

THE CITY OF PARIS MEDIATEUR - AN  
OMBUDSMAN A LA FRANCAISE

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**INTERNATIONAL OMBUDSMAN INSTITUTE**

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## THE CITY OF PARIS MEDIATEUR - AN OMBUDSMAN A LA FRANCAISE

Ombudsman-style institutions have made their appearance only relatively recently in France, a country noted for its highly developed system of administrative law (droit administratif). Traditionally French citizens in dispute with a public authority have been able to pursue a remedy through the special administrative courts (the Conseil d'Etat and the subordinate tribunaux administratifs). In contrast to the situation in England where the common law tradition has, until recently, operated so as to inhibit judicial intervention in matters of administrative discretion, the administrative judge in France has extensive powers to review the substance and merits, as well as the procedural dimension, of administrative action<sup>1</sup>.

Proposals for an Ombudsman-style institution were first mooted in Britain in the wake of the Crichton Down affair of 1954 which fired a wide-ranging debate concerning the need for more adequate controls over the Administration. There was no counterpart to such debate in France, where informed opinion saw no need for institutional innovations in the area of the redress of grievances. Mme N. Questiaux, a distinguished member of the Conseil d'Etat, summed up the prevailing orthodoxy when she wrote in her contribution to a global survey of Ombudsman institutions

published in the mid-sixties that "constitutional, judicial and administrative organisation in France leaves no place for an Ombudsman. For this reason...it is hard to imagine the Office ever being discussed in France in any way other than as an academic point of comparative law."<sup>2</sup>

Although the Messmer Government's decision to introduce a Bill (projet de loi) creating a national Médiateur in the context of a more general drive to improve relations between the Administration and the citizen must have been unexpected in many quarters, such an initiative had been adumbrated by two private members' bills (propositions de loi) introduced by the Independent-Republicans in November 1970 and by the Socialist deputies in November 1972<sup>3</sup>. The exposés des motifs accompanying these Bills testified to the growing sense of disillusionment with certain aspects of the functioning of the administrative courts. The ordinary citizen's fear of litigation, the shortness of the time period available for making an application for judicial review, the privileges enjoyed under droit administratif by the State in its dealings with administrés and the slowness of judicial review were singled out for particularly adverse comment. This concern was echoed during the parliamentary debates in the National Assembly and the Senate which preceded the enactment of the January 1973 Mediateur Act<sup>4</sup>.

The national Médiateur has a broad remit to investigate complaints about administrative malfunctioning

in central and local government, public corporations and all other agencies with a "public service mission". The first two holders of the Office were both experienced politicians associated with parties of the moderate Right; the current incumbent, M. Robert Fabre, was until 1978 President of the Left-wing Radicals, who sided with the Socialist and Communist Opposition in the Presidential elections of 1974 and the Legislative elections of 1973 and 1978<sup>5</sup>. Complaints have to be channeled to the Médiateur through a deputy or a senator: despite this, a substantial number of cases are submitted to him - nearly 4,500 in 1979, for example. The national institution is now well established; its style is more political than that of our own Parliamentary Commissioner, for the Mediateur operates as a champion of the administre in dispute with the Administration and not just as an upholder of the principles of good public administration. Much of his energy is devoted to advocating proposals for the reform or modification of laws and regulations which are held to offend against fairness or equite.

The city of Paris became the first municipality to adopt an Ombudsman-style institution in France when its new mayor, the former Prime Minister Jacques Chirac, set up a municipal Mediateur in May 1977. This article attempts to review the activity of the Paris version of the "local Ombudsman" in its first three years of operation, to identify its distinctive style of operation and to evaluate

the effectiveness of the institution as a mechanism for the redress of grievances.

New arrangements for governing the City of Paris were enacted in 1975 and became operational in March 1977. For the previous 100 years the City had experienced direct rule by a government-appointed Prefect. Under the new Statute of Paris, which became law on December 31, 1975, Paris became both a département and a commune. It has its own elected political leader - the Mayor - who presides over the legislative body, the 109-man Council of Paris, which is made up of elected councillors representing the twenty arrondissements in Paris. Under the new arrangements, the Council operates as both a general and a municipal council. The Mayor has delegated his executive powers to a team of maire adjoints (assistant Mayors), selected essentially from the controlling group on the Council and this body constitutes the political executive which governs the City. Each maire adjoint has executive responsibility for a particular policy area. The Mayor and assistant Mayors are thus in a powerful position vis-à-vis the Council of Paris. In French local government the relationship between the municipal executive and the municipal council is not a genuine "parliamentary" one; although the Council of Paris has the power of final decision on matters of general policy, it does not control the activities of the municipal administration and has no power to dismiss the Mayor.

In the March 1977 municipal elections, Jacques Chirac, leader of the neo-Gaullist Rassemblement pour la République, was returned as Mayor of Paris, after a highly politicised contest in which he defeated both the left and the governing coalition's own candidate.

Like all communes, the city of Paris, with a population of over 2 1/4 million and a municipal payroll of over 30,000, enjoys general powers to promote the welfare of the local community and in principle has operational control over its revenue budget. For example, despite the government's recent measures to provide financial assistance to families with three children, the Paris Council subsequently unanimously agreed to provide additional family allowances on the rates to Parisian residents of three years' standing forced to give up work to look after a third baby<sup>6</sup>. However, the familiar threat posed to the independence of the French capital by prefectoral, and more importantly, central government powers of tutelle remains. For example, the well-publicised row which took place in 1978 between M. Chirac and the government over the financing of the Paris police force did much to exacerbate the political tension between the government and the capital city.

It seems clear that political considerations rooted in the personal rivalry between the President of the Republic and the leader of the Gaullist half of the Majorité did play some part in M. Chirac's decision to set

up a Médiateur for the City of Paris. It would be wrong, however, to interpret the Mayor's initiative as a politically motivated challenge to the authority of the national Médiateur. Clearly, other factors weighed heavily with M. Chirac. Parisians had been deprived of democratically elected local political leadership for over a hundred years and had grown accustomed to regarding the successive prefectoral administrations that managed the city as remote and unresponsive to their needs. The idea of a Médiateur was an appealing one: it recommended itself as a way in which the Mayor could demonstrate that he was serious about improving relations between Parisians and their new government. It seems fair to conclude that this desire to humanise the relations between the municipal authorities and the citizens of Paris was the decisive factor in the setting up of the institution.

On May 12, 1977 M. Michel Junot, maire adjoint, became the first local Médiateur in Paris, and indeed France, by virtue of a mayoral arrêté which entrusted him with the mission of acting as a Médiateur "entre l'Administration municipale et les usagers"<sup>7</sup>. The arrêté states that he is "entitled to transmit to the appropriate services all the complaints he receives, to require the services to provide a reply, and, if need be, to impose a final decision in the dispute in question". In the exercise of his functions, he is accountable not to the Council of Paris but to the Mayor alone. It needs to be stressed that

the Paris municipal Mediateur is not an "Ombudsman" in the accepted sense. He is not an external critic of the municipal administration; nor does he enjoy the protection of statutory guarantees of independence which are in Britain the basis of public credibility in the "local Ombudsman".

