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Marianna Chobanyan

# The Role of the Institution of Ombudsman in Strengthening the Protection of Human Rights and Freedoms in Armenia, Moldova and Ukraine

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CES, The Master's Programme in Human Rights and  
Democratisation in the Caucasus



**EIUC**

European Inter-University  
Centre for Human Rights  
and Democratisation

MARIANNA CHOBANYAN

THE ROLE OF THE INSTITUTION OF OMBUDSMAN IN  
STRENGTHENING THE PROTECTION OF HUMAN RIGHTS  
AND FREEDOMS IN ARMENIA, MOLDOVA AND UKRAINE

BIOGRAPHY

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ABSTRACT

«ՕՄԲՐՈՒԴԻՍՄԵՆԻ ՀԱՍՏԱՏՈՒԹՅԱՆ ԴԵՐԸ ՄԱՐԴՈՒ ԻՐԱՎՈՒՆՔՆԵՐԻ ՈՒ ԱԶԱՏՈՒԹՅՈՒՆՆԵՐԻ ՊԱՇՏՊԱՆՈՒԹՅԱՆ ԱՄՐԱՊԵՆԴԻՄԱՆ ՄԵԶ ՀԱՅԱՍՏԱՆՈՒՄ՝ ՄՈՂԴՈՎԱՅՈՒՄ ԵՎ ՈՒԿՐԱԻՆԱՅՈՒՄ»

«Роль института омбудсмана в укреплении защиты прав и свобод человека в Армении, Молдове и Украине»

*“The Role of the Institution of Ombudsman in Strengthening the Protection of Human Rights and Freedoms in Armenia, Moldova and Ukraine”*

*Today the ombudsman institution is widely and actively used in state systems of protection of human rights and freedoms from arbitrariness of public authorities and from abuse of power by state officials.*

*The world experience of the emergence and development of this institution demonstrates that it is an effective instrument of a democratic state tending to respect the rule of law. The main role of the ombudsman institution is to control the balance between the legislative, executive and judicial branches of power, observe the lawfulness of public authorities' activities as well as protect the violated rights and interests of people because of action (inaction) of government bodies and officials.*

*The master's thesis aims to assess the role of the ombudsman institution in the three countries of the Eastern Partnership (EaP) which are Armenia, Moldova and Ukraine. These countries were chosen since they share the common historic legacy after the collapse of the Soviet Union and all three countries have undergone a long way of transition towards democracy.*

*The master's thesis is divided into three chapters: in the first chapter the emergence and evolution of the ombudsman institution in the world and within the post-Soviet space is described; the second chapter elaborates on the comparative study of the National Laws which established the ombudsman institution in the respective countries and covers the issues of ombudsman's appointment and dismissal as well as his/her competence; the final chapter is dedicated to the assessment of ombudsman's role (its effectiveness) in the protection of human rights and freedoms through the elaboration of appropriate criteria and indicators.*

*The research component of the paper will focus on qualitative measures such as public opinion surveys regarding the general awareness of the societies about the institution and its role in protecting and promoting human rights and freedoms in the respective countries. Finally, the author will come up with evaluative conclusions and practical recommendations to all countries of the present research.*

TABLE OF ABBREVIATIONS

EaP	Eastern Partnership
ENOC	European Network of National Human Rights Institutions as well as European Network of Ombudspersons for Children
EU	European Union
ICC	International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights
ICRC	International Committee of the Red Cross
NGO	Non-governmental organization
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development

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1.

INTRODUCTION

Recently, international law has been increasingly focusing on the protection and promotion of human rights and freedoms. The primary reason for such a tendency is a set of historical circumstances. The problem of human rights protection has always existed, but it began to spread in the era of Yalta-Potsdam system of international relations (after the Second World War) and further developed at the beginning of the 21<sup>st</sup> century.

In the history of human civilization, there were thousands of local conflicts, two world wars and millions of broken destinies due to dramatic human rights violations, the prevention of which could have not only saved lives for many people but also contributed to the further economic development of all humankind. What is worse is that human rights are violated in the most outrageous way even nowadays in a civilized world tending towards the elimination of all forms of human rights violation.

In this regard, the world community in order to minimize human sufferings and uphold human dignity turned to an idea of establishing *NHRI* in the widely accepted form of *ombudsman* with the aim of human rights protection and promotion all over the world. The states one by one began to establish human rights institutions as a necessary element in the process of democratization. Nowadays these institutions are inalienable elements of the national legislatures of many countries all over the world.

The topic of the master's thesis is *very relevant* as far as the countries of the post-Soviet space are concerned. The creation of the ombudsman institution in fourteen post-Soviet countries is a new element within the respective state legislative systems, which aim to protect human rights and freedoms. The emergence of this new institution in the post-Soviet



space was due to political and social changes that have occurred over twenty years ago.

*The relevance* of the topic is also justified by the following reasons:

1. *the significance of human rights protection and promotion in the post-Soviet space* which has undergone the long and contradictory way of *political and socio-economic transformation*;
2. *the demand to research* the ombudsman institution in the post-Soviet space which can be considered as a “*Western*” or “*Scandinavian import*” (based on the three country cases);
3. 3) *the necessity to review* the functioning of these institutions in the respective countries of the present study.

The study *aims* to analyze and assess the role of the ombudsman institution in three countries of the post-Soviet region that are currently the members of the EaP – *Armenia, Moldova, and Ukraine*. The countries have been chosen in such a way so as to represent ethnic and geographic sub-divisions of the post-Soviet space. In this regard, *Armenia* was chosen as a representative of *the South Caucasus sub-region*, *Moldova* - as a representative of *the Romance people in Southeast Europe* and *Ukraine* - as *the East Slavic country in Eastern Europe*.

