



## Independence despite Political Appointment? The Curious Case of the Austrian Ombudsman Board

*Julia Dahlvik<sup>1</sup>, Axel Pohn-Weidinger<sup>2</sup>, Martina Kollegger<sup>3</sup>*

### Abstract

This paper addresses the politicization of public institutions through the case of national ombudspersons. While there is an established literature on the politicization of top public officials, we lack research on the politicization and/or de-facto independence of supreme or supervisory bodies, including ombuds institutions. In this paper, we combine the insights of three bodies of literature in order to build a framework for the empirical study of national ombuds institutions: Literature (1) on the independence of public institutions, in particular ombuds and regulatory agencies, (2) on politicization and party patronage in state institutions, and (3) on career patterns and selection criteria of top public officials and the administrative elite. We then discuss these issues on the basis of an empirical field study of the Austrian ombuds institution: First, drawing on a socio-demographic analysis of ombudspersons we identify common features of their profiles and career paths. We find that overall the ombudspersons represent a relatively homogenous group, but the political party represents an explanatory variable for some of the ombudspersons' characteristics. The second set of empirical results, drawing primarily on qualitative interviews with case-handling staff, demonstrates that despite the institution's public efforts and many interviewees' reassurances that the AOB is independent and acts as such, there are several areas in which party-related positions become visible in the AOB's work. These results are integrated into a typology on the effects of political appointment modes of ombudspersons, which should enable further research in this field.

### Keywords:

political appointments, independence, ombuds, politicization, top officials

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1 University of Applied Sciences FH Campus Wien, Austria.

2 University of Strasbourg, France.

3 University of Applied Sciences FH Campus Wien, Austria.

## 1. Introduction

This paper deals with national ombudspersons as top public officials<sup>4</sup> and as heads of an independent supreme organ, which monitors the public administration. While ombudspersons are, in general, elected by parliament, Austria represents an interesting case, since every six years the three major political parties each have the right to propose one ombudsperson; there is thus a board of three ombudspersons in office (Kucsko-Stadlmayer 2008).<sup>5</sup> Taking the fact of partisan appointment as a starting point, we explore how this mode of appointment affects the profile of the office holders as well as the institution's de-facto independence and everyday work.

Much of the existing literature on ombuds institutions focuses on different legal aspects (Kucsko-Stadlmayer 2008; Roy and Giddings 2000). Despite the increasing importance of public ombuds institutions within the control of both public administration and – more recently – human rights (Koo and Ramirez 2009), their empirical study has been neglected for a long time. Only recently do scholars address the ombuds from a social science perspective, exploring topics such as organizational aspects or the socio-demographic characteristics of complainants (Creutzfeldt 2016; Dahlvik and Pohn-Weidinger 2018; Hertogh 2013). Political aspects are, however, largely ignored, nor are ombudspersons considered from the perspective of top officials, although they are heading a supreme body. In addition, we see a lack of empirical research on career patterns, modes of appointment in different national and regional contexts and their effects on the work of the ombuds institution. The lack of empirical, and in particular qualitative, studies is valid more generally for two research areas to which this paper speaks: the politicization of supreme federal bodies and the de-facto independence of supervisory bodies.

By exploring how party political appointment and formal independence go together, and what are the consequences for the work of the Austrian Ombudsman Board (AOB) and its de-facto independence, we take up Ennser-Jedenastik's (2015, 847) suggestion that further studies should investigate "the combined impact of party politics and agency independence on actual agency behavior". Findings from our fieldwork illustrate the tension within a formally independent institution that is headed by former party politicians: While one ombudsperson sees himself as a "politician at the head of an institution"<sup>6</sup>, another one stated, "I am an ombudsper-

4 The fact that ombudspersons are high officials, in the case of Austria, is also expressed by their salary, which is the same as for State Secretaries (without specific tasks), 14,289.40 € monthly in 2019, which amounts to 160 percent of the basic salary of a member of the National Council. [https://www.rechnungshof.gv.at/rh/home/was-wir-tun/was-wir-tun\\_2/Kundmachung\\_ueber\\_den\\_Anpassungsfaktor.html](https://www.rechnungshof.gv.at/rh/home/was-wir-tun/was-wir-tun_2/Kundmachung_ueber_den_Anpassungsfaktor.html) and <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001475>).

5 40 out of 47 European ombuds institutions have only one ombudsperson (Kucsko-Stadlmayer 2008).

6 In the scope of an internal inquiry on the AOB's mission statement in 2008, all staff members were asked the question "who are we?"

son, not a politician.”<sup>7</sup> This paper takes the tension expressed in these two definitions of the ombudsperson as a starting point: Although, or maybe rather because, the AOB is composed of ombudspersons elected by political parties, we find from our ethnographic research that it is a key aim of the institution to demonstrate serious neutrality and independence to the public.<sup>8</sup> In the following, we aim to find out how this works in practice. To what extent do former politicians become “unpolitical” when they are ombudspersons? How do political elements manifest themselves in the institution and in everyday work?

The paper starts with a short overview on the existing literature we build on, and then goes on to explain our “case” and the study’s methodological design. We then present our findings in two steps. We first analyze whether the formal nomination procedure of the Austrian ombudspersons has *de facto* led to the politicization of the office. To understand the effects of politicization on the AOB’s work, we believe it is also important to know the concrete resources or “capital” the ombudspersons can draw on and which they have established throughout their previous careers. Therefore, drawing on data from desktop research, we explore the career patterns of the 22 current and previous AOB ombudspersons in order to investigate whether ombudspersons from some parties are inclined to “politicize” AOB’s public role more or differently. We demonstrate that while the office is typically occupied by former party members there are differences in the composition of ombudspersons’ political capital that stem from the political party by which they were appointed. In the following part we ask whether this politicization has effects on the everyday work of case handling staff, drawing primarily on our extensive qualitative research, in particular interviews. Eventually, we present a typology we developed to better map out the various effects the politicized appointment process can have. In sum, our study shows that it is crucial to study actual practices and traces of practices through qualitative research in order to capture the multidimensionality of institutional independence, including informal aspects.

## 2. Independence and politicization of public institutions

Due to the lack of research on the politicization and/or de-facto independence of supreme or supervisory bodies, we build on different strands of literature, which helps us to understand the situation of the AOB and its ombudspersons. In the following, we discuss the literature (1) on the independence of public institutions, in particular ombuds and regulatory agencies, (2) on party patronage in state institutions, and (3) on governance model and operational style.

7 [derstandard.at/2000096523449/FPOe-Waldhaeusl-denkt-nun-ueber-Aus-fuer-Volksanwaltschaft-nach](https://derstandard.at/2000096523449/FPOe-Waldhaeusl-denkt-nun-ueber-Aus-fuer-Volksanwaltschaft-nach) (18 January 2019).

8 This aim was also explicitly expressed when the new Board was constituted in July 2019 and the national broadcast company headed “Ombudspersons do not want to make active politics” (<https://orf.at/stories/3129214>, 5 July 2019).