M. Junot holds office for a six year period, the duration of his elected mandate. Unlike his national counterpart, his period of office is renewable for another six year term. M. Junot is himself a man of considerable political and administrative experience, who is well known in Paris public life. He is certainly well qualified to hold the Office. Before entering politics he had twenty-two years experience in the prefectural corps, spending the latter part of his administrative career as Prefect of the Indre departement in central France. He also served for many years as a deputy for a Paris constituency before being elected as a councillor for the 15<sup>o</sup> arrondissement in Paris in the March 1977 municipal elections as a member of the controlling group "Union pour Paris".

It is clear that the arrêté entrusting M. Junot with the functions of Mediateur left him considerable freedom to define for himself the scope of his activity. In accordance with his "mission", he has cast himself as a citizen's advocate, in the image of his national counterpart<sup>8</sup>. There are, however, important structural differences in the way the two institutions operate. In the first place, members of the public in dispute with the Paris



municipal administration have direct access to M. Junot. Secondly, he has the power to impose a final decision in a dispute involving the city authorities.

#### **WORKING PROCEDURES**

M. Junot receives over a thousand complaints a year. There is no discernible social class bias amongst his clientele; complaints come from a wide cross section of Parisian society. Certain basic requirements have to be fulfilled if complaints are to be accepted for investigation but an effort has been made to reduce these to the minimum compatible with the efficient operation of the Office. A complaint must be made in writing and will only be accepted if it is clear that the complainant has already tried to obtain redress from the municipal authorities.

M. Junot has a staff of eight, consisting of a chef de cabinet, investigating staff, secretarial and public relations personnel and a housing official on secondment from a city housing department. The investigating staff are trained in administrative law and operate as "generalists", with no division of labour on the basis of functional areas of municipal administration. The housing inspector carries out inquiries into housing application cases on behalf of the Médiateur. Very exceptionally, in cases involving the interpretation of laws or regulations, the Mediateur's Office makes use of the services of the Hôtel de Ville's litigation department.

Initially, it seems that investigatory procedures were modelled on the national Médiateur's practice, with each municipal department nominating an official who acted as the Médiateur's "correspondant" and undertook internal departmental inquiries into complaints for him. This system was discontinued in favour of more flexible arrangements. The Office's current practice is to transmit complaints to either the appropriate maire adjoint or to the chief official in a department or section. On occasion complaints are directed to relatively junior officials, depending on the circumstances of the particular case. To some extent, then, the investigation of complaints is "sub-contracted" out, but it is clear that when the Médiateur is not satisfied with a department's response, he can take further action. Generally this involves questioning senior officials in the relevant department. Depending on the nature of the case, the Médiateur can proceed to interview the complainant or to hold an enquête sur place and attempt to mediate by bringing all the participants in the dispute together.

The Paris Médiateur's power to oblige departments to reply to his inquiries was reinforced a year or so ago by a directive from the Mayor to all heads of departments, but it seems that officials co-operate very readily with the Médiateur in his investigations. To date M. Junot has not made use of his power to impose his own decision in a case. Where agreements between the parties cannot be reached, as

may occasionally happen in personnel cases for example, the Mediateur has preferred to ask the services of the Secrétariat-Général de la Mairie to arbitrate in the matter.

#### **JURISDICTION**

According to published statistics<sup>9</sup> the Médiateur's Office registered 2390 written complaints from its inception in May 1977 through to May 1979. The volume of complaints appears to have remained fairly constant since then, averaging 100 to 120 per month. Not all complaints are accepted for investigation. M. Junot rejects as outside his competence complaints which are already the subject of proceedings before the courts. His practice in this respect is considerably more cautious than that of the national Médiateur. From comparatively early days as holders of the national Office M. Paquet and before him M. Pinay were prepared, on occasion, to accept complaints which were already pending before the courts and to review them from the point of view of their fairness. Indeed, this practice received legislative backing in 1976, when an amendment to the 1973 enabling Act legitimised this practice. Although still statutorily excluded from investigating matters before the courts or from calling into question the merits of a judicial decision, the national Médiateur can now make recommendations to the administrative agency concerned to settle on the basis of fairness or humanity a dispute that

is pending before the courts or a case in which a judicial decision has gone in favour of the agency.

The Paris Médiateur accepts complaints both from personnes physiques i.e. individuals and from personnes morales i.e. business firms and groups such as tenants' and residents' associations provided that there are prima facie grounds for believing that a particular individual or individuals have suffered specific injustice or hardship. On the same logic, the Paris Médiateur rejects complaints which relate to matters affecting all or most Parisians collectively, such as complaints about the steep increases in local taxes which Parisians have had to pay over the last few years.

The Médiateur is careful not to undermine the managerial authority of senior staff in residential homes and hostels run by the municipal authorities or by the hived-off social service agency, the Bureau d'Aide Sociale de Paris. The Médiateur's respect for the principle of hierarchical authority is also evident in the field of hospital administration. In fact, he receives very few complaints about the internal management of public hospitals in Paris. He is not prepared, however, to investigate complaints relating to matters involving the clinical or other professional judgment of medical staff, although such acts are not specifically outside his jurisdiction. The British Commissioners are excluded by statute from reviewing these matters and it is scarcely surprising that M. Junot

has limited his jurisdiction in this way. He closely follows the practice of the national Médiateur in this respect, who has not seen fit to investigate complaints relating to the curriculum or school discipline (it should be noted that the education service is administered by central, not local government in France) or those relating to disciplinary procedures in prisons or the armed forces.

However, in respect of personnel matters in the public service, including appointments, dismissals, pay and pensions, the Paris Médiateur has adopted a liberal investigatory practice. The Local Commissioners in Britain are unable to investigate personnel matters and neither is the national Médiateur, although this has not prevented him from taking up complaints from civil servants or municipal employees, usually in the field of pensions and other social insurance benefits, which, in his estimation, do not call into question le pouvoir hiérarchique. (It should be noted that public servants in France can take grievances about personnel matters to the administrative courts.) Five per cent of M. Junot's case load is made up of complaints about personnel matters from officials serving in the Paris municipal administration. Some of these relate to eligibility for pension benefits of one kind or another or to sickness pay. Others impinge directly on le pouvoir hiérarchique - for example, complaints relating to redundancy and dismissal, or to the training, promotion or secondment of staff. Many of the complaints about the

Assistance Publique, which runs the public hospital service in Paris, are in fact brought by employees in that agency and concern personnel matters.