*The objectives* of the paper are as follows:

1. to explain the reasons for an emergence of the institution of ombudsman in the world and in the post-Soviet space as well as to describe the process of its evolution and its current stance;
2. to describe the system and context in which the ombudsman institution operates in three countries;
3. to identify similarities and differences between the three institutions in the respective countries;
4. to assess the role of the ombudsman in protecting and promoting human rights in the respective countries;
5. to identify the key challenges and prospects of the functioning of the institution of ombudsman in all three cases;

*The guiding research questions* include as follows:

1. How the ombudsman in three countries is elected, appointed and dismissed?

2. Is the process of ombudsman's appointment transparent and comprehensive?
3. Should the system of election/appointment be changed? Should the civil society (human rights NGOs, etc.) have a word?
4. What is the role of human rights ombudsmen in *Armenia, Moldova, and Ukraine* in the protection of human rights and freedoms?
5. Is this role positive? If yes, what are the outcomes and outputs in the respective countries?

The examples of the ombudsmanship, which are used in this paper, are taken from the three countries practices because their achievements and problems were quite common due to their authoritarian past.

To evaluate the role of the ombudsman in the respective post-Soviet countries the following sources in *English, Russian, Ukrainian and Polish* were used: *legal sources including international treaties, academic literature, annual reports by the ombudsmen, mass media and the Internet sources along with papers, speeches, interviews and press releases by the ombudsmen in the respective countries.*

*The hypothesis* of the master's thesis is as follows: *the ombudsman institution plays a positive role in the protection of human rights and freedoms.* Further, this hypothesis will be tested through the following research methods: *historical analysis, secondary research, legal analysis, comparison, online surveys, observations, reviews.* The results of the paper may be used in the further research of the present topic and may be useful from both academic and practical perspectives.

The study is divided into the introduction, the main part, and conclusions with recommendations. The introduction sets the main argument and the research questions. The main part is divided into three chapters, which contain the problem analysis, the methods applied as well as the results of the study and the outcomes of the research. Chapter one starts with the definition of an ombudsman, its emergence, evolution and current stance in the world and in the post-Soviet space. Chapter two presents a comparative analysis of the ombudsman institution in three post-Soviet countries, *Armenia, Moldova, and Ukraine* – members of the EaP. Chapter three proceeds with the assessment of the ombudsmen role in the respective countries. Finally, the conclusions and recommendations are provided.

1.

THE DEFINITION OF THE OMBUDSMAN INSTITUTION,  
ITS EMERGENCE AND EVOLUTION IN THE WORLD  
AND WITHIN THE TRANSFORMATION  
OF THE POST-SOVIET SPACE

To begin with, a brief insight into the *historical dynamics and geographic spread* of the definition of an ombudsman should be provided. The word “*ombudsman*” is of *Swedish* origin and the ombudsman institution was in fact first established in Sweden in 1809. The term “ombudsman” is an English translation of the Swedish word “*umbuds man*” from the Old Norse “*umboosmaor*”, meaning representative.<sup>1</sup>

Under the Constitution of 1809, the institute Justitie-Ombudsmannen (ombudsman of justice) was introduced in *Sweden*. It was separated from the Chancellor of Justice, still subordinate to the king and being his official. In 1915, alongside the civilian, a military ombudsman appeared, whose function included monitoring the military administration and investigating all complaints filed by soldiers and officers regarding their service in the army. Since December 14, 1967, there had already been three Swedish ombudsmen, the first of which oversaw the courts, the prosecutor’s office, the army, and the police. The second dealt with social issues, information, press and public education while the third was responsible for other issues related to management (transport, taxes, etc.).<sup>2</sup>

On January 1, 1975, the new Swedish Constitution came into force, and as a result, since 1976, four ombudsmen of justice had been working in Sweden.<sup>3</sup> In Sweden, the Ombudsman system is

<sup>1</sup> ‘What Does the Word Ombudsman Mean? | The Office of The Ombudsman’ (Ombudsman.org.mt) <<http://www.ombudsman.org.mt/what-does-the-word-ombudsman-mean-2>> accessed 25 March 2017.

<sup>2</sup> ‘The Ombudsman Institution: a View from the Rule of Law | Radian Salman’ (ResearchGate) <[https://www.researchgate.net/publication/291523846\\_The\\_Ombudsman\\_Institution\\_a\\_View\\_from\\_the\\_Rule\\_of\\_Law](https://www.researchgate.net/publication/291523846_The_Ombudsman_Institution_a_View_from_the_Rule_of_Law)> accessed 25 March 2017.

<sup>3</sup> Magnus Isberg, *The Constitution Of Sweden The Fundamental Laws And The Riksdag*

formed by the Ombudsmen for Justice (OJ) or the Parliamentary Ombudsman, the Chancellor of Justice, the Ombudsman for children, the Equality Ombudsman and the Swedish Consumer Ombudsman. Four Ombudsmen for Justice are appointed by the Parliament and act independently being only accountable before the Parliament itself.<sup>4</sup>

Until 1919 there was a Chancellor of Justice in *Finland*, he was appointed governor-general to oversee the activities of the government and the administration in the rank of the prosecutor.<sup>5</sup> In the Constitution adopted on July 17, 1919, the creation of an ombudsman of justice, functioning in parallel and independently of the Chancellor of Justice, which strengthened its positions, was confirmed.<sup>6</sup> In 1933, the positions of the Ombudsman were consolidated in the constitutional order and in the legal context of the country, since that time both controlling institutions coexist in the country.