## 2.1 The independence of public institutions: ombuds and regulatory agencies

When a new public organization is created, its formal or de-jure design plays a key role concerning both the structure and the procedures of the organization or agency (Huber and Shipan 2002; McCubbins et al. 1989). “Agency design” can also be used by legislative coalitions to protect their policies against future political interference (de Figueiredo and Vanden Bergh 2004; Moe 1990). Such ex-ante control thus preserves “the choices of the legislative majority responsible for creating the agency” and includes not only an agency’s purpose but also “structural choices such as the length and frequency of appointments or administrative procedures that privilege particular constituents” (Corder 2003, 236). As Poggione and Reenock (2009) point out, the design can structure an agency’s contemporary policy choices and outputs (Moe 1990; Potoski 2002), the perceived influence of political actors (Gerber et al. 2005; Woods 2004), as well as the activities of interest groups within a policy domain (Reenock and Gerber 2007).

*Ombuds.* An agency design that favors de-jure independence is a key characteristic of supreme bodies, such as ombuds institutions. As Reif (2004, 399) puts it, “Maximizing the independence of the ombudsman from government, especially the executive branch, is crucial for its effectiveness. Independence can be subdivided into institutional, personal and functional independence.” According to diverse international agreements<sup>9</sup>, to ensure institutional independence ombudspersons should be appointed by the legislature, not by the executive (Reif 2004; Oosting 2001). As Gottherer (2009, 6), former president of the U.S. Ombudsman Association, points out with regard to an institution’s independence, “the best processes prevent political appointments.” Additional protection is provided when the institution is included in the constitution; other aspects deemed to increase institutional independence are autonomy regarding budget and personnel as well as a term of office independent from the term of the legislature (Reif 2004; Oosting 2001).

Independence of the office holder, the second key aspect, is understood to be increased through the ombudsperson’s security of tenure (specified number of years and severe requirements for removal); in addition, immunity from criminal and civil actions during their time in office plays a crucial role. The relevant international documents suggest that functional independence can be achieved when the ombudsman is not subjected to external pressures and is free to conduct investigations

9 These include in particular: United Nations. 1995. *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*. Professional Training Series No. 4 (UN Doc. HR/P/PT/4, 1995); the United Nations Paris Principles, which provide the international benchmarks against which national human rights institutions can be accredited by the Global Alliance of National Human Rights Institutions (<https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>); and OSCE. 1998. *Human Dimension Seminar on Ombudsman and National Human Rights Protection Institutions, Consolidated Summary* (Warsaw, 25–28 May 1998).

and formulate independent conclusions and recommendations (Reif 2004; Oosting 2001). During the term of office the ombudsperson cannot hold any political affiliation or other activity that is deemed incompatible with the office.

As Reif (2004) points out, from an international perspective there are regional differences in formal (and de-facto) independence of ombuds institutions. Questions of independence particularly arise when ombudspersons are appointed by the executive branch; the author mentions cases in Russia and Colombia as vulnerable examples. While such institutions may achieve independence through other criteria, even with a legislative base and constitutional protection, ombuds' powers can be restricted, for instance, when attitudes of the executive and/or legislature become more conservative with a new government.

In this context, the AOB is an interesting case since it was established as an independent authority but, as we will see in the following, from the beginning the agency design included a political mode of appointment of the ombudspersons. This suggests that while the institution is formally independent of political parties, politicization can occur through informal practices of ombudspersons nominated by political parties. This is also why, in this paper, we focus on the ombuds institution's de-facto rather than its de-jure independence.<sup>10</sup> While de-jure independence refers to the legally defined relationship between an institution and the political authorities, "de facto independence can be conceived as the self-determination of agencies' preferences combined with the autonomy of their activity" and is thus a key variable when studying the functioning of formally independent agencies (Maggetti et al. 2013, 3). As we have seen, in the literature on ombuds institutions there is a tendency to neglect this informal aspect.

*Regulatory agencies.* On the other hand, this interplay between formal and informal independence we are interested in has been extensively studied with regard to regulatory agencies. Public ombuds institutions are not regulatory agencies, but as supreme organs they are similar in the high levels of legal autonomy and formal independence. We can therefore transfer insights from this body of literature to our empirical field although results of this literature are partly contradictory: Whereas Hanretty and Koop's (2012) results suggest that de-facto independence can be predicted by de-jure independence in a statistically significant way, Maggetti (2007) discovers a disjuncture and only a weak and very conditional correlation.

Counteracting this rather binary vision of independence, Gilardi (2008) developed an index which includes the status of heads and board members, and found out that independence increases with longer and nonrenewable terms of top-level appointees, severe requirements for removal and the impossibility to hold political office simultaneously. Appointment by the legislature or intra-agency actors (instead of by ministers or governments) and independence as a formal requirement

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10 We do not include judicial independence in our discussion since the ombuds is not a court and cannot make legally binding decisions.

for appointment are also considered characteristics of greater independence. However, Gilardi and Maggeti (2011, 201), studying regulatory agencies, also “show that formal independence is not always associated with *de facto* independence and that, on the other hand, some regulators can be independent in practice without being independent on paper.” In a similar fashion, Farrell (2013), in her qualitative study on Canadian ombuds institutions of general jurisdiction, finds that “a high degree of impartiality is based less on traditional indicia of structural independence than on the ombuds’ independent mindset and ability to act independently”; also the perception of behaving impartially plays a key role.

Others, such as Verhoest et al. (2004), have taken the argument further by suggesting that the autonomy of public organizations needs to be conceptualized in a multidimensional way: institutional autonomy cannot only be understood at the legal level; the managerial, policy, structural, financial, interventional dimensions are equally relevant. Building on Christensen’s variations in formal bureaucratic autonomy, the authors develop a taxonomy including minimum, low, high and maximum levels of autonomy (Christensen 1999 in Verhoest et al. 2004). Whereas managerial and policy autonomy refers to decision-making competencies and differentiates operational and strategic autonomy, the other dimensions conceptualize autonomy as “the exemption of constraints on the actual use of the decision-making competencies”. Control by government on agency behavior is understood as the opposite of autonomy. Applying the taxonomy by Verhoest et al. (2004) to the AOB makes visible a differentiated view of the institution’s autonomy (see Section 3).

To sum up, the literature on regulatory agencies shows that the informal dimensions of independence can also be considered for the study of supreme organs such as ombuds institutions. There is a potential gap between formal and informal structures, since actors in an organizational framework always have a certain amount of leeway. As Maggetti (2007, 34) puts it, “formal independence is neither a necessary nor a sufficient condition for explaining the *de facto* independence of agencies.”

## **2.2 Public administration and party patronage**

In order to study whether or how institutions with political appointees can be independent (and impartial), we also need to consider existing research on the politicization of public administration and party patronage. In this paper, we follow the politicization approach of Dahlström and Niklasson (2013), which focuses on the standards by which persons are appointed to administrative positions. Politicization, according to Peters and Pierre (2004, 2), can be understood as “the substitution of political criteria for merit-based criteria in the selection, retention, promotion, rewards and disciplining of members of the public service”.