Unlike the Local Commissioners in Britain, the Paris Médiateur is not specifically excluded from investigating complaints about contractual and commercial transactions. He has in practice accepted that such matters fall within his jurisdiction. Many of the complaints he receives in this field concern the delays experienced by small and medium-sized businesses in obtaining payment for work undertaken on behalf of the City of Paris. Occasionally, complaints are received about land transactions and commercial leases or about the setting-up of market stalls and the allocation of licences to street traders. Nor is M. Junot prevented from investigating grievances relating to action taken by municipal administrators under the previous local government system, i.e. the system prior to March 1977.

What particularly strikes a British observer, when examining the way in which M. Junot discharges his functions as Médiateur of the City of Paris is the scope of his remit to investigate and review what he has characterised as "administrative malfunctioning"<sup>10</sup>. Like his British counterparts, the local Médiateur in Paris investigates allegations of procedural deficiencies in the functioning of municipal authorities. Additionally, however, he is free to review the legality and fairness of administrative acts. He

can accept and investigate complaints for which an alternative remedy is available in the courts. In practice the local Médiateur in Paris does not confine his activities to the review of "maladministration", understood as procedural deficiencies in the administrative process leading up to the taking of a decision.

In keeping with the remarkable economy of the arrêté entrusting M. Junot with the functions of municipal Médiateur the grounds of complaint are not specified. Complainants do not have to allege deficiencies in the way a case has been handled. This is an important point of difference with arrangements in England and Wales, where complainants must satisfy the Local Commissioners that there is prima facie evidence to suggest that they have "sustained injustice in consequence of maladministration"<sup>11</sup>. "Administrative malfunctioning" is interpreted with sufficient elasticity to bring within the scope of the local Mediateur's review both complaints of procedural maladministration of the sort entertained by his British counterparts (for example those alleging defective administrative procedures, delay, misleading or inadequate advice, and so on) and complaints about the harshness or unreasonableness of actual decisions made by local officials in the course of implementing policy. More generally he can investigate the merits of the rules and procedures which serve as the basis for deciding a whole category of individual cases<sup>12</sup>. Indeed, the scope of his review extends

to the type of dispute between the Administration and the citizen which, in this country, is normally entrusted to the impartial adjudication of an administrative tribunal. Thus, the Paris municipal Mediateur will investigate complaints which call into question the merits as well as the procedural correctness of decisions concerning, for example, the amount of development tax property-owners are required to pay to the municipality or the amount of compensation offered by the municipal authorities when acquiring land or property for slum clearance or other development projects. It is important to stress, however, that M. Junot does not consider himself competent to review the merits of certain categories of discretionary decisions. These include decisions involving the exercise of professional judgment (notably clinical judgment) and decisions taken on policy grounds for which the decision-makers are answerable to the local electorate. Complaints levelled at, say the opportuniste (merits) of the Prefect of Police's exercise of his police powers or the exercise by senior municipal officials acting under powers delegated to them by the Mayor of their discretionary powers to derogate from land-use planning and other regulations, are not accepted for investigation.

There are no time-limits for bringing a case before the Paris Médiateur, but given that he takes longer on average to investigate a case than the two months time-limit generally available for appealing a decision in



the administrative courts, the Parisian citizen in dispute with the municipal authorities has in effect a choice of grievance mechanisms. It seems clear that when he is contesting the legality of an administrative act his preferred alternative is the courts; he looks to the Paris Médiateur (or to the national Médiateur) to review the equite rather than the légalité of decisions. It is this practice of reviewing the fairness of administrative action which stands out as the distinctive characteristic of the institution.

The Paris Médiateur's published review of his Office's first two years of activity<sup>13</sup> indicates that 42 per cent of the complaints addressed to the Mediateur in the Hôtel de Ville did not directly concern the Paris municipal administration, and so were not within the Médiateur's jurisdiction at all, properly speaking. Clearly the average citizen is not aware of the complex division of political and administrative responsibilities between the different tiers of government which co-exist in Paris and the Paris region. The municipal government's jurisdiction does not extend beyond the administrative boundaries of the City of Paris itself, i.e. the twenty arrondissements which make up the central core of the Paris conurbation. The same geographic entity constitutes the département of Paris. The City of Paris and the seven départements which surround it together form an administrative region, the Ile-de-France. The regional Prefect is responsible for strategic land-use

planning and for the overall coordination of regional services such as transport, housing and industrial and commercial development in the Paris area.

Central government itself, of course, impinges directly on the citizens of Paris. Not only does the Médiateur's post bag contain many complaints from Parisians about the administrative activities of central government departments and agencies, notably the Department of Posts and Telecommunications and the fiscal services of the Ministry of the Budget; it also includes many complaints about public corporations (établissements publics) such as RATP (the Paris Transport Authority), SNCF (French railways), and EDF/GDF (Electricité/Gaz de France). Although they are outside his jurisdiction, the Paris Médiateur does investigate complaints about the various para-governmental agencies such as the Caisses de Sécurité Sociale (Social insurance agencies) and the unemployment assistance offices - the ASSSEDICs (Associations pour l'Emploi dans l'Industrie et le Commerce). For the citizens of Paris the Médiateur clearly represents a most convenient point of access to government at all levels, and as a consequence he receives complaints across the board.

Within the municipality itself, the administrative division of labour is extremely complex. The majority of planning applications, for example, are examined by the Mairie but the Paris Préfecture has powers of final decision over certain categories of application. There is a complex

division of responsibilities between the municipal Direction des Affaires sanitaires et sociales and the Bureau d'Aide Sociale and Assistance Publique de Paris which as public corporations belonging to the municipality, have their own budgets and separate legal personalities. Applications for public housing, known in France as HLMs (habitations à loyer modéré, literally, housing at moderate rents) are investigated by the municipal authorities but transmitted to the Prefect and submitted to a Commission containing representatives of both the département and municipality which makes the final decisions about priorities. Again there is much administrative interaction, as far as local taxes are concerned, between the external services of the Ministry of the Budget and the fiscal services of the Hôtel de Ville.

#### **COMPLAINTS**

In many ways the Paris version of the local ombudsman scheme resembles the British Local Commissioner system. Many of the complaints received in Queen Anne's Gate and in the Hôtel de Ville are similar<sup>14</sup>. There is also common ground in the types of administrative malfunctioning criticised on each side of the Channel, although the style of the two "local ombudsman" systems differs markedly. Because complainants do not need to formulate complaints about administrative decisions in terms of procedural

maladministration, it is hardly surprising that only a relatively small proportion of complaints received by the Paris Médiateur allege maladministration in the way in which a case has been handled. More typically, complainants explicitly call into question the "fairness" or "reasonableness" of particular discretionary decisions which adversely affect them.

