

ON IMPROVING THE PROCEDURE FOR INTERACTION OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS IN THE RUSSIAN FEDERATION AND PUBLIC AUTHORITIES

Mikhail Yu. Dityatkovsky^{1,2}, Anna M. Belyatskaya³

¹ *Kutafin Moscow State Law University (MSAL), Moscow, Russia*

² *Dostoevsky Omsk State University, Omsk, Russia*

³ *The State Institute of Economics, Finance, Law, and Technology, Gatchina, Russia*

Article info

Received –

2023 December 14

Accepted –

2024 June 20

Available online –

2024 September 20

Keywords

The High Commissioner for Human Rights in the Russian Federation, ombudsman, human rights and freedoms, human rights activities, legal status, competence, public authorities, officials

An analysis of the experience of ombudsmen in foreign countries will identify the most effective methods and approaches in protecting the rights and freedoms of citizens, as well as the problems and difficulties faced by these institutions. It is important to note that the functions and powers of an ombudsman may vary significantly from country to country. The work provides an analysis of Russian legislation regulating the constitutional and legal status of The High Commissioner for Human Rights in the Russian Federation, and taking into account the experience of normative regulation of the constitutional and legal status of the Ombudsman abroad, the authors put forward proposals for improving the procedure for interaction between The High Commissioner for Human Rights in the Russian Federation and public authorities. The study and analysis of foreign experience will make it possible to develop recommendations for improving the work of The High Commissioner for Human Rights in the Russian Federation and take into account international standards in the field of protection of human rights and freedoms.

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We will consider these issues using general scientific methods, such as analysis, synthesis, deduction, induction, analogy, comparison, abstraction. In addition, the scientific article used specific historical, systemic-structural, functional, comparative legal, formal legal research methods, predetermined by the characteristics of the object and subject of scientific research, its purpose and objectives.

Until now, not enough attention has been paid to analyzing the possibility of giving a mandatory character to the institution of The High Commissioner for Human Rights in the Russian Federation. This means that its decisions and recommendations must be binding on other government bodies. This, in turn, can significantly increase the efficiency of this institution and improve the situation with the protection of human rights in the Russian Federation.

I. Introduction

The study of the experiences of ombudsmen in foreign countries will help identify the most effective methods and approaches in protecting the rights and freedoms of citizens, as well as the problems and challenges faced by these institutions. Despite the established form "ombudsman" in modern Russian, the authors adhere to the spelling "ombudsperson" as it more accurately conveys the original Swedish term. It is important to note that the functions and powers of an ombudsman can vary significantly between countries. Depending on the specific model, an ombudsman may be independent of government bodies or be part of the executive or legislative branches of power. The experience of foreign countries shows that for the successful work of an ombudsman, the following conditions are necessary:- Sufficient authority to conduct investigations and take enforcement actions;

- Availability of adequate resources to fulfill their functions;

- The ability for citizens to address complaints and appeals to the ombudsman;

- Openness and transparency in the activities of the ombudsman.

Studying and analyzing foreign experience will allow for the development of recommendations for improving the work of the Commissioner for Human Rights in the Russian Federation, taking into account international standards in the field of human rights protection.

This paper provides an analysis of Russian legislation regulating the constitutional-legal status of the Commissioner for Human Rights in the Russian Federation. Considering the experience of normative regulation of the constitutional-legal status of ombudsmen abroad, the authors propose suggestions for improving the interaction procedures between the Commissioner for Human Rights in the Russian Federation and public authorities.

We will examine these issues using general scientific methods such as analysis, synthesis, deduction, induction, analogy, comparison, and abstraction. In addition, specific

historical, system-structural, functional, comparative-legal, and formal-legal research methods were used in this scientific article, predetermined by the characteristics of the object and subject of scientific research, its purpose, and objectives.