Partisan appointments are a key characteristic of any party government (Blondel 2002; Müller 2000), and Austria traditionally belongs to the countries with

high levels of party patronage (Treib 2012). According to Kopecký et al. (2012), in the EU countries party patronage has become increasingly relevant as a governing and organizational resource in an ever more fragmented and decentralized public sector. While party political appointment is only one channel of political influence, it seems that particularly in public sector institutions which are removed from the bureaucratic chain of command – such as ombuds institutions – the mode of appointment is among the most important channels (Chang 2003; Falaschetti 2002).

There is a large amount of literature on the politicization of the (elite) administration and the judiciary (Christiansen et al. 2016; Ebinger et al. 2018; Eyméri-Douzans 2003; Hustedt and Salomonsen 2014). While this literature cannot be immediately applied to the situation of ombudspersons, there are certain analogies we can draw on, especially regarding (top) public officials.<sup>11</sup> A common way of exploring politicization in public institutions is studying the biographical data of high-level officials as well as selection criteria or determinants of promotion to high public office (Bach and Veit 2017; Peters and Pierre 2004; Ennser-Jedenastik 2016).

In addition to the focus on top officials' political affiliations and career paths, studies in this field examine their socio-demographic characteristics, such as age, gender, education and profession, to complement the picture of the studied actors. O'Flynn and Mau's (2014) analysis of career profiles of Canadian municipal chief administrative officers, for instance, depicts these as "a group of older white men, highly educated and very experienced". Jann and Veit (2010) reach similar conclusions in their study of executive politicians' and top civil servants' career paths in Germany. However, we completely lack research on public ombudspersons' careers and sociodemographic profiles. Since ombudspersons are not civil servants, existing typologies concerning the politicization of top officials (Jann and Veit 2010; Ugyel 2016) cannot be directly applied to this group of appointees.

Due to their independence from the bureaucratic chain of command, regulatory and supreme bodies represent special cases. Nonetheless, also in this area scholars have investigated the party affiliation of the individuals under study and the informal influence of parties through partisan appointment vis-a-vis institutions' de-jure independence, often by drawing on biographical information (Dahlström and Niklasson 2013; Lewis 2007). For instance, Ennser-Jedenastik (2016) shows that in certain European countries the probability of being appointed to a senior official position in a regulatory agency increases in accordance with the party affiliation of the applicant. Ennser-Jedenastik (2016, 846) sees this politicization

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11 In this context, we believe that another clarification of terms is necessary: In the literature, we find that the terms "public official" and "civil servant" are often confounded or that the former, an umbrella term, is used, while civil servants or "bureaucrats" are in fact meant. Concerning ombudspersons we therefore prefer the terms top or high-level appointees or officials. "A public official is anyone in a position of official authority that is conferred by a state, i.e. someone who holds a legislative, administrative, or judicial position of any kind, whether appointed or elected" (see <https://compliance.admin.ox.ac.uk/definitions-and-interpretations>).

as a potential risk for the democratic legitimacy of regulatory agencies, especially if partisan influence not only affects personnel choices but also has an impact on matters of policy substance.

With reference to executive politicians and top civil servants, Jann and Veit (2010, 20) reach a similar conclusion when they argue that “the danger of party politicization is not only that parties control policy making, ignoring or sidestepping policy expertise, but also that bureaucratic and sectoral policy expertise controls parties and parliaments, dominating agenda setting and policy formation.” The insight of this literature is that biographical data has to be analyzed not only to study the influence of patronage on supreme bodies, but also to examine the impact this politicization has on the policies developed by the organization under study. Applied to ombuds institutions and more specifically the Austrian case, the question is thus whether and how the partisan appointment procedures produce specific biographic profiles which, in turn, potentially leave their mark on the ombudspersons’ practices of monitoring – and rebuking – the administration.

### **2.3 Governance model and operational style**

When studying the effects of political appointment, it also seems relevant to consider the specific governance model implemented in the concerned institution and related to that the operational style in place. While not directly reflective of de-jure independence, the mode of internal governance, operational routines and staff management can also make visible the influence of partisan recruitment as they relate to the informal practices that do or do not lead to de-facto independence.

Especially in the field of corporate governance, the effects of different forms of “internal governance” (Parker 2007) have been studied. In the literature, different historical, economic and psychological reasons can be found for the implementation of a board of directors, such as in the case of the AOB (see also Section 4): the model can be used as an instrument of political legitimacy, as a specialized body to solve agency problems, or as an explanation of organizational behavior (Molano León 2011). It is generally argued that single-headed organizations and those with a board model differ in their dynamics of decision-making and are related to different types of institutional conduct. Scholars have found that boards shape the organization’s strategies in different ways: for instance by providing management staff with information (Zahra and Pearce 1989) or by controlling and monitoring activities and decisions (Walsh and Seward 1990). We also know that a board model can foster inertia in decision-making and that board members may experience conflicts of interest that can undermine the organization’s performance (Hoppmann et al. 2019). Some authors, however, have pointed out that there are important differences between governance models in corporate and philanthropic or nonprofit organizations (Alexander and Weiner 1998; Parker 2007).



Beside the mode of internal governance we also need to consider the operational style of the organization when exploring the effects of partisan appointment. There is consensus in the literature that politics matters in the context of regulatory enforcement and compliance and a broad variety of qualitative and quantitative constructs and measures can be found in different studies (Short 2019). Similar to regulatory agencies (Kagan 1994), ombuds institutions also operate in a political environment, and they are involved in social struggles which are often political. In the regulation literature, scholars have explored the association between the party affiliation of political principals and the enforcement activities of regulators (Moe 1985; Almond and Esbester 2018) or the causal pathways of political influence (Innes and Mitra 2015).

Another body of literature is dedicated to the front-line work, practices and attitudes of so-called “street-level bureaucrats” (Lipsky 2010; Dahlvik 2018); in the field of regulatory agencies studies on the enforcement style of inspectors, including how they relate to the regulatees, have, for instance, shown that different enforcement styles influence clients’ knowledge of rules and the degree of cooperation (May and Wood 2003). McAllister (2009) adds to the two established dimensions of enforcement style, the degrees of formalism and coercion, the agency’s regulatory capacity and autonomy. In a similar vein, Tomic (2018) integrates the concepts of de-facto independence and enforcement style with the finding that commissions’ de-facto independence can be explained by their leaders’ (lack of) reputational craft rather than by their legal independence. He shows that the study of political appointment should not only focus on formal principals’ appointment and removal powers, but that politicization of agency work also happens through informal networks. In the present paper, we will include in our analysis the political dimension of the operational style, which is expressed through staff management and operational routines.

Our conclusion from this literature review is that there is still a research gap concerning the politicization of independent supervisory or supreme federal bodies as well as on the de-facto independence of ombuds institutions. In the following, we will therefore investigate what effect the political appointment has on the work of the ombuds institution by studying the characteristics of the nomination procedure, ombudspersons’ career paths as well as operational style in the Austrian case.

