

DOI: 10.52363/passa-2025.1-16

UDC: 351: 342.25

Taranenko F., postgraduate student of the State University «Kyiv Aviation Institute», Kyiv.

ORCID: 0009-0007-9409-0447

THE MECHANISM OF STATE REGULATION OF THE FUNCTIONING OF THE OMBUDSMAN INSTITUTION IN THE CONTEXT OF UKRAINE'S EUROPEAN INTEGRATION: FEATURES OF FORMATION AND IMPLEMENTATION

The peculiarities of the formation and implementation of the Ombudsman institution as an object of state regulation in the world have been studied. The prospects for the development of the Ombudsman institution in Ukraine have been determined, in particular, its functions, which should be activated in the following areas: as a mechanism for external (extrajudicial) control over the activities of public administration and observance of the right to good (proper) administration and the principles of good governance, as well as as a source of recommendations for improving administrative legislation in certain areas, providing institutional and methodological assistance in developing new mechanisms for protecting human rights, in particular, the provision of quality public services, adherence to the principles of administrative decision-making, and the implementation of the right of an individual to protect a violated right in administrative proceedings.

Keywords: *state regulation, institution of the ombudsman, genesis, protection of human rights.*

Досліджено особливості формування та реалізації інституту омбудсмена як об'єкта державного регулювання у світі. Визначено перспективи розвитку інституту омбудсмена в Україні, зокрема, його функції, що мають активізовуватись у таких площинах: як механізм зовнішнього (позасудового) контролю за діяльністю публічної адміністрації та дотримання права на добру (належну) адміністрацію і принципів належного врядування, а також як джерело рекомендацій щодо вдосконалення адміністративного законодавства у певних сферах, надаючи інституційну та методичну

допомогу у розробці нових механізмів захисту прав людини, зокрема надання якісних публічних послуг, дотримання принципів прийняття адміністративних рішень, реалізації права особи на захист порушеного права в порядку адміністративного судочинства.

Ключові слова: державне регулювання, інститут омбудсмена, ґенеза, захист прав людини.

Problem setting. In Ukraine, the priority of human and citizen rights and freedoms is proclaimed by Article 3 of the Constitution of Ukraine, respectively, their protection is the duty of the state. In general, the legal recognition of a person, his rights and freedoms as the highest value at the constitutional level of the state implies a cardinal change in the nature of interaction between a person and public authorities. In a democratic state, civil society actively influences, through its institutions, the development of policies by government institutions, controls their public activities aimed at the implementation of the developed policies, in fact encouraging officials to serve the interests of the people [2]. Therefore, in modern conditions, the state and its institutions are called upon to guarantee and protect human rights and freedoms.

Unfortunately, these constitutional provisions are of a programmatic and target nature, sometimes declarative, and their implementation is an extremely difficult task for various reasons. However, the state is trying to take certain steps to solve this important task. In particular, we mean the formation of a new tool for functional representation of interests – government relations (interaction with government structures), which covers almost all spheres of public activity. It is based on special technologies for the formation of mutual trust between business, non-governmental organizations and state authorities, the main goal of which is to obtain not only a mutually beneficial, but also a socially beneficial result [2]. The ombudsman is an active subject in such relations.

Recent research and publications analysis. The peculiarities of the formation of management mechanisms in the sphere of development of legal institutions in general and the institution of the Ombudsman in particular were studied by scientists O. Batanov, N. Karpachova, A. Lelechenko, O. Maidannik, V. Pohorilko, A. Pomaza-Ponomarenko, S. Prykhodko, V. Tatsiy, Yu. Todyka and others. However, domestic mechanisms of public administration in the specified sphere (in particular, legal, organizational and resource) in the modern realities of the functioning of our state still remain insufficiently developed in the context of the influence

of full-scale aggression of the Russian Federation on them.

Paper objective. The purpose of the article is to determine the features of the formation and implementation of the mechanism of state regulation of the functioning of the Ombudsman institution in the context of Ukraine's European integration.

Paper main body. The main purpose of public administration entities as representatives of public authority is to ensure the proper level of citizens' realization of their rights and interests protected by law in the public and legal sphere. This requires a significant number of entities that, in order to fulfill the tasks assigned to them, are endowed with various powers, structures and legal properties, the position of which in the sphere of public administration is determined by the nature and scope of their legal personality [7].

Emphasizing the legal status of some of these bodies, we will present the reflections of T.O. Karabin, who emphasizes the dual role of public administration in the mechanism of ensuring human and citizen rights and freedoms, which is both an «active» subject of the mechanism as a result of the implementation of its main purpose – ensuring the rights of citizens, and a «passive object» when it comes to protecting citizens' rights from violations in the sphere of public administration [3]. At the same time, as we have already noted, the subject of public administration is also the Commissioner of the Verkhovna Rada of Ukraine for Human Rights (hereinafter referred to as the Commissioner, Ombudsman). The peculiarity of this institution is that it does not belong to any branch of government, but is a body sui generis, that is, of a special kind, and acts only by means and methods peculiar to it [4].

