

FEATURES OF LEGAL STATUS OF THE OMBUDSMAN IN FOREIGN COUNTRIES

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Currently in each state there are various human rights mechanisms both on national and international levels, including specialized bodies. One of them is the Commissioner for Human Rights. This article examines the specific features of the legal regulation of ombudsman activities in foreign countries.

The institute of the Commissioner for Human Rights was first introduced in Sweden in 1809. It was intended for a fight against agitations and disturbances from the side of state power. In Swedish the concept "ombudsman" meant "force and authority". The duty of that person was to monitor the state's compliance with laws and statutes, civil servants performed their duties faithfully and conscientiously. Since the XX century, these bodies have been established in different countries and included in legal control. The Ombudsman began to act as an intermediary between the state and the citizen in the process of resolving the conflict or a consultant of state bodies and citizens for ensuring more fair and humane relationship between the parties. The institute of the Commissioner for Human Rights as the guarantor of the state protection of the rights and freedoms of citizens, their observance and respect by public authorities has begun to hold a specific place in the system of public authorities. It began to be treated as a separate state body – link of state machine, participating in realization of certain functions of the state.

Currently specialized human rights institutions are already established in various countries. This body is the institute of the Commissioner for Human Rights (ombudsman). This institute is considered as additional or supportive application of legal protection in the system of other state bodies [1]. In spite of the fact that national peculiarities of the certain countries, their legal systems involve variety of forms of this institute, it has one task - to promote the establishment of justice, humanity in the actions of state structures. Wide distribution of institute of ombudsman in different countries was conditioned by a desire to resist to continuous expansion of executive function of the state, strengthening of positions of administrative facilities.

The formation of institute of the Commissioner for Human Rights in various countries has the features. For example, till 1919 in Finland there was a chancellor of justice, he was appointed the governor general for control of activity of the government and administration in the prosecutor's rank. The constitution of 1919 approved the creation of an ombudsman of justice, acting in parallel and independently of the Chancellor of Justice. In 1933 the positions of an ombudsman were strengthened in a constitutional order and in the legal context of the country, since that time in the country there have been both controlling institutes.

Norway was the first to introduce a military ombudsman, the law about which was adopted by the Storting in 1952. In 1962 the civil ombudsman of justice appeared in this country followed by the ombudsman of consumers.

New Zealand was the first from the English-language countries, applying the institute of ombudsman. The history of its creation begins with a seminar of the UN in Ceylon in 1959 where there were an Attorney-General of New Zealand and future Minister of Justice who initiated the adoption of the law on the Parliamentary Commissioner for Administration in 1962. In 1976 a new law about ombudsman has appeared.

The idea of a federal ombudsman in the USA has been rejected, but it appeared in a number of American states: Hawaii (1967), Nebraska (1969), Iowa (1972), New Jersey (1974) and Alaska (1975). There was a number of pseudoombudsmen appointed by governors. The ombudsman also appeared in a number of cities: Dayton (Ohio), Erie (Pennsylvania), Jamestown (New York), San Jose (California), etc. [2, p. 188]

Currently, there are more than thirty countries in which this institution operates. In connection with the growing penetration of the state in the social spheres of society, the growth of the administrative facilities, this institution began to maintain a balance of interests of the state and the civil society. [3]

In some countries along with national ombudsmen there are regional and local Commissioners for Human Rights. For example, in Austria there are regional ombudsmen in Tyrol and Vorarlberg; in Denmark there is a separate ombudsman of Greenland, all main cities of Denmark have municipal ombudsmen. In other countries, for example, in Italy, the institute of the Civil defender exists only at the regional level.

It is possible to note a variety of names under which ombudsmen and their services carry out their activities in different countries. In Scandinavian countries the name of the ombudsman of justice is used, in the

English-speaking countries it's the parliamentary representative (The parliamentary representative for affairs of administration - Great Britain, Northern Ireland, Sri Lanka) [2, p. 181], the Parliamentary representative for investigations (New Zealand), just parliamentary authorized (ombudsman) is the term used in the English-speaking provinces of Canada. In three countries the term "representative" without the word "parliamentary" is applied: representative for complaints (Israel), representative for the rights of citizens (Poland), Commissioner for Human Rights (Russia). The terms "intermediary", "mediator" (France), "a trialman (guarantor) of justice" (Portugal), "the assistant to citizens" (the State of Iowa, the USA) are used. In the name of this institute the term "defender" underlining its orientation on protection of the rights of citizens is applied: defender of citizens (Province of Quebec, Canada), national defender (ombudsman) (Spain), public defender (State of Nebraska, USA), civil defender (Italian provinces). Sometimes the function of the institute of ombudsman is performed by a collective body: board of national legal assistance (Austria), commission on investigations of abuses of administration (Nepal), parliamentary Commission on Human Rights (Latvia) [2].