### 3. The case study research design

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#### 3.1 The Austrian ombudsman board

The Austrian Ombudsman Board (*Volksanwaltschaft*), the institution in the focus of the present case study, was established in July 1977 as one of the supreme bodies of the Republic and monitors all authorities, administrative bodies and departments of the state, the provinces and the local government authorities in the entire feder-

al territory.<sup>12</sup> From its beginning, the AOB's key task has been to investigate complaints from citizens free of charge and assess whether the administration is acting within the law and complies with general administrative principles. The complaint may involve inactivity of the authority, a legal opinion that does not comply with the respective laws, or an act of gross negligence. The AOB does not have any legal enforcement competences; however, the ombuds has the right to inspect any authority's files on any given case and inform the competent minister on potential bureaucratic wrongdoing. An investigation can be based on an individual's complaint or it can be carried out ex officio. An important function of the AOB is making recommendations for the amendment of laws. The AOB has no power to counteract court decisions or pending procedures. In addition, the AOB initiates investigations through several commissions which constitute the Austrian National Human Rights Institution. In 2018, the Austrian Ombudsman Board received more than 16,000 complaints (Volksanwaltschaft 2019).

The AOB consists of three members elected by the Austrian Parliament (National Council) for a term of six years, each in charge of one area of responsibility comprising several subjects. The constitution gives the three major political parties the right to propose one ombudsperson each. This mode of appointment of ombudspersons is a unique legal construction which stands in sharp contrast to the procedure of appointment in most other countries (Roy and Giddings 2000). It has its root in the history of post-war Austria, when the two major political parties installed a system of proportional representation of political parties in positions within administration (*Proporz*) (Müller 2007). During the 1970s and 1980s, party politicization increased in certain European countries as political parties sought to seize control over an increasingly fragmented and public sector (Kopecký et al. 2012). During the foundation period of the Austrian ombuds institution in the early 1970s the governance structure of the AOB was subject to debate (Schönherr 1977). Already in the foundational debate the appointment procedure was notably criticized for the potential politicization of the institution it enables.<sup>13</sup>

Each ombudsperson is the head of a division responsible for certain topics, ranging from construction law to the police, from youth welfare to pension payments. Each unit works autonomously and is steered by a division manager, a deputy division manager, and around ten staff members, typically with a legal education, who deal with the complainants and their cases. Division managers and staff often remain in their positions even when a new ombudsperson enters the institution.

12 The two provinces Tyrol and Vorarlberg have their own provincial ombudspersons (*LandesvolksanwältIn*) responsible for cases concerning the administration of the respective province (not for federal issues).

13 The political mode of appointment is also relevant in the context of AOB as the National Human Rights Institution. According to the Paris Agreement, partisan appointment is an institutional deficit, which lends the AOB only observer status (category B) in international meetings on human rights issues. From these facts, Nowak and Tretter (2007) infer a limited de-facto independence of the AOB.

Beside regular board meetings, in which the ombudspersons and division managers are present, there are no formally required exchanges between the three units, as our ethnographic study shows. As we found out, the caseworkers work largely autonomously, but dispatches are monitored by the respective division manager. In addition, there are administrative and IT support units. Currently, the AOB has around 90 employees; around half of them are legal experts handling the cases (Volksanwaltschaft 2019). There is no official mission statement.

Considering the different characteristics of the two governance models identified by Alexander et al. (1988), interestingly, the AOB can rather be ascribed to the corporate model – not to the philanthropic model – with components such as small board size, rather narrow backgrounds of members, limit on consecutive terms for board members, and (high) compensation for board service. While, in the case of the AOB, it will be hard to empirically disentangle the effects of the governance model from the effects of the partisan appointment, we will see that the board model in place can reinforce or interfere with some of the effects of the political appointment model, for instance, by nourishing politicized media appearances of the different board members.

If we evaluate the ombuds institution's independence by – superficially – applying the components of Gilardi's (2008) indices on the status of regulatory agency heads and board members, we find that the institution has a medium level of independence. On the one hand, the AOB, the 6-year long periods of office can be renewed once and are independent from instructions; but ombudspersons cannot be removed from office, as is the case in other European countries. On the other hand, its independence is limited by the appointment (non-transparent selection process by political parties; no formal qualification requirements).

Whereas the index developed by Gilardi (2008) can be useful, particularly to study the structural dimensions of de-jure independence, for the purposes of this paper it is necessary to contextualize the place of the appointment process among the wider dimensions of de-jure independence. This is also highlighted by the fact that the AOB scores decently on Gilardi's index despite lacking appointment insulation from politics. On the one hand, the preconditions for an organization's autonomous conduct can be measured by the weighted aggregation of the diverse dimensions of de-jure independence. On the other hand, and this question we aim to explore in this paper, when certain dimensions are on a very low level, for instance through political appointment, can high de-facto independence still be achieved? We aim to understand what it means when an institution lacks insulation from politics on certain dimensions such as the appointment procedure, which is a key aspect of the institution's structural autonomy. Verhoest et al. (2004) offer a differentiated, multidimensional perspective on the issue of autonomy of public organizations. While the AOB has high levels of autonomy in the managerial, legal and interventional dimensions (self-governance; constitutional independence; free

from directives), the level of structural autonomy is low (mode of appointment) and the policy and financial autonomy is only on a minimum level (fixed objective of the institution; fully funded by government).<sup>14</sup>

Beside organizational independence we also need to consider personal independence; in this paper, we do this by looking into the ombudspersons' biographical data and career paths. In contrast to other European countries, Austria does not have any official requirements for ombudspersons' qualifications, such as a law degree, high personal reputation or working experience (Kucsco-Stadlmayer 2008). According to the law on the AOB<sup>15</sup>, the only formal requirement for becoming an ombudsperson is being eligible for the National Council<sup>16</sup> and possessing knowledge regarding the organization and functioning of the administration as well as regarding human rights. This means that the office is open for politicization, i.e. the substitution of political criteria for merit-based criteria in public service appointments (Peters and Pierre 2004, 2). As we will see in the following, what is *de facto* relevant or not for becoming an ombudsperson is left to the political parties' nomination practices. We thus have to analyze the implicit criteria of nominee selection based on elements such as career paths and socio-demographic characteristics.