In *Norway*, the first institution was a military ombudsman, the law of which was adopted in 1952.<sup>7</sup> In 1962, a civilian justice ombudsman appeared in this country, and then the consumer ombudsman. The Institute of the *Danish Ombudsman of Justice* was established by law on June 11, 1954.<sup>8</sup>

The first of the English-speaking countries that introduced the ombudsman institution was *New Zealand*. The history of its creation begins with a UN seminar in Ceylon in 1959, attended by the Attorney General of New Zealand and the future Minister of Justice who initiated the adoption in 1962 of the law on the Parliamentary Commissioner for Administration; in 1976 a new law on ombudsman appeared in that country.<sup>9</sup>

*Act* (Sveriges Riksdag) <<http://www.riksdagen.se/en/SysSiteAssets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf/>> accessed 25 March 2017.

<sup>4</sup> 'Ombudsman Mechanism' (*Collectiveredress.org*) <https://www.collectiveredress.org/collective-redress/alternative-ombudsman-sweden> > accessed 25 March 2017.

<sup>5</sup> LLC Revolvly, "Chancellor Of Justice (Finland)" On Revolvly.Com' (*Revolvly.com*) <<https://www.revolvly.com/main/index.php?s=Chancellor%20of%20Justice%20of%20Finland>> accessed 25 March 2017.

<sup>6</sup> 'ICL - Finland - Constitution 1919' (*Servat.unibe.ch*) <[http://www.servat.unibe.ch/icl/fi01000\\_.html](http://www.servat.unibe.ch/icl/fi01000_.html)> accessed 27 February 2018.

<sup>7</sup> Sverre Thune, 'The Norwegian Ombudsmen for Civil and Military Affairs' (1968) 377 *The ANNALS of the American Academy of Political and Social Science* <[http://www.jstor.org/stable/1038140?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/1038140?seq=1#page_scan_tab_contents)> accessed 25 March 2017.

<sup>8</sup> Bent Christensen, 'The Danish Ombudsman' (1961) 109 *University of Pennsylvania Law Review* <[http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=6970&context=penn\\_law\\_review](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=6970&context=penn_law_review)> accessed 26 March 2017.

<sup>9</sup> 'Ombudsmen Act 1975 No 9 (As At 01 April 2017), Public Act Contents -

In 1955, a Commission on Administrative Courts and Investigations was established in the *United Kingdom* (Franks Commission). The commission's report was promulgated in 1957. It proposed the creation of two councils for administrative courts. However, the situation with the means of protecting citizens remained unstable and in 1959 the report of the Wyatt Commission or the "Justice" report (the English branch of the International Commission on Justice) followed. The conclusion of the report was about the advisability of using the experience of the ombudsman. The conservative government of MacMillan met this proposal with hostility. G. Wilson included this idea in his political program and, having won elections in 1964, began implementation. As a result, the law on the Parliamentary Commissioner was adopted in 1967.<sup>10</sup>

Since 1969 in *Northern Ireland*, there have been two types of ombudsman, which are performed by one person: the Northern Ireland Commissioner for Administration and the Northern Ireland Commissioner for Complaints.<sup>11</sup>

There is no federal ombudsman in *Canada* yet, although the draft of the relevant law was introduced in 1978, there are two branch federal ombudsmen: the State Language Commissioner (1969) and the Corrections Officer (1973). In all Canadian provinces there are ombudsmen; their posts have been established since 1967 (Alberta) to 1977 (British Columbia).<sup>12</sup>

The idea of a federal ombudsman was rejected in the *USA*, but it appeared in several American states: *Hawaii* (1967), *Nebraska* (1969), *Iowa* (1972), *New Jersey* (1974) and *Alaska* (1975). There appeared a whole series of pseudo-ombudsmen appointed by governors, or even vice-governors at the same time. Ombudsmen appeared in several cities: *Dayton (Ohio)*, *Erie (Pennsylvania)*, *Jamestown (New York)*, *San Jose (California)*, and others.<sup>13</sup>

The peculiarity of *France* lies in the fact that this country has a special

New Zealand Legislation' (*Legislation.govt.nz*) <<http://www.legislation.govt.nz/act/public/1975/0009/196.0/DLM430984.html>> accessed 26 March 2017.

<sup>10</sup> 'Parliamentary Commissioner Act 1967' (*Legislation.gov.uk*) <<http://www.legislation.gov.uk/ukpga/1967/13>> accessed 26 March 2017.

<sup>11</sup> 'Northern Ireland Ombudsman - GOV.UK' (*Gov.uk*) <<https://www.gov.uk/government/organisations/northern-ireland-ombudsman>> accessed 26 March 2017.

<sup>12</sup> 'Омбудсман в Канаде' (Журнал «Европейский омбудсман», 4 May 2011) <<http://euroombudsman.org/reference/ombudsman-v-kanade>> accessed 27 March 2017.

<sup>13</sup> Л. В. Сморгун, Государственная политика и управление (Росспэн 2006).

area of administrative justice, which considers the conflict between the administration and the administrated, which in the final instance is represented by the judicial activity of the State Council. The idea of introducing the institution of the ombudsman was widely discussed in the early 1970s and faced a sharp opposition of professional officials. After the forced parliamentary debate in 1972, the law introduced by the government was adopted on January 3, 1973. As it was seen later, the French model (mediator) had several specific features, and some researchers even consider that the term “ombudsman” cannot be used here.<sup>14</sup> The mediator’s institute was also distributed here at the regional (Ile-de-France) and local level (Paris).

