB's investigative work is of particular importance to protect the rights of the so-called vulnerable groups; those who have no direct access to the respective institutions and who cannot speak up for their rights, such as children, older people, refugees and asylum seekers or persons with disabilities.

With the possibility to start investigative proceedings *ex officio*, the AOB can help fight systemic problems which have negative effects for these groups without having to wait for somebody to file a complaint.

This is how – for example - the AOB was able to establish certain standards for unaccompanied minor refugees or how it can continue to urge government to improve the conditions for the care of children and adolescents in psychiatric institutions.

The AOB released a special report on the rights of children who are in out-of-home care, which was presented to Parliament in 2017 and which lay the basic foundations for important guidelines in politics and administration.

Another platform, established by the AOB in order to give a voice to those, who rarely find their way to an office, is a regular NGO Forum held on the premises of the AOB. This platform brings together organizations which represent certain groups of our population; for example NGOs speaking on behalf of persons with disabilities.

Within this NGO forum we also carried out a study to analyse how this group of people is represented and portrayed in the media.

We also developed guidance for the appropriate wording; for example avoiding terms and phrases which have negative connotations and are embarrassing, such as “bound to the wheelchair”, as they are hurtful and not in line with our goal of a more inclusive society.

I also initiated a very interesting project with the Roma community in Austria. In a horrific and racially motivated cowardly bomb attack in the Year 1995 in a small town in Austria 4 young Roma-people lost their lives.

Roma (they were called *gypsies*, or *Zigeuner*) originated in the Punjab region of northern India as nomadic people. For centuries, Roma were scorned and persecuted across Europe. In 1939 about a million Roma lived in Europe and a supplementary decree to the Nürnberg laws classified gypsies as “enemies of the race-based state”, thereby placing them in the same category as the Jews. Historians estimate that between 220 000 and 500 000 Romani were killed by the Nazis and their collaborators.

Even though the Federal Chancellery established a hotline immediately after this terrible attack in 1995 and tried to support the Roma in many ways, we have noted that the AOB still hardly receives any complaints from the Roma community.

This is why I invited representatives from the community to start a permanent dialogue with them. The goal is to promote the support of the AOB and offer information about the institution....

Unfortunately, it was not really successful until now, so the AOB will keep up the work in this specific field.

And now I would like to highlight a very special part of the AOB,  
a weekly TV Show.

The TV-show of the Austrian OM Board is a very effective tool to reach out to the general public and is of utmost importance to make the AOB's work visible.

For many years the AOB has held a very close cooperation with the Austrian public TV broadcaster ORF. Since 2002 the weekly TV show "*BürgerAnwalt*", which translated is "Advocate for the People", has given the Ombudsman an opportunity to address the different problems citizens have with Austrian authorities by showing real-life examples of complaints.

Every Saturday in the late afternoon during prime time, two cases are presented in the show. It always starts with a short video clip, filmed at the home of the complainant explaining the situation (e.g. a physical condition that the health insurance refuses to pay for, or problems with building permits etc).

After this short film, the studio discussion begins. In the studio you have the moderator of the show and on one side the Ombudsman with the complainant and on the other side representatives from the authority.

It is important to mention, that the viewer understand the role of the Ombudsman, which is to control public administration. They know that the Ombudsman is not the lawyer of the complainant.

Most of the time representatives of the administration appear in the studio as well, because it would be quite embarrassing and not too good an impression if the officials left the spot in the studio empty. But sometimes it still happens...

The show attracts a very high number of viewers and has an average market share of about 30%.

There is no need to say that this weekly TV show has become an important platform and advertising tool for the AOB that helps make the OM's work well known and raise awareness of the possibility for support and redress.

This is particularly important, because no institution can claim to be "strong and accountable" if it is not known to the people it should serve.

Every few years the AOB conducts a survey to evaluate its visibility and it turns out that about 70 % of Austrians know the Ombudsman Board. This can largely be attributed to the weekly TV show.

The show also contributes significantly to driving forward solutions to sometimes long running problems that people encounter in their interaction with public administration. In a way, the show therefore also leads to the reduction of maladministration.

Last but not least, it can also have a preventive effect. Often the mere threat of knowing that authorities might be summoned to the broadcasting station in front of a large audience, brings about solutions that before would not have been possible.