### 3.2 Methods and data

We make a unique contribution to this research field by studying the politicization of an ombuds institution and the effects of partisan appointment on everyday work and the institution's actual independence through the combination of a variety of qualitative and quantitative methods. The gap in research that was identified in the literature review particularly concerns the lack of empirical studies on supreme bodies. This is a key reason for the rather exploratory approach we follow in the present case study. In this paper, we discuss our findings in two sections:

First, we investigate the career paths and political relations, understood as acquired social capital, of all 22 former and current ombudspersons at the AOB through desktop research. Biographical data on ombudspersons' backgrounds was extracted from two primary online sources: [www.parlament.gv.at](http://www.parlament.gv.at) and [www.meine-abgeordneten.at](http://www.meine-abgeordneten.at). Beside collecting the key socio-demographic variables, we also explored these top officials' political relations before and after their appointment to the AOB.<sup>17</sup> To study ombudspersons' career patterns, we used variables established in research on career paths in political or administrative elites (Watson and Hassett 2004; Liegl and Müller 1999; Jann and Veit 2010; Derlien 2008), such as gender, ed-

14 Information from <https://www.parlament.gv.at> and <https://volksanwaltschaft.gv.at>.

15 See constitutional law (Neuntes Hauptstück des Bundes-Verfassungsgesetzes. Volksanwaltschaft).

16 This includes Austrian citizenship, minimum age of 18 years and not having been convicted of an offence (specified in more detail by the law) by a final judgement (Bundesgesetz über die Wahl des Nationalrates).

17 No information was found on any activities during their time at the AOB since that would constitute a legal infringement of their position as main representatives of a supervisory body.

ucation, profession, participation in politically related associations and time spent in politics at the community, regional and national levels.

In the second section, to complement the results of our desktop-research, we analyze additional data on the ombudspersons' political relations that was gained through qualitative semi-structured interviews with both legal staff of the AOB and citizens as complainants. Whereas staff – including personnel from all hierarchical positions – were asked about their practices and experiences in working with cases and complainants as well as about organizational aspects of the AOB, citizens were asked about their motivations to address the AOB and their expectations and experiences throughout the complaints procedure at the AOB (consultation day). In sum, interviews were conducted with 32 staff members (including 7 former ombudspersons and staff) and 27 complainants<sup>18</sup> between 2017 and 2019. The interviews were analyzed through coding and categorizing, following the Grounded Theory approach (Glaser and Strauss 2010).

Since this paper is part of a larger mixed-methods study on the AOB that combines qualitative, ethnographic and quantitative methods, we include some complementary findings in our discussion stemming from participatory observation of the AOB consultation days<sup>19</sup> where citizens meet the ombudsperson face-to-face throughout the country, and from our representative survey among complainants. The survey was carried out in paper and online in May and June 2018. In sum, 8,274 users of the AOB were contacted, and we received 1,914 replies (23 percent response rate). Participation in the survey was anonymous; the research team did not receive any personal data of users since the dispatch was carried out by the AOB based on its own database of complaints.

#### **4. Ombudspersons' career paths and political capital**

In the previous section we have shown that during the foundational period of the Austrian Ombudsman Board, the three major parties have successfully defended a legal construction where they have the power to nominate their own candidate for the ombuds office. To better understand which informal criteria are used in the appointment of ombudspersons, we have analyzed the biographical data and party-related characteristics of all 22 ombudsperson since 1977.

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18 The sample was exploratory; contacts to citizens were established primarily through researchers' presence at AOB consultation days.

19 We participated in 23 consultation days throughout 6 Austrian provinces. The observation protocols were also analyzed through coding and categorizing, following the Grounded Theory approach (Glaser and Strauss 2010).

#### 4.1 Ombudspersons' biographical characteristics

The analysis of the socio-demographic characteristics regarding age and gender of ombudspersons shows that the average age of appointment lies at 55 years. We also see that 63.6 percent of the ombudspersons are male and 36.4 percent are female. On average, the typical constellation of the collegial body was a trio consisting of two men and one woman.<sup>20</sup> As mentioned above, this pattern regarding age and gender is a typical finding in the field of executive politicians' and top civil servants', even in international comparisons (O'Flynn and Mau 2014; Jann and Veit 2010). Our data shows important differences between the parties regarding the proportion of women. Out of the 7 ombudspersons each, the ÖVP has the highest rate of women (4), followed by the SPÖ (3), whereas the FPÖ has never appointed an ombudswoman.<sup>21</sup> Women are also under-represented among Germany's administrative elite and executive politicians (Nölle 2010; Jann and Veit 2010).

Concerning the ombudspersons' educational background, we find that 86.4 percent have completed tertiary education. Overall, only a fifth of Austrian ombudspersons does not hold a university degree, while exactly half of them hold a doctorate degree. In sum, 54.5 percent of the ombudspersons hold a degree in law; the other ombudspersons were educated mainly in educational sciences and business sciences. The domination of legal education can generally be observed among senior officials in Austria (Liegl and Müller 1999). A high degree of formal education – and a dominance of the legal education – is similarly prevalent among Germany's executive politicians and administrative elite (Ebinger et al. 2018; Jann and Veit 2010).

Law, business and education were thus also the main professional fields of activity prior to the AOB. Before joining the AOB, more than half (13) of all ombudspersons were active in organizations that were traditionally divided among the two coalition parties ÖVP and the SPÖ according to the principle of proportional representation: most commonly the Chamber of Labor (3), the Austrian Federation of Trade Unions (ÖGB) (3), and the Austrian Broadcasting Association (ORF) (3), followed by the insurance sector (pensions, social security and accidents; each 2 ombudspersons), and others. In sum, 13 organizations could be identified.

Regarding political relations of the top public officials under scrutiny prior to period in office, each of them has exhibited a wealth of experience in either federal,

20 *Prima facie*, this circumstance could lead to the assumption that female top public officials have been under-represented within the 22 years of the AOB's existence. However, at closer inspection, the gender distribution at the Austrian Ombudsman Board still demonstrates openness towards female appointees since the AOB-applicants are members of parliament at the time of their appointment and the rate of assemblywomen is traditionally low, as our calculations have shown.

21 It is also noteworthy that the FPÖ typically does not delegate female party members to the prestigious posts of committees of the Council (see <https://www.addendum.org/politometer/kategorie/gesetzgebung/frauen-im-nationalrat>).

regional, or local politics or in the aforementioned party-affiliated organizations before their appointment to the AOB. 90.9 percent of the ombudspersons were involved in federal politics prior to their appointment. Their federal-political fields of occupation embraced a vast gamut, including positions such as deputy federal party leader, state secretary, federal minister, or chair of a parliamentary fraction. On average, ombudspersons were active for 10.7 years at the federal level, that is in the National Council, before being appointed to the AOB. Compared to Germany's executive politicians and top civil servants (Jann and Veit 2010), the Austrian ombudspersons have more political experience on the regional and national levels. It is also interesting that six ombudspersons-to-be were members of the Parliament's AOB Committee (2 ÖVP women, 2 FPÖ men, 1 SPÖ man, 1 Green women). This might suggest that those future ombudspersons were not only interested in the AOB's work already as parliamentarians but their activity in the committee might also be interpreted as a sign to show their parties that they are interested in the position of the AOB in the future.

With respect to the ombudspersons' involvement with regional and communal politics, the findings correspond to the results at federal level. 16 out of 22 top-public officials were involved in regional politics (72.7 percent), 14 ombudspersons (63.6 percent) also held office as local politicians throughout Austria. The offices held at the regional and local levels mainly consisted of employments at the municipality council and the *Landtag*. In addition to their experience at the federal level, on average, ombudspersons were politically active at the community level for 12.2 years and at the regional level for 13.8 years before being appointed to the AOB.