In domestic literature, notable works include those by A.N. Sokolov [1], A.Yu. Sungurov [2], N.Yu. Khamaneva [3], N.Yu. Zavorotnyuk [4], S.A. Knyazkin [5], and others, which address issues related to the functioning of the ombudsman institution in Russia.

In foreign literature, significant research in this area includes works by Andre Legrand [6], E. Blankenburg [7], and other scholars.

Additionally, studies dedicated to comparative analyses of the functioning of ombudsman institutions in different countries are of great interest. For instance, M.T. Timofeev's work [8] analyzes the ombudsman institution in Great Britain, while Yu.G. Spichak's research [9] examines the experience of this institution in Eastern European countries.

Thus, while the issue of the functioning of ombudsman institutions is well-represented in scientific literature, questions related to their effectiveness, specific activities in different countries, and possibilities for their application in modernizing legal systems remain insufficiently explored.

Analyzing the activities of the Commissioner for Human Rights in the Russian Federation is an important task since this institution plays a key role in protecting citizens' rights and freedoms. A.A. Begaeva has extensively studied the structure and functions of the Commissioner for Human Rights in the Russian Federation and their interaction with other state bodies [10]. A.P. Evdoshenko focused on analyzing the legal status of the Commissioner for Human Rights in Russia [11], while N.V. Korneeva examined their role within the system of state authorities [12]. A.Yu. Semenova researched issues related to the accountability of the Commissioner for Human Rights in Russia [13], and I.P. Smirnov addressed problems concerning their effectiveness [14]. D.E. Feoktistov [15] and O.A.

Sheenkov [16] considered issues related to overseeing the activities of the Commissioner for Human Rights in Russia.

However, despite all these studies, insufficient attention has been paid to the analysis of the possibility of granting the institution of the Commissioner for Human Rights in the Russian Federation an imperative character. This means that its decisions and recommendations should be mandatory for execution by other state bodies. This, in turn, could significantly enhance the effectiveness of this institution and improve the situation regarding the protection of human rights in the Russian Federation.

II. Features of the Interaction between the Ombudsman Institution in Foreign Countries and Public Authorities and Their Officials

Today, the institution of the ombudsman exists in several dozen countries. For instance, it is present in European countries such as Austria, Belgium, Germany, Cyprus, the Netherlands, Poland, Portugal, France, Sweden, and others. The ombudsman institution has been established in 12 post-Soviet states: Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Uzbekistan, Ukraine, and Estonia. The ombudsman institution also exists in unrecognized states like Abkhazia, South Ossetia, and the Pridnestrovian Moldavian Republic. This institution is also present in some Latin American countries such as Argentina, Venezuela, Mexico, and others. Regarding Asia, the ombudsman institution is not particularly widespread; among the countries that have this institution are India and Korea. The same applies to African countries; this institution is not particularly popular but exists in Malawi, Morocco, Nigeria, and Rwanda. Canada and the USA are among the countries where the position of the ombudsman is established at the level of individual provinces and states.

Analyzing the legislation of foreign countries reveals that the ombudsman institution is enshrined in the constitutions of almost all these states, with special laws adopted to define its legal status.

The ombudsman institution has received legislative and public recognition in states with various forms of governance—constitutional

monarchies, presidential, parliamentary, and mixed republics. The ombudsman institution successfully operates in states belonging to different legal families (Roman-Germanic, Anglo-Saxon, religious, traditional legal families). The unique ability of the ombudsman to migrate across different systems is explained by the fact that all countries, without exception, face bureaucratic problems. The expansion of the administrative function of the state and the growth of state regulation lead to a reduction in the significance of other branches of power and strengthen the positions of executive authorities. It is precisely this commonality of problems (bureaucratization of management, infringement on human rights, decline in authority of power) that accounts for the recognition of the ombudsman idea in countries with diverse constitutional traditions and standards of living [17].

Ombudsmen play an important role in protecting citizens' rights by providing independent oversight over the actions of state bodies. They can accept complaints from citizens, conduct investigations, and offer recommendations to rectify unjust or incorrect actions.