But even if no immediate solution is found, the Ombudsman and the TV show will continue to observe each case and if necessary will record a second show a few months later to do a “follow-up” and to report what has been done in a specific case or what still has to happen.

A final aspect I would like to mention is that of transparency. The TV show shines a light on peoples’ issues with public administration. It presents the problem and makes transparent how authorities deal - or don’t deal - with the matter. It is really a best practice example for the kind of contribution an OM institution can make in achieving good governance.

But I guess the most important underlying notion is that citizens can see that their complaints are taken seriously, that their voice is heard and that somebody cares!

I promoted this TV show at the last World Conference of the International Ombudsman Institute in Bangkok in 2016 and I am pleased to say that some potential followers could already be found, e.g. the Ombudsman of Hong Kong or the Public Defender of Georgia, who have also introduced TV shows to promote their work.

One further example of “voice for the voiceless”....

I would like to introduce to you a special “Pension commission”

Two and a half years ago Austrian Parliament entrusted the AOB with a new mandate and responsibility:

People, who became victims of abuse when they were placed in children's homes that were run either by the state or the church, or who experienced ill-treatment and abuse while living in foster families, are now entitled to monthly payments and receive an additional pension of up to 300 EUR after tax.

A so-called Pension Commission, consisting of 12 experts, does the necessary research to evaluate applications and to make recommendations whether the payment of such an additional pension is justified or not.

It is rather depressing to witness that – even after the atrocities and terrible crimes of the Second World War – children experienced horrifying acts of violence and abuse when they were left alone and – for different reasons – had to live a life away from their parents.

In many youth care facilities the children were beaten and humiliated, they suffered forced labour and inhuman punishment; many experienced sexual abuse too. We have to assume that there are tens of thousands of victims; most of them suffering their entire life as a result of what they experienced as a child.

Physical and mental illness, ending up in prison as violent perpetrators, alcohol addiction or substance abuse, limited or no success in the work field, problems to build and maintain relationships... These are just a few examples of what these people deal with in their adult life.

There were many offenders who worked as educators or so-called caregivers in the different facilities. They range from uneducated catholic nuns to

psychopaths or frustrated former Nazis. The history of Austrian children's homes indeed is a dark chapter in Austria's past.

Even punishments such as standing in the snow with bare feet were applied; unthinkable considering that the most monstrous crime in history had just occurred a few years earlier...

I had the responsibility and honour to chair this expert commission – which consists of academic researchers, psychologists, legal experts and self-advocates – in the first two years of its existence.

During these first years of work, we managed to get a unanimous approval from Parliament, which states that people, who experienced ill-treatment and abuse during their stay in hospitals in their youth, are now also entitled to apply for an additional pension for victims in children's homes.

A decision as to whether a victim's pension is justified is made on the basis of existing files and after a so-called "clearing interview" has been conducted. These interviews are carried out in the presence of psychological experts under the dual-control-principle and in a very empathetic and sensitive way.

More than 95 % of the cases have a positive outcome and so far there have been virtually no incidents of copycats or freeloaders. This is yet another testimony of the AOB's excellent reputation!

Today, roundabout 16 000 children and adolescents, who cannot live with their parents for various reasons, are taken care of by foster parents or in small group homes. I am pleased to say that – nowadays – severe deficits or intolerable incidents have become the rare exception in these care models.

The National Preventive Mechanism mandate of the AOB ensures preventive measures to protect those concerned, because within this mandate, teams of experts make unannounced visit to these children-facilities and can have confidential talks with the young residents to find out how their living situation really is.

And this is part of the probably most important instrument of the AOB to protect “voiceless people” ....

The AOB acts as National Preventive Mechanism (NPM) according to the UN Optional Protocol to the Convention against Torture (OPCAT) since July 2012.

The AOB further acts as Monitoring Body in accordance with Article 16.3 of the UN Convention on the Rights of Persons with Disabilities (CRPD).

Within this mandate the AOB promotes and protects human rights and monitors places where people are or can be deprived of their liberty.

And within this broad mandate the AOB also monitors executive bodies and administrative officers authorized to issue orders and carry out coercive measures (for example as football games and demonstrations or during forced returns).

The structure of the Austrian NPM can be described as a collaboration of the AOB and its 6 Expert Commissions.

Aside of these two bodies there is a Human Rights Advisory Council. It consists of a chairperson and a deputy chairperson (both appointed by the AOB) and

16 members and substitute members who come from Federal Ministries, the provinces and different NGOs.