The Parliamentary Commission of *Israel* in 1968 recommended the establishment of the ombudsman institution. In 1971, an appropriate law was prepared, but in practice, the Law on the General Censor was supplemented by the 7th chapter on the activities of the Commissioner for Complaints, because of which the General Censor also took the Commissioner’s powers of complaints. The ombudsman position was established in 2003 after the adoption of the Ombudsman for Complaints against Judges Law in 2002.<sup>15</sup>

Separately, it is necessary to dwell on the peculiarities of the ombudsman institution in countries that have a federal structure. As has been already noted, there are no federal ombudsmen in *Canada and the United States*.

In *Switzerland*, with the absence of a Swiss ombudsman, the ombudsman of the cantons of Zurich and Basel operate. In *Belgium*, there are ombudsmen for the Walloon and Flanders parts of the country.<sup>16</sup>

In *India*, the idea of a federal ombudsman also did not find support, but there are state ombudsmen. Apparently, the first federal ombudsman appeared in *Australia* (Law of April 13, 1977). By this time, there had already been an ombudsman for Defense Forces for two years. There

<sup>14</sup> Jean-Paul Delevoe, *Back To Roots: Tracing The Swedish Origin Of Ombudsman Institutions* (2009) <[http://www.theioi.org/downloads/54kii/Stockholm%20Conference\\_27.%20Back%20to%20the%20Roots\\_Jean%20Paul%20Delevoe.pdf](http://www.theioi.org/downloads/54kii/Stockholm%20Conference_27.%20Back%20to%20the%20Roots_Jean%20Paul%20Delevoe.pdf)> accessed 28 March 2017.

<sup>15</sup> ‘Ombudsman Of The Israeli Judiciary’ (*Ombudsman of the Israeli Judiciary*) <<http://www.justice.gov.il/En/Units/OmbudsmanIsraeliJudiciary/Pages/Main.aspx> > accessed 27 March 2017.

<sup>16</sup> L. V. Smorgunov, *Gosudarstvennai`a` Politika I Upravlenie* (Rosspen 2006).

are ombudsmen in all federal states - they appeared from 1971 (Western Australia) until 1979 (Tasmania Island). In the latter case, he works in a dual capacity - a local and federal ombudsman - in cases where he is delegated the appropriate authority. The experience of Australia was followed by *Pakistan*, where there is one federal ombudsman, as well as regional ombudsmen in each province.<sup>17</sup>

The institution of the ombudsman is fairly regarded as one of the important levers of the democratization of power in countries with an authoritarian and totalitarian past. Thus, in *Portugal*, the post of the Guarantor of Justice was introduced by Law No. 212 of April 21, 1975. In *Spain*, the institution of the ombudsman was defined by Organic Law No. 3 of April 6, 1981.<sup>18</sup>

In *Poland*, the institute of ombudsman was introduced in 1988.<sup>19</sup> The first country not only in the region of *East-Central Europe* but also within the whole *post-Soviet space* which introduced the ombudsman institution was *Lithuania* according to the Sejm law which came into force on March 24, 1994.<sup>20</sup>

The ombudsman institution is far from being recognized everywhere. So, for example, back in 1980, the National Parliament of *Bangladesh* adopted a special act aimed at establishing an ombudsman institution in the country.<sup>21</sup> However, this act has not yet entered force and there is no ombudsman office in this country.<sup>22</sup> In *Belarus*, there is also no human rights ombudsman and it is the only country in the post-Soviet space and the only country out of 6 members of the Eastern Partnership that has not introduced this institution yet.<sup>23</sup>

From the above brief history of the emergence and spread of the ombudsman institution around the world, it can be assumed that

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ulzibayar Vangansuren, *The Institution Of The Ombudsman In The Former Communist Countries* (International Foundation for Election Systems 2005).

<sup>20</sup> Edita Žiobienė, 'Reform Of The Ombudsman Institutions In Lithuania.' (*Repository.mruni.eu*) <<https://repository.mruni.eu/handle/007/11717>> accessed 28 March 2017.

<sup>21</sup> 'The Ombudsman Act, 1980' (*Government of the People's Republic of Bangladesh*) <[http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=599](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=599)> accessed 29 March 2017.

<sup>22</sup> Awal Hossain, *Ombudsman for Bangladesh: Theory and Reality* (International Journal of Public Administration Vol 27 2004) <<https://www.tandfonline.com/doi/full/10.1081/PAD-200037365?scroll=top&needAccess=true>> accessed 29 March 2017.

<sup>23</sup> Piotr Kuchta, 'Elena Tonkacheva: Introduction Of Ombudsman In Belarus Is A Problem Of Academic Initiative - Eurobelarus' (*En.eurobelarus.info*, 2013) <<https://en.eurobelarus.info/news/society/2013/11/08/elena-tonkacheva-introduction-of-ombudsman-in-belarus-is-a-problem-of-academic-initiative.html>> accessed 30 March 2017.

initially, its main goal was not at all the protection of human rights, but the increase in the effectiveness of the executive branch. The complaint of the residents was an indicator that either the officials did not comply with the existing laws or norms and that the institution had to be corrected.

The rapid spread of this institution in the last quarter of the 20th century was due to the complication of the functions of the state apparatus under the conditions of a “welfare state” or a socially oriented state inevitably revealed the problem of effective control over the activities of executive officials. It is about this function that the names of the ombudsman in the Anglo-Saxon countries referred.

On the other hand, it was in the second half of the 20th century, after the horrors of World War II, that mankind realized the importance of respect for human rights as the concept underlying the law itself, further developed the concept of natural human rights, and states began to realize that respect for human rights is their most important task.

Started in the mid-seventies of the XX century the *third wave of democratization*, the collapse of authoritarian regimes and the transition to democracy also revealed the important role of the ombudsman institution in the turn of the executive structures from serving the interests of the leaders and the ruling elite to work for the benefit of most of the population.