This is true, for instance, of complaints in the field of housing which constituted over a quarter (27 per cent) of M. Junot's case-load in his first two years of operation. There are relatively few allegations of procedural maladministration - failures or delays in the maintenance or repair of the public housing stock of HLMs, functions which are entrusted to housing associations (sociétés d'économie mixte, in which the City of Paris has a shareholding). More commonly, complaints relate to housing allocation processes and procedures which are channelled through the Office d'Halitations à Loyer Modéré (OHLM) de Paris. The Médiateur receives "requests" for housing assistance from tenants who have been evicted and from HLM tenants who have tried unsuccessfully to exchange their flats for more suitable accommodation. People whose applications for HLM housing have been rejected or deferred ask the Mediateur to review their cases with a view to having their applications reconsidered on the grounds of fairness.

Planning cases constitute a relatively small proportion (6.6 per cent) of complaints received in the period May 1977 to May 1979. Some of the complaints, alleging deficiencies in the enforcement of planning regulations and the implementation of district plans, and delays in the processing of planning applications are reminiscent of the Local Commissioners' case load. More frequently, however, the Médiateur is asked to review the merits of discretionary decisions relating to the refusal or granting of planning permission or the assessment of compensation by the City in compulsory purchase cases. The Paris Médiateur has investigated a number of complaints from people who have obtained planning permission for extensions to their flats about the fairness of PLD (plafond légal de densité) tax assessments. This is a tax designed to prevent land speculation and to limit the density of the built environment and is levied on the extra floor space above the threshold for which planning permission has been granted.

A relatively small number of complaints are received about the upkeep and cleanliness of Paris streets and about nuisances caused by public works.

After housing, affaires sociales make up the second largest share of the Médiateur's case load, accounting for one in seven (14 per cent) of the complaints received in the two years May 1977 to May 1979. Most of these complaints relate to the various welfare benefits which are provided by either the Bureau d'Aide Sociale de

Paris or the Direction des Affaires sanitaires et sociales in the Hotel de Ville. The Paris BAS with its decentralised offices in each arrondissement, provides a whole range of discretionary benefits and social services, such as day care facilities and recreational centres<sup>15</sup>. Some complaints relate to placement in Old People's Homes and creches run by the municipal authorities or the Paris BAS. The same general pattern of complaints is found again here. There are relatively few complaints alleging procedural maladministration; rather the Mediateur is asked to review the discretionary decision not to award or to renew a welfare benefit or to provide access to a social service.

The Médiateur has investigated a few cases involving the public hospitals run by the Assistance Publique de Paris. They relate to the delays or difficulties experienced by patients in the repayment of hospital expenses. In France these costs are calculated on a daily basis and charged to the patient, who then claims the expenses back from the caisse d'assurance maladie (health insurance agency).

Complaints about local taxes made up 6.7 per cent of M. Junot's case load in his first two years in office. Here rather more grievances concerned maladministration on the part of the local tax authorities, for example complaints about errors in tax assessment and subsequent delays in obtaining the repayment of overpaid tax. Some complainants have asked the Médiateur to review the tax

authorities' refusal to allow them to stagger their payment of local taxes.

Rather like the Metropolitan Police in London, the Parisian police service lies outside the jurisdiction of the Mairie. This aspect of the ancien régime was left untouched by the 1977 reorganisation of government. The Prefect of Police continues to be appointed by and accountable to the Ministry of the Interior and is responsible not just for "law and order" but for public safety generally, including the fire service, traffic control, the supervision of immigrants and aliens, and environmental health services. The Préfecture of Police is consulted on the traffic and safety aspects of planning applications and is closely involved in municipal affairs. Because the Prefect is accountable to the Council of Paris sitting as a conseil general, the Médiateur does investigate complaints about the police service. Indeed, his Office receives full cooperation from the Préfecture. In fact complaints about the police constitute a small percentage of the Médiateur's case load (5.6 per cent in the period May 1977 to May 1979). It seems that some people complain to the Médiateur about the tickets they get for illegal parking but for the most part the complaints are concerned with the adequacy of measures taken to protect public safety, the administration of regulations involving immigrants and migrant workers and the enforcement of environmental health regulations. Although they are in principle open to investigation, no

complaints appear to be received about sensitive issues of police violence or denial of suspects' rights whilst in police custody. In one interesting case, however, touching upon the rights of an immigrant worker, the Médiateur was asked to investigate the Prefect of Police's refusal to renew a residence permit. The complainant changed her job and in accordance with regulations applied to the Préfecture of Police to have her changed work circumstances recorded on her residence permit. Instead, she was granted a three month temporary permit and because of delays in the Préfecture received notification of this only eight days before the permit was due to expire.

#### **ADMINISTRATIVE MALFUNCTIONING**

An analysis of the Paris Médiateur's findings in respect of administrative malfunctioning in the City of Paris indicates that he has not discovered much evidence either of illegal actions or decisions or, for that matter, procedural maladministration. In the former category, for example, he has had occasion to criticise the municipal administration for failing to apply the correct planning regulations in a case concerning a complaint about advertising hoardings but generally such cases do not figure prominently in his findings of administrative malfunctioning.



Errors and carelessness account for a good deal of such maladministration - for example, errors in the assessment of liability for local taxes have occurred because officials have got taxpayers' names muddled up. Other cases involve data-processing errors. An applicant for a housing allowance was mistaken for another with the same name and unable to obtain the allowance. In another case a vehicle which had broken down was impounded by mistake.

The Paris Médiateur has also castigated the municipal authorities for unjustifiable delays resulting in hardship. For example, the Médiateur found maladministration in a case involving an excessive delay on the part of a housing association in installing a heating system in a block of flats it managed on behalf of the municipality. The unjustifiable delays incurred by the municipal authorities in paying small business firms have already been mentioned. The Paris Médiateur has also found maladministration in the failure of officials to take action to remedy nuisances and excessive noise caused by public works, traffic and recreational facilities.

There appear to be relatively few findings of failure to consult or to provide adequate information or publicity to citizens. Nor does the Médiateur appear to have come across many instances of wrong or misleading advice. On the other hand, findings of lack of consultation or of failure of communication between different agencies

are fairly well documented. In a typical case, due to the failure of a housing association and the municipal housing department to exchange documents, a tenant who had been obliged to give up a HLM flat did not receive the compensation to which he was entitled.

The Médiateur does not seem to have discovered evidence of arbitrary or biased decisions, although he has on occasion criticised officials for excessive formality in the administrative process. For example, the Médiateur criticised a social insurance agency's decision not to reimburse to the complainant the costs of manufacturing and fitting an artificial limb because certain administrative formalities had not been complied with.