According to the Law of Ukraine “On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights” of 23.12.1997 [6], it constantly exercises parliamentary control over the observance of constitutional rights and freedoms of man and citizen, as well as the protection of the rights of everyone independently of other state bodies and officials. It is precisely to speed up the procedure for eliminating human rights violations and preventing them in the future that the institution of the Ombudsman was created in Ukraine, following the example of Western European states. However, citizens' awareness of their rights and ways to restore violated rights still remains low. This is evidenced by the numerous appeals received by the Commissioner's Secretariat, which in 2018 amounted to over 25 thousand. Thus, in Ukraine, the Commissioner is a special body of state power, appointed by the parliament, which protects human rights in all spheres of life: compliance with the principles of good (proper)

administration.

It should be noted that today in more than 120 countries of the world the position of ombudsman exists [8, p. 221]. However, in different countries it has different names: in France – Mediator of the French Republic, in Great Britain – Parliamentary Commissioner for Administration, in Spain and Romania – Defender of the People, in Albania – Advocate of the People, in Georgia – People’s Defender, in Slovenia and the Czech Republic – State Human Rights Defender, in Moldova – Parliamentary Advocates, in the Russian Federation, Indonesia, Thailand, the Republic of Korea – Commissioner for Human Rights, in Lithuania – Comptroller of the Seimas, in Estonia – Chancellor of Justice and others [1]. The official name of the institution of ombudsman in Poland is Spokesperson for Civil Rights [9], and in Ukraine – Commissioner of the Verkhovna Rada of Ukraine for Human Rights [6]. Domestic sources have different approaches to defining the institution of the Ombudsman, which reveal its functional responsibilities. This is both a state official who exercises control over the observance of constitutional human rights and freedoms [4], and a service directly engaged in the protection of human rights and legitimate interests related to relations with executive and administrative bodies [1, p. 14], and an auxiliary and independently functioning state specialized body that possesses non-traditional methods of investigating and responding to facts of violations of human rights and freedoms by officials of bodies regardless of the form of ownership of state and public authorities [5, p. 47].

Thus, in the modern world, the ombudsman is a civil servant of the highest rank, who is usually appointed to the position by parliament and is called upon to protect human rights in all spheres of life. Regardless of the legal system, the model of the ombudsman, his main function was and remains control over the activities of the national public administration.

It was found that the classical model of the ombudsman has the following characteristics:

- the status of the ombudsman is enshrined in the constitution of the state or a special law that ensures the stability of the status of the specified official;
- the political neutrality and independence of the ombudsman from the state authorities, the violations of which the specified institution receives complaints;
- the authority to consider complaints from citizens or to initiate an investigation on its own initiative if the ombudsman becomes aware of cases of improper performance of its powers by officials of state bodies;

– issuing a decision of a recommendatory nature based on the results of the investigation and, if necessary, publishing a report for the parliament to review, but the specified official does not make binding decisions.

Let us consider the above elements in more detail, as well as other characteristics of the classical model of the ombudsman:

1. Enshrining the status of the ombudsman in a regulatory legal act that has supremacy for the state.

Of course, regulating the status and activities of the ombudsman in a subordinate regulatory act not only reduces the status of the specified institution, but also makes it dependent on the state authority that issued the specified regulatory act and has the right to make changes to its provisions, which can contribute to the destabilization of the functioning of the ombudsman. At the same time, enshrining the status of the ombudsman in the constitution is the best. The spread of ombudsmen around the world only in the 20th century characterizes it as a young state-legal institution in the legal systems of states, and granting it constitutional status contributes to the entrenchment in the legal system of the state and the authority of this institution.

2. Political neutrality of the ombudsman, ensured by political and legal mechanisms.

The lack of political neutrality can create a vector of the ombudsman's activities determined by political interests, which hinders the protection of human rights in a certain area – for example, political (to assemble peacefully, without weapons) or personal rights (prohibition of torture, the right to freedom and personal integrity, the right to respect for private and family life, freedom of thought, conscience and religion, etc.).

3. Independence of the ombudsman in the process of carrying out his activities and making decisions as an intermediary between the individual and the state for the purpose of effective, real protection of human rights. In this case, independence is understood, among other things, as the non-inclusion of the ombudsman in the structure of any public body and the absence of his subordination to an official of a state authority (the institution of the ombudsman in some Latin American countries, where the ombudsman is part of the prosecutor's office system, does not correspond to this feature). The problems of ensuring the independence of the ombudsman will be discussed in more detail in the second section of this dissertation research.

4. The adequacy and universality of the Ombudsman's powers to consider citizens' complaints about the actions or inaction of officials of state authorities. It should be noted that the consideration of citizens' complaints is the primary task of his activities as a mediator between the individual and the state. Within the framework of the powers to consider citizens' complaints, the Ombudsman, as a human rights institution, offers an alternative protection of human rights based on a free and relatively short procedure, using soft mechanisms for conflict resolution and issuing advisory decisions. It should be noted that the scope of legal issues on which a citizen can apply to protect his rights should not be limited, as is the case, for example, in Mexico. Thus, in accordance with Art. 7 of the Mexican Law of June 29, 1992 "On the National Commission on Human Rights" (hereinafter referred to as the Law of June 29, 1992), the Ombudsman cannot consider complaints related to the adoption of electoral decisions by commissions [10].