The institution of the ombudsman proved to be an important mechanism contributing to this democratic transition. On the one hand, it was an important institution of extra-departmental state control; on the other hand, it helped to solve the problems of ordinary citizens. Finally, the ombudsman himself was in most cases a pure form of “power of authority”, since he/she did not possess the characteristics of “power”. And its very presence in the system of power institutions testified and testifies to the desired direction of the evolution of the state apparatus. It is not by chance that it was in post-Franco Spain that the institution of the ombudsman was called the Defender of the People, which quickly spread to all Latin America.<sup>24</sup>

In 1993 an important step was taken in the sphere of regulation of *the NHRI* – the Principles relating to the Status of National Institutions

<sup>24</sup> Мухитдинов Е.Н., Институт Омбудсмана\* (Уполномоченного По Правам Человека) В Международном Праве: История Возникновения И Развития В Странах Мира И Казахстане. (Доклады Национальной академии наук Республики Казахстан 2008).



(The Paris Principles) were adopted by General Assembly resolution 48/134 of 20 December 1993.<sup>25</sup> According to the UN OHCHR Accreditation of NHRI as of 24 January 2017, there are around 150 ombudsman institutions all over the world.<sup>26</sup>

An important function of the ombudsman institution, especially in post-authoritarian countries, was also the function of a “*bridge between society and power*”, the function of an intermediary restoring the coherence of the social system, the gaps between the common man and the state machine.

Finally, the ombudsman institution assumes the functions of *extrajudicial examination* of cases, carrying out its activity with a kind of “tunnel effect” in the face of increasingly complex and increasingly expensive judicial power. And here the activity of the ombudsman is approaching the functions of restorative justice, or the function of “restoring peace in the community”.

There are 3 models of the ombudsman institution in the world:

- *Executive ombudsman* – is an executive body, which is appointed by the president or government and to whom is accountable; (This model is also called quasi-ombudsman and is considered to be the worst model because of its dependence on the executive branch and low efficiency. Such a model exists in France and in some states of the USA)
- *Independent ombudsman* – is a special and autonomous branch of power the level of which corresponds to the level of legislative, executive and judicial branches. This ombudsman is appointed by the president or parliament but after the appointment, it is not accountable to either president or parliament (Portugal, Namibia, the Netherlands)
- *Parliamentary ombudsman* – is present within the legislative branch of power, is elected and appointed by the parliament and is accountable to it. He/she is acting as a parliamentary body but has wide powers

<sup>25</sup> ‘OHCHR | Principles Relating To The Status Of National Institutions’ (*Ohchr.org*) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>> accessed 2 April 2017.

<sup>26</sup> *Accreditation of National Human Rights Institutions Last Updated: 24 January 2017* (OHCHR).

which give him/her certain autonomy and independence from parliament. The main task of a classic parliamentary ombudsman is control over the administration and its officials (in contrast to the previous two models of ombudsman in which his/her control is spread over both executive and legislative branches).<sup>27</sup>

Furthermore, *the main functions* of the ombudsman institution should be defined, and these are as follows:

- promoting more effective work of the authorities;
- assistance to residents in restoring rights violated by power;
- implementation of the function of an intermediary, a bridge between society and power;
- implementation of the function of extrajudicial investigation.<sup>28</sup>

The rapid spread of the ombudsman institution at the end of the 20th century can be explained by the fact that in the eyes of society it has the following attractive features:

- it is an easily reached resource of power, close to the usual inhabitant;
- it has a speed of review and response;
- an important feature of the ombudsman institution is also greater trust, “creditworthiness” on the part of ordinary citizens;
- the institution of the ombudsman corrects the imbalance between resident and the government;
- finally, it increases the responsibility of officials.

At the same time, it has attractive features in the eyes of public authorities:

- the availability of the institution increases the attractiveness of the authorities themselves;
- the ombudsman institution does not carry the threat of violence to the

<sup>27</sup> Мухитдинов Е.Н., Институт Омбудсмана\* (Уполномоченного По Правам Человека) В Международном Праве: История Возникновения И Развития В Странах Мира И Казахстане. (Доклады Национальной академии наук Республики Казахстан 2008).

<sup>28</sup> Victor O. Aveni, *Ombudsmen as Human Rights Institutions: The New Face Of a Global Expansion* (2009).

- authorities and is not connected with parties, i.e. it is not a potential political competitor;
- it is quite economical (according to experts, its cost for the state is 1/10 of the cost of the court);
  - the institution of the ombudsman is an important tool for preventing corruption;
  - it can take a new look at the problem;
  - finally, it is the mechanism for controlling the government's activities, especially its middle and low levels.<sup>29</sup>

To sum up, from all mentioned above there are two remarks to make. First is the phenomenal popularity of the institution worldwide as demand for its particularly flexible and cost-effective services continues to grow. By way of illustration, the early office was not introduced until after 110 years (from the first ombudsman in Sweden) when Finland adopted it in 1919. West Germany adopted the concept in the military in 1954; however, it was not until 1962 that it effectively reached the English-speaking world when New Zealand adopted the idea. Second, and related to the first point, is the expansion in the role of the ombudsman from its traditional function, expressed exclusively in terms of administrative justice, to a broader role that explicitly addresses the protection and promotion of human rights.<sup>30</sup>

The importance of the ombudsman institution is confirmed by the fact that it is also established at supranational level – by the European Union. In 1993, the Maastricht Treaty established the institute of the European mediator which was put into operation in September 1995. He/she is elected by the European Parliament for 5 years and is called upon to consider complaints on cases of poor administration in the work of institutions or organizations of the EU, except for the European Court of Justice.<sup>31</sup> Similar in functions the High Commissioner for Human Rights exists within the UNO. He/she is appointed by the UN General Assembly.<sup>32</sup>

<sup>29</sup> Ibid.