Criticisms such as this, of the over-rigid application of regulations to particular cases, reveal the real flavour of the institution: when he reviews administrative malfunctioning, the Paris Médiateur's essential concern is to review and wherever possible to remedy "bad" or "unreasonable" decisions or rules. In this regard, we may cite a case involving the Paris Bureau d'Aide Sociale (BAS). An aggrieved citizen complained that he was unable to recover certain residential costs incurred at the time his father moved in to an old people's home. His father died only a month after moving in but the BAS regulations in force required residential costs to be paid three months in advance and stated that these were not returnable in any circumstances. The BAS was unwilling to

pay back the residence costs for the two month period after the complainant's father had died. The Médiateur criticised the rule and in this case was able to effect a remedy, as the Director of BAS received authority from the Treasury to make an ex gratia payment in recognition of the fact that the rules had operated harshly.

The review of unfair or unreasonable decisions is, indeed, the Paris Médiateur's most distinctive and valuable contribution to municipal administration. This is evident in the manner in which the Médiateur reviewed a case involving a HLM tenant whose flat was badly damaged by fire. Contrary to his tenancy agreement, the occupier had not got the flat insured against fire damage. While the city authorities repaired the damage, the complainant and his wife were rehoused in another HLM flat. At the time they agreed to pay rent for the new flat and to bear the cost of the repair work. In the event they paid neither their rent nor the costs of the repair work. The City asked the Chief Regional Official of the Treasury to take legal action against them. Faced with the imminent prospect of the bailiffs moving in to evict them they took their case to the Médiateur. Reviewing the case, M. Junot found that the City's action was perfectly legal and had indeed been upheld by the courts. However, he argued that given the special circumstances of the case, the complainant being an invalid and his wife unemployed, the City authorities were acting unreasonably in evicting the couple.

For a British observer, the other distinctive feature of the Médiateur's style is his active political intervention to redress "wrongs" once he has reviewed a decision. He does not simply operate, like his counterparts in Britain, as an impartial and external critic of maladministration. As his title implies he is much more of a "mediator" or more accurately, given the connotations of that word, an "intercessor" taking up the cudgels where appropriate on behalf of the complainant and actively proposing a remedy that is fair and reasonable given the circumstances of the case. In the case just mentioned, for example, he intervened directly in the affair by contacting the Treasury official and getting him to postpone the eviction proceedings for two months whilst the case was reconsidered. He then arranged a meeting with the director of the agency concerned and together they reviewed the case. The final result was that the couple were required to pay the outstanding rent on an instalment basis while the City bore the costs of the repair work on the original property, the provisions of the Civil Code notwithstanding.

Similarly, in another case, an elderly and severely handicapped man, living with his wife in extremely unsatisfactory housing conditions, complained to the Médiateur about the delay in dealing with his application for a purpose-built HLM flat for handicapped people. M. Junot, accepting the case on the grounds of équité, took up the matter in the first instance with the director of the

appropriate housing association. He was told that no flat was available. M. Junot's response was to contact the maire adjoint responsible for housing, an action which amounts to direct political intervention. The maire adjoint himself took up the matter via the OHLM de Paris and a few months later suitable accommodation was found for the elderly couple.

A case involving complaints about noise levels at the Centre George-Pompidou provides perhaps a more genuine instance of "mediation". Individual residents and the local residents' association complained about the nuisance caused by the activities of a circus troupe and a group of "experimental musicians" who performed regularly in the public piazza. The M<sup>e</sup>diateur organised a meeting under his chairmanship which brought together representatives of the Centre Beaubourg management, the police, the residents' association, the circus and the group of musicians, together with individual complainants. The outcome was an agreement to provide more surveillance of the public piazza, and some months later the residents' association attested to the improvement in the situation.

All in all, compared with the rather formal and legalistic style imposed upon the Local Ombudsmen in Britain, the M<sup>e</sup>diateur for Paris comes over as a much more political animal, willing to drop the stance of neutral assessor of administrative malfunctioning to act as a

citizens' advocate, following this up if necessary by active mediation akin to the exercise of political influence.

#### **APPRAISAL**

What, then, can we say about the effectiveness of the institution? Certainly, there are many positive aspects. The local Paris Médiateur lays great emphasis on "personalising" the investigation of complaints. As a matter of priority, complainants receive a written acknowledgement of their complaint within twelve days. They may subsequently be asked to come to the Médiateur's office in the Hôtel de Ville to talk in person to the Médiateur or they may be asked to attend a "round table" session involving all the parties to the dispute.

The institution clearly meets a need. The number of unsolicited letters received by M. Junot from citizens expressing their gratitude that someone "really does care" about their problem testifies to the Médiateur's psychological impact in improving the relations between citizens and their municipal administration. Similarly, the Médiateur's role as a "Citizens Advice Bureau" is a very positive one. Even if M. Junot is not competent to investigate a complaint he can advise the aggrieved citizen of alternative remedies available to him, explain the legal provisions or regulations which are the source of the trouble or simply provide information about benefits, grants

and entitlements which citizens frequently do not know about. The fact that aggrieved citizens have direct access to the Paris Médiateur is clearly very significant and is reflected in the number of complaints received.

On the face of it, the speed with which complaints are processed, and the high rate of success achieved in obtaining a remedy (55 per cent of complaints are dealt with within three months and 90 per cent disposed of within a year) also bears witness to the effectiveness of the institution. According to figures made available in the Paris Médiateur's published review of his first two years' activity<sup>16</sup> the municipal authorities are exonerated from allegations of administrative malfunctioning in three cases out of ten (28 per cent). In one of three cases (35 per cent) investigated by the Médiateur administrative malfunctioning is found and the complainant "obtains satisfaction". In one of four cases (23 per cent) disputes terminate in a compromise solution. This means, in effect, that though the Médiateur finds that the municipal authorities have acted in a legally or procedurally correct manner, they had modified their original position in favour of the complainant, on grounds of *équité*. It seems reasonable, therefore, to conclude that the Paris municipal Médiateur's success rate is somewhat inflated owing to the liberal practice he has adopted in respect of accepting complaints for investigation.

In any case, these figures need to be interpreted with some care. Included within the "successes" are cases in which the Paris Médiateur has merely succeeded in getting the municipal authorities to take positive action to deal with an application or a dispute that has been held up for an unreasonable length of time. This in no way indicates that he has actually been successful in resolving the initial dispute in favour of the citizen. The number of genuinely successful interventions where the Médiateur has obtained a financial or other remedy for the aggrieved citizen may be assumed to represent a considerably smaller proportion of the global figure. Significantly, too, one in seven (14 per cent) of all complaints are abandoned by their authors. Given the speed with which the average complaint is investigated, and the relatively small number of investigating staff in the Médiateur's office in the context of the large case load, it seems reasonable to suggest that in many of the cases in which a remedy is obtained, the municipal authorities recognise that they are at fault - cases involving administrative errors or oversights, for instance. In more problematic cases, where the médiateur finds that the correct application of legislative provisions or regulations has led to injustice, his staff require a good deal more time if they are to investigate and mediate successfully with the appropriate agency. Clearly, the Office does not have the organisational capacity to take up very many of these cases.