A parliamentary ombudsman is usually appointed by parliament and is accountable to it. They have the right to investigate complaints against state bodies and officials and to propose recommendations for rectifying identified violations [18, 19]. An independent ombudsman is typically appointed by a special commission and is not accountable to any branch of government. They can investigate complaints from citizens, propose recommendations, and even appeal to the court if they believe that actions by state bodies or officials violate the law [20, 21]. An executive ombudsman is appointed by the executive branch and is accountable to it. They can investigate complaints against state bodies and officials and propose recommendations to rectify identified violations [22]. Each of these ombudsman models has its advantages and disadvantages; the choice of a specific model depends on the historical, cultural, and politico-legal characteristics of each state [23].

The procedure for handling complaints by ombudsmen in various countries is roughly the same. The complaint process concludes with the issuance of a report by the ombudsman and other

measures to address violations of human rights and freedoms. Here, the scope of powers of ombudsmen differs. In almost all countries (Austria, Belgium, Denmark, Hungary, the United Kingdom, Mexico, etc.) where the institution of the ombudsman exists, ombudsmen issue reports that are advisory in nature. Essentially, they can only provide their conclusions, which include recommendations for public authorities and their officials on restoring violated rights and freedoms [24]. However, in some countries (e.g., Sweden, Finland), ombudsmen have broader powers and can make decisions that are binding.

In Belgium, based on the findings obtained during the examination of complaints, Federal Ombudsmen formulate recommendations to optimize the work of state structures. If the Federal Ombudsman discovers circumstances that may indicate the commission of a crime or an administrative offense, they are obligated to inform the State Prosecutor. If the Federal Ombudsman identifies a situation that could be classified as a disciplinary violation, they must report this to the leadership of the official involved.

In Serbia, the Protector of Citizens plays a crucial role in monitoring compliance with citizens' rights and freedoms by state bodies. The Protector not only identifies and detects violations but also proposes ways to address them. Upon discovering violations, the Protector of Citizens drafts a report that details the identified issues and offers recommendations for their resolution. This report is then sent to the relevant state bodies for action. For instance, if the Protector of Citizens finds that certain public servants are abusing their authority, they may suggest additional training for these officials, changes to regulatory acts governing their activities, or other measures aimed at eliminating violations.

As part of their final recommendations, the Parliamentary Commissioner for Administration in the United Kingdom may propose the following measures to a public body that has violated fundamental rights and freedoms of citizens:

- Officially apologize and provide explanations regarding the violations committed;
- Take necessary actions to rectify the consequences of poor administration and restore

violated rights;

- Review current administrative decision-making procedures;- Provide financial compensation.

The recommendations proposed by the Parliamentary Commissioner for Administration are not legally binding. A standard mechanism for exerting influence involves submitting a specialized report to Parliament in situations where a public body does not take the actions suggested by the Commissioner. The UK Parliament has the authority to summon a minister or another representative of the administrative structure to a session to provide clarifications on these issues. Thus, Parliament strengthens the position of the Parliamentary Commissioner for Administration and the authority of their proposals.

After completing the investigation process of a complaint, the National Human Rights Commission in Mexico formulates recommendations aimed at restoring the applicant's violated rights. Public authorities are required to notify the Commission within 15 days about whether they have accepted or rejected the measures proposed in its recommendations for restoring violated rights.

The Ombudsman in Sweden possesses the most significant powers. The standard response of the Swedish Ombudsman to violations of citizens' rights and freedoms is the initiation of disciplinary proceedings against officials who have demonstrated incompetence in the performance of their duties. The Ombudsman has the authority to initiate legal proceedings against an official whose decisions or actions have led to the violation of citizens' rights and freedoms [25]. Although the Ombudsman does not have the formal power to annul or amend the contested decisions, their intervention can indirectly lead to the desired outcome in cases where obvious errors and violations are identified.