<sup>30</sup> Mary Senevirante, *Ombudsman – Public Services and Administrative Justice* (2002).

<sup>31</sup> М.М. Тхаркахо, Особенности Формирования Института Омбудсмана В Зарубежных Странах (Вестник Адыгейского государственного университета Серия 1: Регионоведение: философия, история, социология, юриспруденция, политология, культурология 2008).

<sup>32</sup> А.С. Автономов, Конституционное (государственное) право зарубежных стран

The effectiveness of this institution, of course, is achieved through ensuring the protection of human rights and freedoms. However, ombudsmen must work in close relationship with other institutions for the protection of human rights because the more mechanisms for the protection of human rights there are, the more humane this society is. In this connection, the institution of the ombudsman should be considered as an additional remedy in the system of state mechanisms.

The term “ombudsman” is used today in the following meaning. According to the Merriam-Webster online dictionary, this is a government official appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials.<sup>33</sup> The ombudsman is an official of the state, called upon to observe the legality of the actions of state bodies and the observance of the rights and freedoms of citizens. There are two types of ombudsmen by means of appointment, *parliamentary (representative)* and *government (executive)*.

Parliamentary ombudsmen oversee the legitimacy of parliament, government, justice, police, civil servants and make an examination of laws and by-laws. Government ombudsmen monitor the most important problems of state and public life, such as social conflicts, gender discrimination, observance of the rights of children, disabled people, mass media issues, etc.<sup>34</sup>

An independent mediator in the event of disputes between the state and the citizen, the “custodian of the truth in the last resort”, the defender of human rights - these are just some of the characteristics of the ombudsman institution in many countries of the world today. The peculiarity of the ombudsman institution is the fact that the probability of antagonism (various contradictions) between it and the state organizations is negligible due to the non-mandatory, recommendatory nature of its regulations. Representative ombudsmen, speaking with the results of the work done, provide an annual report to the parliament. The ombudsman has an impact on public authorities through the press, making public every single violation of human rights, fulfilling the

(2001)

<sup>33</sup> ‘Definition of Ombudsman’ (*Merriam-webster.com*) <<https://www.merriamwebster.com/dictionary/ombudsman>> accessed 3 April 2017.

<sup>34</sup> Victor O. Ayeni, *Ombudsmen as Human Rights Institutions: The New Face of A Global Expansion* (2009).

function of informing the public. This helps to accelerate the formation of a civil society - the most important indicator of the development of democratic ideals in the state. *Sweden, USA, Austria, France, England* - this list of Western states that have approved the establishment of the ombudsman can be continued for a long time.<sup>35</sup>

It can be reasonably concluded that the human rights role has now evolved into an integral part of the ombudsman function and nowadays we associate this term largely with human rights. Today's ombudsman is undeniably a *human rights institution* and cannot succeed otherwise in the face of the issues and challenges that confront it in the 21st-century environment.

If we look back at the history of the evolution of the term, we can see that by the mid-1980s the concept of ombudsman had emerged clearly as a global phenomenon. By the 1990s, the number of the ombudsman offices around the world had more than doubled. Establishing an ombudsman became a good measure of a country's seriousness about democratic reforms. Partly because of its spread and diversification, the precise number of ombudsman and ombudsman-like offices around the globe is uncertain. Sir *John Robertson*, former *President of the International Ombudsman Institute*, observed: "*It has been impossible to assess with accuracy just how many persons there are around the world who are described as an ombudsman, describe themselves as ombudsman or who have the ombudsman role in their functions... I doubt, therefore, whether it is ever going to be possible to compile a full and accurate list and profile of all ombudsman-type positions around the world*".<sup>36</sup>

However, based on Internet research and the International Ombudsman Institute (IOI) records, there are no less than 170 independent ombudsman offices in around 133 countries. The countries that have established ombudsmen can be broken down as follows: 34 in Africa; 13 in Asia; 9 in the Pacific; 29 in the Caribbean and Latin America; 53 in Europe; and 2 in North America. Ombudsman offices have also been established at the international level in institutions, including *the European Union; United Nations, United Nations Development Program (UNDP), and the World Bank*.<sup>37</sup>

<sup>35</sup> А. В. Шавцова, *Право прав человека*, (Минск: Тетра Системс 2011).

<sup>36</sup> J. Robertson, *The Ombudsman Around the World* (The International Ombudsman Journal 1998).

<sup>37</sup> G. E. Caiden (ed), *International Handbook of the Ombudsman*, Volumes I and II,

What is even more significant is that the global expansion of the ombudsman has preserved certain essential attributes that not only continue to stand the institution out from other oversight bodies but have also enabled it to naturally adapt into a veritable human rights instrument.

*The competence* of ombudsman traditionally lies within the complaints from the public on administrative injustice and maladministration, but also increasingly with human rights and corruption-related matters. He/she has the power to investigate, report upon, and make recommendations about individual cases, administrative procedures and relevant system-wide changes. The ombudsman, as an individual, is a person of prestige and influence who operates with objectivity, competence, efficiency, and fairness. He/she is readily accessible to the public and does not ideally charge for the use of the service. He/she uses fast, inexpensive and informal procedures. In other words, the ombudsman is not a judge or tribunal and has no power to make orders or to reverse administrative action. He/she seeks solutions to problems by processes of investigation and conciliation. The ombudsman's authority and influence derive from the fact that he/she is appointed by and reports to one of the principal organs of state, usually either Parliament or the chief executive. Generally, he/she can also publicize administrative actions.<sup>38</sup>

With the aim to spread and contribute to the development of the ombudsman institution in Europe as well as to ensure exchange at national, European and international levels the *European Ombudsman Institute* was established in 1988.<sup>39</sup>

At international level, *the International Ombudsman Institute* was established in Quebec, Canada. The aim of this organization is to promote the idea of ombudsman institutionalization all over the world.<sup>40</sup>

In Asia-Pacific region in 1996, *the Asian Ombudsman Association* was established. It is composed of more than 20 members of the region.<sup>41</sup>

Westport, (Connecticut, Greenwood Press 1983).