The Médiateur's ability to obtain redress for citizens involved in disputes with other agencies outside the Mairie must also be counted as a positive factor, though again, dependent as such interventions are on the good will of the agencies involved, it must be concluded that successful intervention in such cases indicates that a particularly unjust course of action has been taken or that there is prima facie evidence of error or delay or some other type of maladministration.

Nevertheless, it is a testimony to the weight of the Office and to the personal authority of the Médiateur that he has been able to intervene successfully on so many occasions. In one case, for example, involving the RATP and SNCF, M. Junot was able to redress the situation of pensioners who, as a result of a recent increase in their pensions which made them liable for tax, had found themselves deprived of their free travel passes. The Paris Médiateur has on many occasions interceded with the telecommunications services of the Department of Posts and Telecommunications so as to obtain priority treatment for people who have complained to him about delays in the installation of telephones. As indicated above, he has also been instrumental in redressing errors in customers' gas and electricity bills and in reducing the delays experienced by members of the public in obtaining social insurance or unemployment benefits.

It is clear that the Paris Médiateur's activity does not encroach in any significant way upon the courts. Citizens do not in the main ask him to review the legality of administrative acts or decisions. We may conclude that, despite falling within the scope of his jurisdiction, the Médiateur's control of the legality of the administrative acts of the Mairie is negligible. Essentially, the Médiateur's sphere of activity begins where that of the administrative judge leaves off - the review of the fairness, not the legality of decisions and procedures. As we have seen in the case involving the couple whose flat was badly damaged by fire, the Médiateur has in practice recommended on the grounds of equity that the municipal authorities not proceed with the execution of a judicial decision which upheld their intended course of action.

It is difficult to evaluate the impact of the local Médiateur as a mechanism for controlling administrative malfunctioning. There is impressionistic evidence to suggest that the Médiateur's activity has been of positive value to elected councillors, who either make inquiries themselves or are kept informed by the Médiateur of the progress of cases involving their arrondissements, so enabling them to take up the issues raised with maires adjoints or senior officials. In this way, councillors tend to be much better informed than they would otherwise be of the sorts of problems that their constituents encounter in their dealings with the municipal administration. It does

not appear that councillors fear the M<sup>e</sup>diateur as a rival who has usurped their role as natural "mediateurs" for their constituents. Occasionally the M<sup>e</sup>diateur has been questioned by councillors during Council debates about his findings in a particular case, but there seems little evidence that the M<sup>e</sup>diateur's investigations have given rise to subsequent political activity on the part of councillors and it seems fair to conclude that the institution has, to date, had no great impact on Parisian politics.

Is the municipal Mediateur genuinely independent? The lack of distance between M. Junot and the administration he "controls" is, on the face of it, a serious defect in the scheme. And it is legitimate to ask whether the fact that the holder of the Office is an elected party politician with a seat on the Council does not impart a partisan flavour to the institution. Yet it is difficult to envisage any more suitable arrangements. An "external" M<sup>e</sup>diateur, appointed by the central government, would arguably be seen by both municipal officials and the Paris public as an attempt to strengthen central control over the municipality. Given the tradition of the "strong Mayor" in local government in France, it seems clear that to locate the institution within the municipal political executive, to which the municipal bureaucracy is accountable, is itself the best guarantee of the M<sup>e</sup>diateur's independence. His identification in the public's mind with the Office of Mayor imparts added legitimacy. It seems that M. Junot has unrestricted access

to all files and records and complete freedom to question whichever municipal officials he chooses. The Office does not form part of the executive apparatus of government and in practice it seems that councillors, officials and the public have no difficulty in identifying the Paris Médiateur as a "non-political" critic of the municipal administration.

The ombudsman's traditional weapon, publicity, has been relatively little used to date. Now that the institution is established, it seems likely that a more positive effort will be made to publicise the Office and its work on a systematic basis through the publication of Annual Reports and media exposure. But essentially, the Paris Médiateur works behind the scenes and does not publicly criticise the municipal administration. There is no public disclosure, in the form of publication of results reports or press releases, of the findings of administration malfunctioning in individual cases. No doubt there are good reasons why the Médiateur has eschewed publicity - it may be surmised that he has sufficient powers already and does not wish to jeopardise the effectiveness of the institution which is based largely on the good will of municipal officials - but the Mediateur has done little to make the municipal administration more visible or open to the administres.

The national Médiateur, of course, receives complaints from Parisians, via deputies and senators, including ones about the municipal administration. In 1974

he received 274 complaints from Paris residents. After falling in 1975 and 1976 to 208 and 262 respectively, the number of complaints increased in 1977, the year in which the Paris "local" Médiateur assumed office, to 313. Complaints rose again to 352 in 1978 and 390 in 1979, in line with the general increase in the volume of complaints received by the national Office. Although these figures are surprisingly low - they may, perhaps, illustrate the deterrent effect of an indirect mode of access - clearly the introduction of a local Médiateur has had no visible impact on the national Médiateur's case load from Paris residents. M. Junot is a personal friend of M. Paquet, who came to the end of his term of office in June 1980 and he told me that there was in fact a certain "collaboration" between the two médiateurs although this does not appear to be on a systematic basis, and it is not altogether clear in which circumstances M. Junot prefers to investigate a case himself rather than to recommend to the complainant that he approach his deputy or senator with a view to submitting the complaint to the national Médiateur.

The national Médiateur does, however, provide a useful reference point in one important and instructive respect. The national Médiateur's annual reports reveal that in certain fields of public policy he has not discovered much maladministration<sup>17</sup>. This is true for instance of the social insurance agencies, where it appears that laws and regulations are being correctly applied for

the most part<sup>18</sup>. From the early days of the institution, the national Médiateur has recognised that many complaints about administrative decisions are really directed at "bad" or "unfair" or "rigid" laws and regulations which officials are obliged to implement. As a consequence the "reformist" side of his activity has become increasingly prominent and since the amending legislation of 1976 the national Médiateur has statutory authority not only to recommend an equitable solution to an individual dispute, but the power to propose modifications to laws and regulations.

There are inherent limitations in adopting a strategy of reviewing discretionary administrative decisions which adversely affect an individual, on the grounds of equity or fairness. Results are likely to depend far more on the personal authority of the office-holder than if the objective facts of maladministration are allowed to speak for themselves. In essence, every case is one of special pleading. Not only is this a subjective enterprise; it leads to uncertainty in the minds of officials who are obliged at one and the same time to implement the law and anticipate censure from a Mediateur-figure whenever this leads to inequitable consequences. Moreover, this strategy can produce arbitrary results, in that it leads to inequality of treatment between individual citizens. It is, of course, to prevent this that we have laws in the first place. Nor is the strategy effective where administrators have no scope for the exercise of discretionary powers. As

M. Junot puts it<sup>19</sup> "compromise is only possible if the Administration disposes of an element of discretion in the dispute in question; this is not the case when there exist legal rules which have to be strictly and rigidly enforced".