Limiting the range of rights for which citizens can apply to the Ombudsman may contradict its essence as a human rights institution. This limitation creates an artificial barrier to the protection of individual rights violated by the state, which does not correspond to the main idea of constitutionalism and the goals for which state institutions were created in the first place. However, despite the fact that the ombudsman has emerged as a body of parliamentary control recently, it is not currently unambiguously such in all countries.

Conclusions of the research. In a democratic state, public administration is described not as a unilateral influence, but as a mutual influence, when the subject of administration not only sends certain specific impulses of influence to the object of administration, but also records the reaction to them. Moreover, it should not be forgotten that in the context of the relationship between public administration and democracy, the general subject of administration is the people themselves, who form the bodies of state power and influence the definition of the main goals and priorities of state administrative activity. In view of this, the problems of interaction between a citizen and public administration regarding the implementation of his rights and freedoms are considered through the prism of the institution of public services, which covers many areas, primarily education, healthcare, and social protection. The development and improvement of the aforementioned institution is one of the priority areas of the modernization policy of our state. Being an element of the general mechanism for protecting citizens' rights, their direct implementation is at the same time

an independent stage of this process, which has its own mechanism designed to ensure the effectiveness of public administration activities.

Thus, the advantages of the existence of soft power institutions (the institution of the ombudsman) in a state are as follows:

- the growing need to build mutual trust both between state authorities and between an official of a state authority and a person;
- the ethical value of soft power;
- the need to stimulate the progressive development of the situation, conflict resolution on the basis of interaction and solidarity;
- the absence of overloading with “hard” rules, simplification of the procedure, which can contribute to a faster achievement of the result.

Soft power institutions (the institution of the ombudsman) appear in the world as a result of the development of culture and its values, and not as a result of instructions from state authorities that possess the tools of hard power [Weeks], although they ensure this development. One of such institutions is, in fact, the ombudsman.

Therefore, the performance of the Ombudsman’s function in Ukraine should be activated in several areas: as a mechanism for external (extrajudicial) control over the activities of public administration and observance of the right to good (proper) administration and the principles of good governance, as well as as a source of recommendations for improving administrative legislation in certain areas, providing institutional and methodological assistance in developing new mechanisms for protecting human rights, in particular, the provision of quality public services, compliance with the principles of administrative decision-making, and the exercise of an individual’s right to protection of a violated right through administrative proceedings.

References:

1. Banakh, S.V. (2014). Functions of ombudsmen in the modern world: comparative legal research: dissertation ... candidate of law: 12.00.02. Mariupol, 236 p.
2. Instruments and mechanisms of development and implementation of public policy in Ukraine. Ukrinform. 2019. June 3. URL: https://www.ukrinform.ua/rubric-other_news/2713805-instrumenti-ta-mehanizmi-viroblenna-jvprovadzenna-publicnoi-politiki-v-ukraini.html.

3. Karabin, T.O. (2016). Distribution of powers of public administration: monograph. Uzhgorod: Grazhda, 296 p.
4. Kikish, S. (2018). Ombudsman as an alternative way to protect human rights: myth or reality? Legal newspaper online. № 49 (651). URL: http://www.p-partners.com/storage/files/2019-04-12/49_651_ombudsmen_yak_alternativniy_sposib_zahistu_prav_lyudini_mif_chi_realnist.pdf.
5. Martselyak, O.V. (2004). Constitutional and legal status of the Ombudsman institution: world experience and Ukrainian model: dissertation ... Dr. in Law: 12.00.02. Odesa, 472 p.
6. On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights: Law of Ukraine of 23.12.1997 № 776/97-VR. Database «Legislation of Ukraine» / Verkhovna Rada of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80>.
7. Svistovych, R.S. (1997). Subjects of public administration: modern dimension. International scientific journal "Internauka" Series: "Juridical Sciences". URL: <http://www.inter-nauka.com/magazine/law/Krivenko L.T. Verkhovna Rada of Ukraine. Kyiv: In Yure. Pp. 22-41>.
8. Righting Wrongs. The Ombudsman in Six Continents / ed. by Gregory R., Giddings P. Amsterdam, International Institute of Administrative Sciences 2000. 502 p.
9. O Rzeczniku Praw Obywatelskich : Ustawa RP. Dziennik Ustaw. 2001, Nr 14, poz. 147. URL. <https://www.rpo.gov.pl/pl/content/ustawa-o-rpo>.
10. Rowat, D. (1979). Administrative Secrecy in Developed Countries (Studies in Administrative Procedure). Columbia University Press. 299 p.

Received: 21.03.2025
Accepted: 17.05.2025
Published: 26.06.2025