<sup>38</sup> Мухитдинов Е.Н., Институт Омбудсмана\* (Уполномоченного По Правам Человека) В Международном Праве: История Возникновения И Развития В Странах Мира И Казахстане. (Доклады Национальной академии наук Республики Казахстан 2008).

<sup>39</sup> 'Europäisches Ombudsmann Institut -' (*Eoi.at*) <<http://www.eoi.at/>> accessed 4 April 2017.

<sup>40</sup> 'The IOI' (*Theioi.org*, 2018) <<http://www.theioi.org/>>accessed 4 April 2017.

<sup>41</sup> 'Welcome to Asian Ombudsman Association (AOA) - Home' (*Asianombudsman.com*) <<http://www.asianombudsman.com/>> accessed 4 April 2017.

Thus, we can conclude that no other institute has gained such popularity and fast development and diffusion in the world as the ombudsman institution has. This proves its high efficiency in the system of human rights protection and promising prospects in the sphere of protection of human rights and freedoms as well as control over the activity of governments.

Along with the increasing interest of the world community towards the institution of ombudsman, in many post-Soviet member states this extremely important integral part for the formation of a democratic law-governed state was established, but in some, the ombudsman institution is completely absent as in the case of Belarus.

After the collapse of the Soviet Union, the institutionalization of the ombudsman's offices was taking place in unfavorable conditions, unlike in the Western states: the role of the Parliament in the USSR was insignificant, and the role of the executive branch was on the contrary hypertrophied; in the courts, accusatory verdicts dominated, whereas a high level of bureaucratization and corruption existed, and the mass media was under strict state control. That is why the establishment of the ombudsman institution took a long time, purposeful work and overcoming the resistance of some government bodies.

The establishment of the ombudsman institute in the post-Soviet space appeared to be facilitated by the membership of the countries of the region in international organizations – UNO, CSCE/OSCE, and the Council of Europe. Technical, methodological and financial support by these organizations has had the decisive role in the initial functioning of the ombudsmen's offices on several occasions.<sup>42</sup>

As far as the post-Soviet space has been in the long process of democratic transition since the collapse of the USSR the ombudsman institution here has acquired specific characteristics which do not match the classical model of the Western world. This phenomenon has been caused by political factors which limit autonomy and independence of the ombudsman institute.<sup>43</sup>

All the post-Soviet states share the similar authoritarian past and transitional period. This can be considered as one of the main factors which provided for specific features of the establishment of ombudsman

<sup>42</sup> Larisa Lesenko, *Instytucja Ombudsmana W Państwach Poradzieckich* (Dom Wydawniczy Elipsa 2011).

<sup>43</sup> Ibid.

institution in the region. According to *U. Vangansuren*, the ombudsman's primary constructive role in East-Central Europe and Central Asia was to consolidate the democracy and the rule of law through the defense of human rights.<sup>44</sup>

In this regard ombudsman offices in the post-Soviet space began to pay close attention to human rights and freedoms, anchor the reforms in public management sector, increase public participation in the policy- and law-making process, strengthening civil society as well as to enhance the process of internationalization and globalization of the previously isolated former Soviet countries.

It can be fairly assumed that the role of the emerging ombudsman institution in transitional post-communist countries should be higher. And this is proved by the fact that between 1988 and 2002, 19 post-communist countries adopted ombudsman institutions.<sup>45</sup>

*Vangansuren* in this regard cites former Slovenian ombudsman *Ivan Bizjak* who conducted a survey among the ombudsmen in transition countries, which enabled him to evaluate their importance in their countries. These officials saw themselves as very important and felt they could do a lot for the future development of democracy and civil society.<sup>46</sup>

Further, *Vangansuren* elaborates on differences between the ombudsman institution in the Western democracies and those in new democracies and comes to the following conclusions.

1. The difference between *the complaints* dealt with by the ombudsmen in transitional countries and those in Western countries. As expected, they both dealt with similar problems. However, the ombudsmen in transitional countries handled more social and human rights problems than did their Western counterparts.
2. The ombudsmen in the post-Soviet countries use their *rights of initiating and modifying legislation* more frequently than do the Western ombudsmen because, in transitional countries, there are still many laws and regulations inherited from the previous regime.

<sup>44</sup> Ulziibayar Vangansuren, *The Institution of The Ombudsman in The Former Communist Countries* (International Foundation for Election Systems 2005).

<sup>45</sup> Ibid.

<sup>46</sup> Ivan Bizjak, *Special Features of the Role of the Ombudsman in Transition Conditions* (VII<sup>th</sup> International Ombudsman Institution Conference, Durban, South Africa 2000).