The effectiveness of the local Paris Médiateur as a citizen's advocate is, of course, vitiated to the extent that municipal administrators are obliged to operate policies in ways prescribed for them by the provision of legislative Codes, as supplemented by detailed government regulations and ministerial circulars. In this way the managerial autonomy of housing and planning officials, hospital administrators, social welfare staff, public health officers and other categories of municipal employees is tightly circumscribed.

An alternative strategy is to modify the laws and regulations which are themselves the cause of injustice and hardship. The national Médiateur, who adopted such a strategy from the beginning, proceeds on both fronts: where the application of a law or regulation has particularly unjust consequences he recommends that the decision-maker derogate from the regulations or legislative provisions in force; where he receives many complaints that a law or regulation is itself unjust he proposes a reform to eliminate the injustice at its source. Clearly, the Paris Médiateur's scope for reformist activity is limited to the municipal level. Despite prefectoral and ministerial tutelle, the municipal government disposes of a large

measure of operational autonomy in the way it runs the City. For example, as well as administering the statutory social aid system, the City of Paris, as indicated earlier, can develop its own social welfare policies. Consequently, it is free to manage a whole range of discretionary welfare benefits and services such as day nurseries, pre- and post-natal clinics, old people's homes and so on.

Given this situation, we might have expected the local Paris Médiateur to have floated certain reform proposals in respect of departmental procedures and regulations in force within the Hôtel de Ville. Yet it does not appear that he has extended his political action beyond mediating in individual cases. M. Junot sees the Office's main function as the redress of individual grievances, not the promotion of administrative reforms. Yet paradoxically he has adopted a reformist strategy designed to influence central government to change unjust laws and regulations. This is well illustrated by a case which also indicates the structural limitations of the Office, involving three blocks of flats which were constructed in 1976 following a grant of planning permission by the Prefect of Paris. A local residents' association appealed against the Prefect's decision on the ground that the flats were not constructed in conformity with the POS (plan d'occupation du sol, i.e. development control plan). They won their case in the Paris administrative court. By this time the flats had already been built and sold and some of the new owners had moved



in. (An application for judicial review does not formally suspend the administrative act which is being challenged). The Paris Médiateur was asked to pursue the case and he was able to persuade the Prefecture and the Environment Ministry that the best solution to the problem would be to regularise the situation by modifying the POS. The modification to the POS was duly approved by the Paris Council and planning permission regranted. But this new grant of planning permission, and the modification made to the POS, were again successfully appealed in the courts.

In his efforts to secure an equitable solution to this particularly difficult case, the Paris Médiateur concluded, significantly, that changes in national legislation were required. Equally significantly the Mayor of Paris, reinforcing the action of the municipal Médiateur, addressed a reform proposal to the Minister of the Environment urging a modification to the Town Planning Code.

What then are the wider lessons that can be drawn from this new institutional experiment in Paris government? First, that when a local "ombudsman"-style institution is set up in a large urban authority, with direct access and personalised and speedy working procedures, people do make use of it as a grievance mechanism. It seems clear that other large municipal authorities in France could adopt a similar scheme with profit. It is less clear that the institution could be successfully transplanted to smaller communes, where there is no tradition of "local"

government. Any extension of the national scheme, now seemingly over-loaded, to the level of the département, along the lines of an external review as in Britain, might have its attractions for the Government in reinforcing the system of Prefectoral tutelle, but this would be a different type of institution altogether. Secondly, the Paris experience suggests that local ombudsmen in France are likely to adopt a different working style from their counterparts in Britain. It seems that if local Médiateurs are to make an impact in an administrative environment based on a well developed system of administrative law, then they need to concern themselves with the fairness of administrative acts rather than their legality, and adopt a more positive role in the redress of grievances. Thirdly, municipal Médiateurs are likely to become fairly quickly aware of the structural limitations of their Office. Many administrative functions are shared between municipal authorities and central government, and it is not clear that a municipal Médiateur would be able to investigate disputes involving both levels of government. Again, where unfairness and injustice result less from maladministration than from the very laws and regulations that municipal administrators are obliged to implement, remedy for grievances is predicated upon reformist activity which is the preserve of central government. No one should be surprised if local Médiateurs come to act as catalysts for

the strengthening of local democracy. Indeed, we may speculate that this is likely to be one of the most compelling motives for their creation.

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The sole responsibility for all statements of fact and interpretation remains the author's.

## NOTES AND REFERENCES

This article was written before the Socialist Government took office in June 1981.

1. For sympathetic accounts of French administrative law by British observers see C.J. Hamson, 'Executive Discretion and Judicial Control', London 1954 and, more recently, L.N. Brown and J.F. Garner, 'French Administrative Law' 2nd ed., London 1973. For a more critical view see C. Harlow, "Administrative Reaction to Judicial Review" in Public Law, Summer 1976, pp. 116-133 and "Remedies in French Administrative Law" in Public Law, Autumn 1977, pp. 227-248. See also the articles by P. Weil, "The Strengths and Weaknesses of French Administrative Law" in Cambridge Law Journal, Vol. 24 Part 2, November 1965, pp. 242-259 and L.N. Brown and P. Lavirotte, "The Mediator: a French Ombudsman" in Law Quarterly Review, Vol. 90, April 1974, pp. 211-238.
2. N. Questiaux, "How administrative courts meet the need" in D.C. Rowat (Ed), 'The Ombudsman' 2nd ed, London 1965 p. 218.
3. Documents: Assemble nationale (Quatrieme Legislature) Nos 1472 and 2715.
4. Debats: Assemblee nationale (2<sup>e</sup> Seance du decembre 1972); Senat (Seance du 19 decembre 1972).
5. Report in The Times, August 2 1980.
6. Report in The Times, July 7, 1980.
7. Le Médiateur: bilan de deux annees d'activite 1977-1979, City of Paris May 1979, p. 5.
8. Note that M. Junot has remained an active politician. The argument is advanced later that this increases rather than detracts from his authority as Mediateur.
9. 'Le Médiateur' op. cit. p. 8.
10. Ibid p. 12.
11. Part III, Section 26 of the Local Government Act, 1974.
12. It is interesting to compare M. Junot's working definition of "administrative malfunctioning" with the way in which the Parliament and Local Commissioners in Britain have refined the notion of "maladministration". For a discussion of the approach