In most countries around the world, there is administrative liability for obstructing the activities of the Human Rights Commissioner, with France being an exception. In France, the Ombudsman represents an executive model and does not have the authority to demand documents or information from executive bodies and their officials. Consequently, these officials do not bear responsibility for refusing to provide such information. The situation is markedly different in

Argentina. Here, any obstruction in filing a complaint with the Human Rights Commissioner or interference in their investigation by refusing to provide reports or access to documents necessary for the investigation is considered a crime under Article 239 of the country's Criminal Code.

III. Features of Interaction Between the Human Rights Commissioner in the Russian Federation and Public Authorities and Their Officials

Following the adoption of amendments in March 2020 regarding the organization and functioning of public authority, a new concept—"public authority"—emerged in the Constitution of the Russian Federation. Additionally, Part 3 of Article 132 of the Constitution of the Russian Federation outlines the unified system of public authority, which includes local self-government bodies and state authorities. The concept and essence of unified public authority in Russia are elaborated in the Constitution of the Russian Federation and Federal Law No. 394-FZ "On the State Council of the Russian Federation" dated December 8, 2020. This unified public authority comprises the following structural elements: federal state authorities, state authorities of the subjects of the Russian Federation, local self-government bodies, and other state bodies.

According to Article 15 of the Federal Constitutional Law No. 1-FKZ "On the Human Rights Commissioner in the Russian Federation" dated February 26, 1997 (hereinafter referred to as FKZ), citizens have the right to appeal to the Human Rights Commissioner in the Russian Federation if they are dissatisfied with decisions or actions (or inactions) by state bodies, local self-government bodies, officials, or state employees.

Article 34 of FKZ mandates that officials must provide requested materials and documents, as well as any other information necessary for the Human Rights Commissioner in the Russian Federation to exercise their powers, free of charge and without hindrance. The requested materials, documents, and other information must be sent to the Human Rights Commissioner in the Russian Federation no later than 15 days from the date of receipt of the request, unless a different deadline is specified in the request itself.

The realization of the rights granted to the Human Rights Commissioner in the Russian Federation encounters certain challenges. For instance, following the presidential elections in the Russian Federation in 2012, a series of incidents compelled the Human Rights Commissioner in the Russian Federation to seek judicial intervention to protect citizens' interests concerning actions by a state body that refused to provide information (documentation) to the Human Rights Commissioner. Specifically, various territorial election commissions failed to provide written statements from voters who voted outside polling stations to the Human Rights Commissioner in the Russian Federation.

Judicial authorities did not uphold the demands of the Human Rights Commissioner in the Russian Federation on this matter. They justified their position by referencing subparagraph "g" of paragraph 23 of Article 29 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum for Citizens of the Russian Federation." According to this subparagraph, the right to access documents and materials directly related to elections is granted exclusively to commission members with decisive voting rights and commission members with advisory voting rights.

Attempts by the Human Rights Commissioner in the Russian Federation to refer to FKZ provisions, which grant them the right to request and receive any information and documentation and assert that these provisions have higher legal authority than federal laws cited by territorial election commissions, were not supported by judicial instances.

Thus, in this case, the right of the Human Rights Commissioner in the Russian Federation to receive necessary information and documentation from state bodies, as enshrined in FKZ, is effectively obstructed.

The Federal Constitutional Law (FKZ) not only establishes the right but also the duty of the Human Rights Commissioner in the Russian Federation to address a state body, local self-government body, or official upon identifying violations of citizens' rights and freedoms in their decisions or actions (or inactions). This communication must include the Commissioner's

conclusion, which provides recommendations regarding possible and necessary measures to restore the violated rights and freedoms.