Legal status of the ombudsman in various countries is regulated by laws. However each state has features of his fixing. In some countries basic provisions about legal status of the ombudsman are enshrined in the Constitution (the constitution of Sweden 1809, the Temporary constitution of Sudan 2005, the constitution of the Republic of Angola 2010), and in others – in the separate regulatory legal act without fixing of basic provisions in the constitution (The Russian Federation - the Federal constitutional law "About the Commissioner for Human Rights in the Russian Federation", the Republic Azerbaijan – the Constitutional law of the Azerbaijan Republic On the Commissioner for Human Rights (ombudsmen) of the Azerbaijan Republic, Ukraine – the law of Ukraine On the Representative of the Verkhovna Rada of Ukraine for human rights).

An important element of the right status of the ombudsman are the powers fixed by norms. The analysis of Laws on the Representative of the Russian Federation, the Azerbaijan Republic and Ukraine, allows drawing the conclusion that the competence and duties of the human rights activist is almost identical in all specified countries.

The following fundamental obligations of the ombudsman are enshrined in laws of each country in which the institute of the Commissioner for Human Rights functions:

- observance of the Constitution of the country, its laws, rights and legitimate interests of citizens;
 - ensuring performance of the functions assigned to it and the use of the rights granted to it fully;
 - storage of information of citizens;
 - the direction of the annual report on the activities for questions of respect for the rights and freedoms of citizens in Parliament [4].
- Also the following powers of the ombudsman which in turn are his rights are fixed:
- the right to appeal to competent public authorities or officials behind assistance in implementation by the Representative of the activity;
 - the right for free visit of all public authorities, local authorities and self-government, the enterprises and institutions and also presence at meetings of their collegial bodies;
 - the right to request and receive the documents and materials necessary for consideration of the complaint from public authorities, local governments and officials;
 - the right to conduct independently or together with competent public authorities, officials and public servants check of activity of public authorities, local governments and officials;
 - the right to charge to competent public institutions carrying out expert researches and preparation of the conclusions on the questions which are subject to examination during consideration of the complaint;
 - the right to get acquainted with criminal, civil cases and cases of administrative offenses, decisions (sentences) on which have taken legal effect and also with affairs and materials on which it initiation of legal proceedings is refused;
 - the right to refuse witness statement on a civil or administrative case, case of administrative offense or criminal case about the circumstances which became known to it in connection with the execution of its duties;
 - the right to send the remarks and offers relating to ensuring the rights and freedoms of citizens, improvement of administrative procedures to state bodies, local governments and officials;
 - the right to address legal entities of a legislative initiative with offers on change and on addition of the legislation concerning the rights of citizens.

However you shouldn't forget that the institute of the Commissioner for Human Rights functions not only by the general rules which are provided by each country, but also according to features of the state. For

example, the analysis of norms of foreign countries demonstrates that after election of the Commissioner for Human Rights, the procedure of bringing of the oath is fixed in most of them. In some countries incorrect bringing of the oath is the reason for discharging of the person. For example, the Verkhovna Rada of Ukraine makes the decision on dismissal of the Commissioner for Human Rights before the expiration to which he has been elected, in case of violation of an order of bringing of the oath [5]. In other states the consequences of the incorrect oath bringing can not be specified at all. It is possible to concern also the terms of office of ombudsmen: in some countries the term of office of the ombudsman coincides with the term of office of the President (Ukraine), in others it is much longer (Azerbaijan), and in thirds it is shorter (Russia). In foreign countries various approaches to the formation of the institute of the ombudsman are provided. In Ukraine the ombudsman is appointed by Parliament. In the Russian Federation the President has the right for promotion of candidates for a position of the ombudsman, and the right for their subsequent appointment belongs to Parliament. In the provinces of Canada defenders of the rights and freedoms of citizens are appointed by National Assemblies (representative bodies).

Thus, the carried-out analysis of legal status of the ombudsman allows to draw a conclusion that their legal status is very similar as they all perform the same function, the main of which is the protection of human rights. However, according to features of each state, various appointment procedures of the representative, the requirement to the candidate for this position are fixed, the specifics of distribution of powers of the ombudsman on territories of the country and many other aspects are provided.

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