The Human Rights Advisory Council:

- supports the NPM in the determination of investigative focal points;
- it advises the NPM prior to issuing determinations of maladministration or recommendations; and
- it provides guidance on how to ensure a uniform course of action and on how to establish investigative standards based on international standards.

The 6 regional Commissions are independent and consist of 57 experts of various interdisciplinary backgrounds (medicine, law, psychology etc.).

The head of each Commission has to be an eminent person with experience in the field of human rights.

The members of the Commissions are appointed for six years and a reappointment of a member is possible.

The members of the Commissions are not staff members of the AOB but they receive remuneration for their work.

The Commissions conduct regular and unannounced visits at places, where persons are or can be deprived of their liberty and facilities designed to serve persons with disabilities.

These visits are determined by a defined investigative focal point and the relevant international and national standards.

The Commissions have unrestricted access to all institutions, to all information and documents and they can hold private interviews with patients, inmates etc.

The results and observations of these visits are reported back to the AOB in comprehensive reports which are gathered in a database and form the basis for further investigation.

When a deficit is identified, the AOB takes action such as contacting the supervisory authorities to find solutions for immediate improvement.

To give you an overview of the NPM's annual workload in 2018:

- The Commissions carried out 520 visits (the majority unannounced);
- a total of 476 visits were conducted in institutions and facilities (most of them in so-called less traditional places of detention, such as nursing homes, child and youth welfare facilities or psychiatric hospitals);
- the commissions observed and accompanied 44 police operations (i.e. forced returns, demonstrations or assemblies);

This brings me right to the next important area for the AOB but also the international OM community: The International Ombudsman Institute (IOI).

The IOI is the only global, independent and non-political organisation for the networking of OM institutions and the promotion and development of the OM-concept.

The IOI currently has 198 voting members of national, regional and local OM institutions from more than 100 countries around the world.

The IOI is organized in 6 world regions: Africa, Asia, Australasia & the Pacific, Europe, Caribbean & Latin America and North America and the three official IOI-languages are English, French and Spanish.

The IOI was founded in 1978 in Edmonton, Alberta (Canada). In 2009 the University of Alberta no longer found the necessary resources to host the IOI headquarters and so the IOI General Secretariat moved from Canada to Austria, where it is hosted by the Austrian Ombudsman Board in Vienna.

According to the IOI bylaws, one member of the Austrian Ombudsman Board takes the position of the IOI Secretary General. I had the pleasure and honour to serve the organisation as its Secretary General from 2013 to 2019; since 1 July 2019 Ombudsman Werner Amon is the Secretary General of the IOI.

I have been nominated by the IOI Board of Directors to serve as IOI consultant and I am more than happy to do so!

As for the organizational structure: the IOI Board of Directors consists of representatives from all six world regions. Four of them are elected to serve on the IOI Executive Committee; currently these are:

- IOI President Peter Tyndall (OM of Ireland)
- IOI 1<sup>st</sup> Vice-President Diane Welborn  
(OM of Dayton-Montgomery County, USA)
- IOI 2<sup>nd</sup> Vice-President Chris Field (Western Australia OM)
- IOI Treasurer Viddhavat Rajatanun (OM of Thailand)

As an organization, the IOI:

- promotes the OM concept and supports OM institutions world-wide;
- offers expertise on topics such as the rule of law, investigative procedures, and responsible governance;
- promotes the exchange of knowledge and best practices among colleagues by offering training and capacity building programs;
- supports and facilitates OM-related projects through its regional subsidies program;
- supports colleagues who work under difficult circumstances or Ombudsman under threat;
- promotes and facilitates scientific research on OM-related topics.

The IOI's training program is possible due to the very good cooperation the IOI established with several renowned universities and experts (e.g. Queen Margaret University, APT, IACA etc.).

The training focal points are diverse and include topics such as: effective complaint handling; anti-corruption; torture prevention; mediation or reporting and communication – just to name a few.

Just to give you one example: In March of this year, the IOI funded a very successful Mediation Training for African Ombudsman in Durban, South Africa.

In collaboration with the African Ombudsman Research Centre (AORC) we organized a tailor-made program for the needs of African Ombudsman institutions, which put a specific focus on mediation.