With respect to the party-political socialization of the top-public officials under scrutiny, it is not surprising that also political (youth) organizations seem to have played an important part in the molding of the politicians-to-be in the case of at least 59 percent of the Austrian ombudspersons. Our desktop research suggests that ombudspersons from the SPÖ (average: 2 associations) and the ÖVP (average: 1 association) were more active in diverse associations than FPÖ ombudspersons (average: 0 association). An alternative explanation might be that participation in right-wing associations is not publicly shared or known as much as activities in center or left-wing associations.

Regarding ombudspersons' time in office, the constitution allows for two successive periods of six years. Only two ombudspersons exhausted the permitted length of periods in office and remained for the duration of 12 years, whereas the average time in office is 6 years. The political parties thus seem to display a certain indifference to personnel continuity.

Political relations after period in office: Our analysis shows that throughout the AOB's existence, the function as ombudsperson did not prevent them from pursuing political activity after their withdrawal from the AOB. According to our

research, at least nine of the former 19 ombudspersons (excluding the current 3 ombudspersons) were politically active after their time at the AOB.

## 4.2 Ombudspersons' party-related characteristics

After having outlined the general characteristics of this "population" of ombudspersons, we can now distinguish different types amongst them and see how these relate to party characteristics. A first way is to consider the kind of political experience an ombudsperson has accumulated before taking up office at the AOB: We find that one-third of all ombudspersons (7 out of 22) only has experience at the federal level, with experience ranging from 0 to 26 years<sup>22</sup>, not at the community or regional levels. By contrast, none of the ombudspersons has political experience exclusively at the community or regional levels. This indicates that while experience on the community and regional levels is important, experience at the federal level seems to be even more crucial for the appointment as ombudsperson. This group has a relatively high amount of involvement in political organizations, which might be seen as a compensation for the lack of experience at the regional and local levels. Age and gender are relatively equally distributed in this particular group with experience at the federal level only. Some differences, however, can be found regarding party affiliation: the SPÖ (3) has the most members in this group, followed by the ÖVP (2) and the FPÖ (1) as well as the Green Party (1).

Second, we find that the political party the ombudsperson belongs to has some explanatory power concerning some characteristics of the appointed persons. We see that in comparison to the other two parties, SPÖ ombudspersons have less than half the total political experience (10 vs. 25 and 30 years).<sup>23</sup> In contrast, SPÖ ombudspersons have the highest shares in being active in politically associated organizations (often related to social partnership) before the AOB as well as in state-related professions. The fact that the SPÖ and ÖVP have higher shares in these two categories can be explained by the traditional system of proportional representation in Austria, established after World War II, which for a long time implied a sharing of the important posts in the major state-related organizations between these two parties. The third major Austrian party, the FPÖ, founded in 1955, started gaining popularity only around the turn of the millennium, with first participation in the government coalition in 2000.<sup>24</sup>

22 There is one – current – ombudsperson with no experience as a politician (Bernhard Achitz); he was, however, Secretary General of the non-partisan Austrian Trade Union Federation (ÖGB) from 2008 to 2019, which is traditionally dominated by the socialdemocratic fraction. He also ran for the SPÖ at two elections to the National Council.

23 The calculation includes a person's cumulated experience at the community, regional and national levels, i.e. if someone was active at the community and national levels at the same time for three years that makes a total of 6 years of experience.

24 <https://www.bundestkanzleramt.gv.at/bundestkanzleramt/geschichte/regierungen-seit-1945.html>.



The fact that SPÖ ombudspersons have less experience in politics but more in politically associated organizations also correlates with the traditional distribution of topics at the AOB, with the SPÖ being responsible for the “social field”. This means that once at the AOB, ombudspersons experienced in the area of social partnership will examine potential maladministration in domains such as social or pension insurance or youth welfare – ensuring that “the ordinary citizen” is not plagued by the bureaucracy.

**Table 1**  
Ombudspersons’ characteristics according to political party

	<b>Cumulative political experience (average years)</b>	<b>Active in politically associated organization (average number)</b>	<b>State-related profession</b>
SPÖ	10.2	2	5 of 7
ÖVP	29.9	1	4 of 7
FPÖ	25.2	0	2 of 7

In contrast, according to our data, there are no significant differences among the parties regarding the amount of political socialization in associations prior to the AOB or political activity after the AOB.

In sum, our findings show that most ombudspersons are active in (party) political contexts both before and after their time at the AOB. They bring with them an important amount of political capital, especially on the federal level, when they are nominated for the office. Our analysis shows that for half of the ombudspersons the AOB is only a stopover, not the “final stop”; regarding this observation, we could not identify any significant changes over time. This finding implies that there is a political career before *and* after the AOB; and, most likely, both the party and the ombudsperson will be aware of that. Against this background – knowing that one will probably continue to be politically active afterwards – it seems rather unlikely that the ombudspersons actually stop being politicians at least to some extent during their time at the AOB. Research suggests that party loyalty and thus the maintenance of (political) networks plays an important role for the longevity of a person’s career in the public sector (Bach and Veit 2017). While the ombudspersons cannot hold other official functions during their time in office, it can be assumed on the basis of our findings and the existing literature that they continue to maintain their (political) networks. The question remains whether or not this has an effect on the way they conduct their office. We therefore explore in the following section whether this politization of the ombuds office has any visible effects in the everyday work of ombudspersons and case-handling staff.

## 5. Effects of politicization

In this section we complement the results of our desktop research with our findings from qualitative interviews with AOB staff and citizens as complainants in order to study the effects the political appointment of ombudspersons can have on the everyday work at the AOB and the institution's independence. Before we look into the practices of everyday work, which can only be observed through empirical study, there is at least one aspect which makes the politicization of the institution visible on a formal level of operational style: the allocation of responsibilities among the three ombudspersons. What area of public administration each ombudsperson and their department control is decided by the board itself. Although changes to this distribution can be made when a new period starts or a new ombudsperson joins the institution there is a clear stability concerning the main areas of public administration each unit controls. When we look at this distribution, we find that traditional key topics of the three political parties are found in the respective ombudsperson's unit: e.g. welfare and health issues are allocated to the ombudsperson appointed by the social-democratic party, finances, communities, land use planning are among the topics of the conservative party, interior affairs, police, mobility and technology belong to the Freedom party ombudsperson (and to the Green party ombudsperson).<sup>25</sup>

*The need to stress the institution's neutrality.* In our interviews with the AOB staff, it was repeatedly emphasized that party policy does not play a role in the daily routines of their work. Through the interviews, we gained the impression that both ombudspersons and staff strive to stress the AOB's impartiality and independence like a mantra. It seems that our interviewees felt a special need to do so, particularly because of the political mode of appointment.<sup>26</sup> While the media typically mention the ombudspersons' political affiliations in their reporting, the AOB avoids any party political positioning in their public relation activities, since the overt exposure of any party-affiliation would contradict the AOB's neutrality codex, as an AOB public relations staff explains. Some interviewees also highlighted that the unity and neutrality of the AOB and thus the irrelevance of party interests is especially reflected by the three-party board and its joint decision-making for important cases. In line with this emphasized impartiality, some staff members maintained that an ombudsperson's observation of a deficiency in the field of activity of a major from the same political party would never lead to problems. As mentioned above, this was one of the concerns expressed in the public debate around the AOB's foundation and the future appointment of ombudspersons. One interviewee even stated that there is "no room ... for daily politics and fractional concerns in this house." Thus, it seems

25 <https://volksanwaltschaft.gv.at/downloads/7ctin/gev-der-va-2020.pdf>.