Article 35 of the FKZ stipulates the timeframe, obligations, and procedure for public authorities to respond to recommendations received from the Human Rights Commissioner in the Russian Federation. Upon receiving a conclusion from the Human Rights Commissioner, the state body, local self-government body, or official is required to review the recommendations within one month and notify the Human Rights Commissioner in writing about the measures taken. However, the FKZ does not mandate the restoration of violated rights. The obligation of state bodies, local self-government bodies, or officials is to collectively discuss or individually review (depending on the type of body) the final opinion of the Human Rights Commissioner but not necessarily to satisfy it. They have the right to disagree with the Human Rights Commissioner and maintain their previous decision or action (or inaction), considering it lawful. In cases where a violation of the applicant's rights or freedoms is acknowledged, the state body, local self-government body, or official must take comprehensive measures to eliminate its consequences and notify the Human Rights Commissioner accordingly. They are not bound by the Commissioner's views regarding the proposed measures for restoring the applicant's violated rights or freedoms and have the authority to implement their plan of preventive measures.

It would be advisable to establish a normative obligation for state bodies, local self-government bodies, and officials to comply with the conclusions of the Human Rights Commissioner in cases where violations of citizens' rights and freedoms are identified in the decisions or actions of these entities. Such a provision would strengthen the position of the Human Rights Commissioner within the human rights protection system. A state body, local self-government body,

or official receiving such a conclusion should be required to take the measures outlined in that conclusion. In cases of disagreement with the conclusion of the Human Rights Commissioner, it is proposed to grant them the right to appeal the conclusion in court.

In this context, it is proposed to amend Articles 27 and 35 of the FKZ. The amendments would establish an obligation for state bodies, local self-government bodies, and officials to take actions to restore violated human rights and freedoms as outlined in the conclusions of the Human Rights Commissioner in the Russian Federation [26].

IV. Conclusions

The study of the interaction between the Human Rights Commissioner in the Russian Federation and various state institutions has revealed a significant ambiguity in the legal status of the Human Rights Commissioner in the Russian Federation. This is particularly evident in the absence of effective mechanisms to influence various state authorities, which adversely affects the productivity of the Ombudsman institution.

In light of the above, it is justified and becomes expedient to adapt positive foreign experiences in the functioning of the ombudsman institution to take measures aimed at expanding the powers of the Human Rights Commissioner in the Russian Federation. Such an approach would contribute to transforming this institution into an effective mechanism for protecting human rights, freedoms, and legitimate interests. Specifically, this could enhance the authority of the Human Rights Commissioner in the Russian Federation before public authorities when considering his or her conclusions.

It is proposed to amend the legislation of the Russian Federation to establish an obligation for these public authorities to take necessary measures to restore violated human rights and freedoms as stipulated in the conclusions of the Human Rights Commissioner in the Russian Federation.

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INFORMATION ABOUT AUTHORS

Mikhail Yu. Dityatkovsky – Doctor of Law, Associate Professor; ¹Professor, Department of Constitutional and Municipal Law; ²Professor, Department of State and Municipal Law

¹ *Kutafin Moscow State Law University (MSAL)*

² *Dostoevsky Omsk State University*

¹ 9, Sadovaya-Kudrinskaya ul., Moscow, 125993, Russia

² 55a, Mira pr., Omsk, 644077, Russia

E-mail: ditmihur@mail.ru

ResearcherID: W-2788-2019

ORCID: 0000-0002-7318-212X

RSCI SPIN-code: 3935-0431

Anna M. Belyatskaya – PhD in Sociology, PhD in Law, Associate Professor; Associate Professor, Department of State and Legal Disciplines

The State Institute of Economics, Finance, Law, and Technology

5, Roshchinskaya ul., Gatchina, 188300, Russia E-

mail: sukhareva@mail.ru

ORCID: 0000-0002-7183-3937

RSCI SPIN-code: 6427-7226

BIBLIOGRAPHIC DESCRIPTION

Dityatkovsky M.Yu., Belyatskaya A.M. On improving the procedure for interaction of the High Commissioner for Human Rights in the Russian Federation and public authorities. *Pravoprimenenie = Law Enforcement Review*, 2024, vol. 8, no. 3, pp. 53–61. DOI: 10.52468/2542-1514.2024.8(3).53-61. (In Russ.).