Is was an extremely interactive mediation training, which was facilitated by one of the leading mediation trainers and scholars from the Durban-based University of KwaZulu-Natal. The challenging part of this training I have to say, was to deliver it in both English and French and to still have a lively and fruitful exchange between the English and the French speaking colleagues on the continent.

Within its regional subsidies program – a program that the IOI introduced in 2011 and which is highly appreciated and very popular among our members – the IOI gives financial support to regional projects that deal with topics and issues relevant for the OM community. Projects which could be realized with the help of IOI funding included:

- a starter kit for the support of “younger” OM institutions (Australia);
- guidelines for the working methods of OM institutions regarding human rights (Northern Ireland/UK);
- an awareness campaign on women’s and children’s rights (Pakistan);
- guidelines on measuring the impact of OM work (Canada);
- monitoring elections and strengthening political rights at elections (in several Latin American countries)

Unfortunately, another focus of the IOI in the past few years became the matter of OM colleagues who are under threat.

Threats to Ombudsman institutions are a direct response to the complaint handling work of OM and their efforts to protect human rights and fight the abuse of power.

Threats to OM come in a variety of forms, such as:

- budget cuts which can even result in the abolishment of an office;  
*(Poland, Spain, Italy)*
- refusal to discuss OM reports in Parliament;  
*(Slovakia, Croatia)*
- refusal to appoint an incumbent;  
*(Spain, Argentina)*
- derogatory remarks about the incumbent;  
*(Bermuda, Georgia, Mexico)*
- changes in legislative foundations to remove certain mandates from the OM jurisdiction or Constitutional changes to control the OM;  
*(Canada, Ecuador, Cyprus)*
- entrusting the institution with more and more mandates without giving them the necessary human resources;  
*(Mexico)*
- up to actual death threats or attacks.  
*(South Africa, Malawi, Papua New Guinea, Mexico)*

While threats come in such a variety of ways, the reason for placing them on the institution is usually the same: to affect its existence and functioning and to undermine its independence and legitimacy.

As the only global organization for the promotion of OM institutions, the IOI takes these developments very seriously. It puts a clear priority on supporting members in every possible way, especially when democracy and the rule of law are weakened.

The IOI developed a set of guidelines to establish courses of action and to coordinate IOI support for OM who come under threat.

These guidelines provide an overview of the options for support and they clarify the procedures to be followed should such case present itself.

All actions taken by the IOI are of course closely coordinated with the OM concerned!

To illustrate an example: the Polish OM contacted the IOI and informed us about developments in the country which brought his office under threat.

The Office had seen budget cuts and potential limitations to its mandate and the OM invited the IOI to come to Poland on a fact-finding mission.

This is exactly what we did. We arranged for two visits two Warsaw. At the first visit we tried to get a better understanding of the situation. We talked to the Presidents of the Constitutional Court and the Supreme Court; we had meetings with the National Judiciary Council, with members of the Senate and representatives from the Government as well as civil society and NGOs.

After this visit we prepared a mission report with the main outcomes and findings of our visit, which was published on the IOI website and launched in a press conference we held in Warsaw a few months after the first visit.

As an immediate effect, the budget of the OM was not cut but remained untouched. However, the colleague in Poland is still put under a lot of pressure by threats from public representatives, which even go as far as to insist on the dismissal of our colleague.

The IOI will therefore continue to keep a watchful eye on the situation in Poland and is ready to assist the OM and his team.

In conclusion – and from my personal point of view – I have to say that I always saw the IOI as an important network of Ombudsman and Human Rights institutions around the world.

Unfortunately it became more and more evident in the past few years, that the IOI is also an important “protective body” for colleagues around the world; especially when they work under difficult circumstances, face reprisals or even threats.

However, the IOI is also the only non-political organization for the support of Ombudsman institutions around the world, and I think it is of utmost importance that this non-political approach continues to shape the IOI’s vision and mission, its services and the benefits it offers to its members.

Ladies and gentlemen,

This brings me to the end of my speech, hope you enjoyed the video-clip (?).....

I only would like to bring one more thing to your attention:

Every four years, the IOI holds its World Conference, which is traditionally preceded by a meeting of the IOI General Assembly.

The 12<sup>th</sup> IOI World Conference will be held in Dublin in May 2020 and the conference theme “A voice for the voiceless” is dedicated to the most vulnerable groups of society.

Registration for the conference will soon be open and I hope to see colleagues from Israel in Dublin again next year.

**Thank you very much for your attention!**