26 When we asked our interviewees whether they see the AOB as a sociopolitical actor, we typically received the answer that party politics do not play a role at the AOB.

to us that politicization appears here through the way the institution uses it *ex negativo* as a way of defining itself.

*Room for thematic preferences in investigations.* In sharp contrast to these interviewees' statements regarding the ombudspersons' party-political unbiasedness, another staff member noted that the decision for or against inspections through the AOB sometimes does correlate with party political sensitivities. The staff explains that party ideologies are partly expressed through the decision, which cases are investigated and which are not: There is extensive leeway between what must be done and what can be done, the interviewee concludes. In our complementary analysis of annual reports, we also found that to a certain extent, the ombudspersons' thematic preferences – in particular topics that are investigated *ex-officio* – seem to be related to their political ideology and thus influence the extent of their commitment to specific topics. Due to such political choices and actions, which can be observed at certain instances, one interviewee finds it “not an ideal solution” that AOB units investigate cases in organizations of the same political color.

*Staff recruitment.* With regard to the legal staff's – not the ombudspersons' – party political positioning, some employees explained that during their careers at the AOB, they have never been asked questions concerning their party affiliation; thus, they are convinced that party membership does not have any influence on the AOB's recruitment of new staff. Still, they acknowledge that some legal staff can be assigned to a particular political party due to their present or former occupation of a political office on the district or communal level, or their involvement with party-affiliated organizations, which inevitably link them to a political party; however, this is not necessarily the party of the ombudsperson in whose unit they work. Some staff members, for instance, have publicly known relations to the FPÖ, such as being a member of the City Council.

Another interesting aspect which emerged during the interviews with legal staff and assistants concerns personnel changes. When new ombudspersons are appointed to the office, the implementation of at least minor personnel changes within the three business units (but also from outside the AOB) is a common practice. It happens, for instance, that staff request to change their business unit due to a redefinition of the same. Newly elected ombudspersons often “take along” their staff or assistants from their former (party-related) places of employment. This party-related change of personnel was particularly visible when, due to majority changes in parliament, the FPÖ had to leave its AOB post to the Green Party in 2007, and six years later, when the FPÖ got the post back. The fact that at both times when these two very opposing parties – one of them right-wing, the other one left-wing – swapped places, several staff left the AOB or changed units highlights the institution's politization with regard to staff. One of our interview partners also observed that during the time when the Green Party ombudsperson was new to the AOB,

it was noticeable that two of the departments were moving closer together, e.g. in discussions and meetings.

*Media appearances.* Another channel through which ombudspersons' party-political interests are expressed are media appearances on certain socio-political topics, as mentioned by some interviewees. A staff member stated that even though the three ombudspersons are not engaged in professional party politics during their time in office, their affiliation to a specific political party puts certain constraints on their function as ombudspersons. For example, an FPÖ-appointed ombudsperson would not advocate border openings, while an SPÖ-elected ombudsperson would not support the reduction of pensions, as the interviewee explains.

In their media presence a sort of competition among the ombudspersons becomes visible that reflects the political competition for attention in the public sphere. A staff member complains that the focus is often more on the person than on the content,

*It's not about the matter as such, and it's also not about long-term solutions, it's only about media presence. If one of them is in the papers, the second wants to be in the papers too ... Every human being endowed with a sense of political thinking recognizes what goes on in the background and this casts the AOB in a negative light. ... the AOB is too reputable to engage in such practices.*

The interviewee remarks that ombudspersons' media statements regarding certain issues can be understood as the enactment of political power games, which are channeled through the AOB. In the perceptions of the legal staff, such actions can negatively affect the legal staff's everyday work. "My opponents in the administrative bodies, they know what's going on when the ombudsperson rages against their agency in the papers, and I have to work with those people."

*Interaction with complainants.* Another effect of the political background of ombudspersons appears when we consider their direct interaction with complainants. Our interviews and participatory observations suggest that the ombudspersons' political background or "craft" (Goetz 1999) can be of benefit particularly in their face-to-face interactions with citizens at consultation days. Staff members state that citizens are often in favor of approaching the former-politician-ombudspersons; the latter's relations to and in politics can encourage citizens to call upon the AOB. As we could observe at consultation days, the ombudspersons' (former) political influence can generate high hopes among complainants.<sup>27</sup> Frequently, citizens expect that their case could be handled quickly, for instance, through a telephone call by the ombudsperson to the right, responsible person. However, some staff members point out that tensions between citizens and ombudspersons can emerge

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<sup>27</sup> Ombudspersons' prominence is also increased through their juridical confrontations in the weekly television show *Citizens' Lawyer* (*Bürgeranwalt*) of the Austrian public broadcasting company.

when ombudspersons make early promises regarding an examination – or even the results of the examination – of the case at hand.

Regarding the respective party-affiliation of the ombudspersons, our interviews with complainants revealed that for some, the decision to visit the consultation day is to a certain extent influenced by the political color of the ombudsperson. “Just imagine you have to go to the FPÖ – that would be a nightmarish thought for me”, an interviewee states. In contrast, another fraction of the interviewed complainants stated that the political affiliation of the ombudsperson has no relevance for them as long as they show genuine concern for their problems. Some complainants say they do not mind ombudspersons political affiliations as long they are fair and have the respective legal competence. In our quantitative survey, 24 percent of the complainants state that the political color of the ombudsperson is important to them.

Finally, it needs to be said that not only the individual ombudspersons have the possibility to – and sometimes do – act in accordance with party political ideologies; also the AOB as an institution acts as a political actor in a broader sense. First, through ombudspersons’ media statements and participation in or organization of different events on socio-political issues, such as the future of living, violence against women, child poverty, mandatory vaccination and animal welfare<sup>28</sup>, the AOB continuously positions itself as a political actor. Moreover, the AOB also acts as a political player when a law is amended due to the AOB’s strategic action and recommendations.