12. (cont.) adopted by successive Parliamentary Commissioners to the "bad decision" and "bad rule" see Geoffrey Marshall's article, "Maladministration" in Public Law, Spring 1973 pp. 32-44 and his chapter on "Parliament and the Redress of Grievances: the Parliamentary Commissioners in the 1970s" in S.A. Walkland and M. Ryle (Eds), The Commons in the Seventies, London 1977. See also R. Gregory and P. Hutchesson, The Parliamentary Ombudsman, London 1975, Ch. 8 and F. Stacey, Ombudsmen Compared, Oxford 1978, Ch. VII. For a discussion of the Local Commissioners' more cautious approach to "maladministration" see N. Lewis and B. Gatheshill, The Commission for Local Administration, London 1978 pp. 17-29 and F. Stacey op. cit. Ch. IX especially pp. 206-208.
13. Le Médiateur, op. cit. p. 9.
14. See F. Stacey, op. cit. Ch. IX and C.M. Chinkin and R.J. Bailey, "The Local Ombudsman", in Public Administration, Autumn 1976, pp. 267-281.
15. For details see Chapter 4, France in B. Rodgers et al, The Study of Social Policy, London 1979 especially p. 106 and C. Stevens, Public Assistance in France, London 1973.
16. Le Médiateur, op. cit. p. 12.
17. This contrasts with the British experience, where the Parliamentary and Local Commissioners report findings of maladministration in over half of the cases which they accept for investigation. See the Annual Reports of the Parliamentary Commissioner for 1978, p. 2 and 1979, p. 41, and the Report of the Commission for Local Administration in England for the year ended 31 March, 1980, p. 9.
18. This does not necessarily indicate that public administration is of higher quality in France than in Britain. Rather it seems that over a range of policy areas, public officials in France have only very narrow grounds for exercising discretionary powers. For the view that the administration of social insurance and social security policies consists essentially of the routine application to individual cases of complex regulations which are binding as to details of execution, see J. Dutheil de la Rochere, "Social Security Law in France" in M. Partington and J. Jowell (Eds), Welfare Law and Policy, London 1979, pp. 154-159.
19. 'Le Médiateur', op. cit. p. 12.

### POSTSCRIPT

Michel Junot was returned as a member for the 16<sup>e</sup> arrondissement in the March 1983 municipal elections, and subsequently re-appointed, for a six year term, as Médiateur for the City of Paris.

Contrary to the view expressed in some quarters at the time of the institution's creation, that it was likely to be valued less for itself than as a source of political capital for the new mayor, the most recently published statistical indicators of the institution's performance - made available to journalists in January 1983 as part of a much broader review of the Chirac administration's record in Paris since 1977 - confirm that the "local Ombudsman" is now an established part of the machinery of municipal government in Paris. The Office has continued to receive some 1,000 complaints a year; the nature of the caseload and the institution's record, as measured in terms of M. Junot's ability to secure redress for citizens in dispute with Paris-based administrative bodies, shows a striking consistency with earlier years. M. Junot still deals personally with nearly all the complaints received and there has been little need for change in the internal organisation of the Office, save for the recent appointment of M. Oliver Passelecq, an academic from the prestigious "Institut d'Etudes Politiques", as "charge de mission" with special responsibility for advising the Médiateur on the legal aspects of individual cases.

Two points, perhaps, are worthy of special note. First, the large number of complaints that the Office continues to receive which do not directly implicate the Paris municipal administration has acted as a significant constraint in respect of one particular aspect of the institution's functioning: publicity for the activities of the local Ombudsman. M. Junot informed the author, in an interview in May 1983, that he had felt obliged as a consequence to adopt a more cautious policy regarding publicity for the institution than he would have wished. Secondly, and this is a trend that the Socialist government's 1982 legislation on the rights and liberties of the communes, departements and regions and, more narrowly, the administrative organisation of Paris, Marseille and Lyon is bound to accentuate (in so far as it abolishes administrative and financial tutelle and transfers decision-making powers, budgetary resources and administrative personnel from central to local government), the local Ombudsman has begun to develop the "reformist" side of his activity, along the lines of his national counterpart. Thus, M. Junot told me that he had recently issued a formal proposal to relax the rules in force within the municipality governing the change of use of buildings, having found in a number of cases that existing procedures were unnecessarily complex and had occasioned undue delay in the implementation of policy. At the time of writing these procedures were under review by a specially commissioned municipal working group.

Overall, then, the verdict on the first six years of the French version of the local Ombudsman is a positive one. The Paris experience shows that an Ombudsman-style institution can be adapted without undue difficulty to a system of municipal government in which the control of administrative action has by tradition been the more or less exclusive preserve of the "juge administratif", and without detriment to those features of the Ombudsman scheme that make it universally attractive: its simplicity, its appropriateness as a device for handling the growing volume of non-justiciable complaints about the small change of administrative blunders and oversights, and its potential contribution to improving the general quality of public administration.

These remarks notwithstanding, the new 1982-style "statut de Paris" and the circumstances surrounding its introduction serve to underline the inherent limitations of an institution that operates, and was designed to operate, on the basis of a political mode of redress for the citizen aggrieved by administrative action - political both as regards its day-to-day activity as an influential intercessor and in the more general sense that the institution cannot be divorced from Jacques Chirac's distinctive political and managerial style as Mayor of Paris. The Socialist government's original proposal, which was to apply to Paris only, would have involved the creation of strong district councils in each arrondissement, leaving



Chirac in a position roughly analogous to the leader of the Greater London Council in Britain. The proposal was widely seen by public opinion and by the press as a politically motivated attack on Chirac and as an attempt to reduce his hold over the capital, and was strenuously resisted by Chirac himself. The Government climbed down and, as enacted, the legislation provides for a measure of decentralisation in Paris in the form of a new tier of elected "conseils d'arrondissements", each headed by a "maire d'arrondissement", to take over some of the functions of the city council in respect of housing and local social services, and with the right to be consulted on local planning decisions. The Paris measure, which incorporates new electoral arrangements based on proportional representation with separate party lists in each district, was calculated to accentuate the element of partisanship in the city's government, though in the event the Chirac list won an absolute majority in the March 1983 elections and his party now controls not only the city council but every "conseil d'arrondissement".

Nevertheless, the new arrangements for governing Paris are likely to exacerbate the element of delay and muddle in the administrative process; and, crucially, they create the potential for partisan conflict between councils pursuing different policies. They thus place the Paris Ombudsman, given the open-ended nature of his powers to review the fairness of decisions made by municipal

administrators in individual cases on the basis of overtly "political" (ie. policy) considerations, and the intensity of the partisan divisions that characterise French politics, in something of a dilemma. If, in the long run, the Paris Ombudsman is to survive an eventual transfer of power to a left-dominated municipal executive, then it would seem that M. Junot cannot afford to compromise the institution's reputation for integrity and impartiality by allowing it to be drawn into disputes arising out of the administrative implementation of politically contentious policies that range city against district.

Certainly, for the medium term, the auguries look distinctly favourable for the fledgling institution.

DAVID CLARK

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