In some cases, a legislative suggestion produces factual changes. In order to reach these changes, the ombudspersons have to put much effort into negotiations with the parliament, and this presupposes a certain amount of fractional know-how. “If it has to lead to a legislation amendment, you have to think politically...; then you have to sound out the subject with other fractions in the parliament. Especially, with respect to legislative recommendations, the members of the AOB are involved in changes and processes, and that is political.” Another AOB staff member highlights that the ombudspersons’ reputation as former political actors is of great benefit to the AOB as an institution because it gives weight to their enforcement of socio-political topics. Here it is less the direct link to the content of a political program or the agenda of a political party than the ombudsperson’s role as a public figure who strives to put certain socio-political topics on the political agenda.

To conclude, these different empirical elements suggest that the politicization of the ombuds institution has effects on different levels and is expressed in different ways. The choice of topics for ex officio investigations, organizational matters, such as the recruitment of personnel, the relations to the complainants and the expectations of complainants to obtain an intervention for their case, the communication

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28 See [www.volksanwaltschaft.de/en](http://www.volksanwaltschaft.de/en).

of ombudspersons on socio-political matters and the competition for media coverage are all occasion where the political nature of the office appears.

### 5.1 Towards a typology

To structure the various effects of the politicized appointment process we have identified in the case of the AOB, we propose a typology which seems useful for the study of the politicization of ombuds institutions. Despite its exploratory nature we believe that this typology can yield a framework for future research. Based on our empirical findings, five dimensions seem particularly relevant to us:

#### 1. The personal dimension: appointment of ombudspersons

As we have seen, the Austrian ombudspersons have strong ties to the political sphere as almost all of them have been elected politicians and have held positions in governmental positions, particularly on the federal level. To understand the politicization of the ombudspersons as individuals, it is key to study not only the quantity but also the quality of their political capital acquired before entering the ombuds institution. In the Austrian case, we have seen that there are different types of political capital which relate to disparities in career paths, which in turn are linked to the diverse political parties.

#### 2. The organizational dimension: staff recruitment

Another modality of politicization is the extent to which personnel policy is subject to political influence. Does the “bureaucracy” of the ombudsperson, i.e. the legal and administrative staff, have a political background – if so, which kind – or do recruitment policies exclude political cooptation? In the case of the AOB, we have seen that ombudspersons, for instance, bring along a new staff, and that some of the legal staff have been representing political parties in national or regional councils.

#### 3. Case-processing dimensions

a. *Interaction with complainants*: The first subdimension relates to the way complainants engage with the ombudsperson. One insight of our study is that certain citizens are readier to address a partisan ombudsperson because, due to their publicly known political capital, they are perceived as being better placed to “sort things out”. The social networks ombudspersons can refer to for having been part of the political sphere – at different levels – attracts citizens and encourages them to file a complaint. This effect might not take place if the ombudsperson were not publicly known as a political person.

b. *Interaction with public bodies*: The second subdimension concerns the way the ombudsperson engages with public bodies when trying to resolve a complaint. In the case of the AOB, we have seen that caseworkers sometimes argue that “hampered communication” can take place between AOB caseworkers and those public bodies that previously had a political clash with the concerned

ombudsperson. In addition, members of the case-handling staff mentioned that sometimes when meeting the complainants, the ombudspersons, taking the habitus of a politician, tend to make empty promises to persons whose complaints are legally unfounded, thereby complicating the staff's work in resolving the case.

#### 4. The "public watchdog" dimension

Most classical ombuds institutions have the possibility to initiate so-called ex-officio investigations without a complaint being filed, for example by taking up a case of administrative misconduct that has been reported by the media. The Austrian case suggests that political (as well as personal) preferences can influence the decision whether or not to initiate an ex-officio investigation. Future studies should consider which cases were taken up ex officio and from which cases the ombudsperson chose to stay away, and for what reasons. Political ties might play a role in this context.

#### 5. Public role dimensions

- a. *Policy commentary*: Linked to the institution's function as a public watchdog, ombudspersons can participate in public debate through press releases or special reports. It might be asked whether this activity as a public figure is linked to specific political preferences.
- b. *Policy advocacy*: A second aspect of the ombuds' public role is related to the calls for legislative changes the ombuds addresses to parliament. It could be explored to what degree such suggestions for legal change reflect political orientations.
- c. *Political solicitation*: A third aspect of politicization through the public role played by the ombudspersons concerns the question whether the ombudsman is addressed by political actors of the civil society. Do political groups address the ombudsman in order to get support for social change and does the ombudsperson take up these matters? (see Pohn-Weidinger and Dahlvik, forthcoming)

## 6. Conclusion

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As we discussed in the literature review, there is a research gap in social science studies on the politicization of supreme or governmental supervisory bodies, especially concerning empirical research. The particularity of our case study of the Austrian Ombudsman Board is that corresponding to the principle of proportional representation, the ombudspersons have been appointed by political parties since its foundation in 1977. Since this mode of appointment stands in contrast to the approaches in most other countries, the aim of this paper was to investigate the effects of this "intentional politicization" on the institution's de-facto independence

by studying who the ombudspersons are and how the work of case-handling legal staff is affected by this kind of party patronage.

Our study includes the investigation of the politicization of the Austrian federal ombuds institution on two levels. First, we explored the resources or political capital the ombudspersons have established throughout their careers previous to the AOB. Concerning the ombudspersons' profiles and career paths we found strong similarities to findings on Germany's executive politicians and administrative elite. Ombudspersons are typically very experienced as politicians at the community, the regional and even more so the national level, and were active in party-related associations or organizations before joining the AOB. The analysis also reveals that while overall the ombudspersons represent a relatively homogenous group, the political party is an explanatory variable for some of the ombudspersons' characteristics.

In the second empirical part, we investigated whether there are observable effects of the politization of the ombuds office in ombudspersons and staff's everyday work, and thus de-facto independence. Qualitative interviews with case-handling staff demonstrated that despite the institution's public efforts and many interviewees' reassurances that the AOB is independent and acts as such, there are several areas in which party-related positions become visible in the AOB's work. Among these are ombudspersons' media appearances, staff recruitment as well as leeway concerning the investigation or non-investigation of certain cases. On the basis of these findings we developed an exploratory typology to better grasp the various effects of the politicized appointment process, including personal and organizational dimensions, case-processing, ex-officio decisions, and the AOB's public role.

The objective of this paper was to make an empirical contribution to the relation between politicization and independence in a national ombuds institution, which oversees the public administration. With the case study of the AOB we aimed to advance the scientific debate about the politicization of supreme supervisory bodies through partisan appointment and its effects on the institution's everyday work. Our work shows that qualitative empirical research adds important aspects to the study of institutions' de-facto independence, since it allows us to consider informal aspects through actors' practices and traces of their practice. To conclude, our data thus confirm the position found in the existing literature that informal aspects may be equally important as formal aspects when we try to assess an institution's (political) independence. Nonetheless, more empirical and in particular qualitative research is needed to better understand the relation between politicization and independence of public institutions, including ombuds institutions. We hope that the typology developed in this paper will be a useful basis for further development and future comparative research in diverse contexts. In particular, further studies might explore the consequences of politicization along the five dimensions of the typology.



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