3. The majority of the ombudsmen in the former communist countries are entitled to do conduct *ex-officio investigations* which is considered one of the most important powers vested in the ombudsman in societies in transition. It implies that these ombudsmen initiate more *ex-officio investigations* than it is customary in the West.<sup>47</sup>

In the post-Soviet states (members of the Commonwealth of Independent States, CIS), the two types of the ombudsman institutions are presented. The Institute of the Parliamentary Ombudsman is provided at the legislative level in *Armenia, Georgia, Kyrgyzstan, Moldova, Russia, Ukraine*. The presidential model is presented in *Azerbaijan, Kazakhstan, Tajikistan, and Uzbekistan*. But still, the institution of the ombudsman is a subsidiary, (additional) mechanism of legal provision operating in the state, and it cannot replace the main law enforcement agencies.<sup>48</sup>

The current development of CIS countries requires closer cooperation in the legal sphere. The countries of the CIS, which had begun to build the system of legal provision in the post-Soviet space, gradually came to understand the universality of rights and freedoms, the need to bring national legislation into line with international standards. Today, the institutionalization of the ombudsman institution at legislative level can bring the relationship between the citizen and the state to a new level and adapt the national legislation to international requirements.

The status of the ombudsman and his or her competence in the CIS member states vary considerably. It can be noted here that there is a need to adapt the institution of the ombudsman to a single model of jurisdiction for all countries of the Commonwealth. This may facilitate the task of ensuring the implementation of human rights in the states of the Commonwealth.

In some states, the ombudsman is endowed *with the necessary powers* to protect human rights (the Commissioner of the Verkhovna Rada of Ukraine), in others - *limited in freedom of action* (Ombudsman of the Oily Majlis for Human Rights in Uzbekistan).<sup>49</sup>

<sup>47</sup> Ulziiibayar Vangansuren, *The Institution of The Ombudsman in The Former Communist Countries* (International Foundation for Election Systems 2005).

<sup>48</sup> Konstantin Kokarev, *Import of human rights institutions and their effectiveness in post-Soviet states* (Saint Petersburg: Report at the international conference "Protection of Human Rights: Institutes and practices" 2013).

<sup>49</sup> А. В. Шавцова, *Право прав человека*, (Минск: Тетра Системс 2011).

The absence of the ombudsman institution is largely exacerbated by the underdevelopment of civil society institutions that are in their infancy due to the historical circumstances, as happens in the post-Soviet states.

Thus, today the institution of the ombudsman has had far-reaching prospects to get wide distribution in almost all CIS countries. Supported by a developed civil society, the sprouts of the ombudsman institution are a solid basis for the formation of democratic ideals not only in the minds of officials but also in the souls of ordinary people, helping them to easily unravel the complex labyrinths of politics.

In recent years the institution has become more closely linked to safeguarding the rule of law and the interests of citizens. The ombudsman is increasingly being a promoter of the fundamental right of individuals to good administration and a defender of citizens against maladministration, abuse of power and improper discrimination.

After the dissolution of the Soviet Union, in the post-Soviet republics the establishment of the ombudsman institution was taking place in unfavorable conditions, unlike how it was in developed democratic states: in the Soviet Union the role of parliament in the socio-political life of the society was not significant; whereas the role of the executive power was hypertrophied, in the courts an accusatory deviation prevailed, there was a high level of bureaucratization and corruption of the state apparatus, mass media was under strict control of the state. That is why the introduction of the ombudsman institution took time, goal-directed work, overcoming of resistance of the state bodies.

Hence, we can see that the transformation period after the collapse of the USSR was hindering the establishment and further development of the ombudsman institution. However, the first ex-Soviet state which introduced the ombudsman's post was *Lithuania* on January 11, 1994. In 1996 such laws were introduced in *Georgia* (people's defender of Georgia), *Russian Federation* (ombudsman of Russian Federation), *Latvia* (state bureau on human rights from 1995 till 2006, after 2006 – the post of ombudsman was introduced).<sup>50</sup>

In 1994, *Lithuania* was the first post-Soviet state to introduce the ombudsman institution. It was followed by *Latvia* in 1996. In 1997, the

<sup>50</sup> Л.И. Цыганкова, 'Институт омбудсмена на постсоветском пространстве: становление, проблемы, перспективы' (2012) *Vesnik of Yanka Kupala State University of Grodno. Series 1. History and Archaeology. Philosophy. Political Science.*

ombudsman institution was established in *Uzbekistan, Moldova, and Ukraine*. *Estonia* institutionalized *the Chancellor of Justice* post in 1938 according to the Constitution. This body, however, ceased to operate during the Soviet era but was re-established in 1993, as the general body of petition and guardian of constitutionality. Only in 1999, the functions of the ombudsman were entrusted to the Chancellor of Justice. In 2001 this institution was created in *Azerbaijan*, in 2002 – in *Kyrgyzstan and Kazakhstan*. In 2003, the same happened in *Armenia*, in 2008 – in *Tajikistan*. And finally, in *Turkmenistan*, the institution of ombudsman was introduced in 2016 and came into force from January 1<sup>st</sup> 2017.<sup>51</sup> Nowadays, all post-Soviet countries have human rights ombudsmen in their national legal systems except for *Belarus*.<sup>52</sup>

For about 23 years, discussions on the introduction of the ombudsman institution in the republic have not stopped on the sidelines of the Belarusian policy. This issue was first raised by the Constitutional Court in 1994. In 1995, it returned to this issue and outlined its position in the annual message, pointing out that it was possible to introduce the institution of the ombudsman in the Republic of Belarus. This message pushed Belarusian lawmakers to draft a bill on the Human Rights Commissioner. In 1996, the parliament adopted and approved the Bill in the first reading. In the future, the project was sent to the Commission on Human Rights and National Relations for Legislation and Judicial Reform to be finalized. However, things did not go further, and as a result, the project remained in the Commission.<sup>53</sup>

The introduction of the institution of the ombudsman in the Republic of Belarus was not raised until 1998 in the message of the Constitutional Court “On the state of constitutional legality in the Republic of Belarus in 1998”, stating that the legal securing of the right of citizens to address a constitutional complaint would meet the goals of the world protection of human rights

According to the other experts, the introduction of the ombudsman institution in Belarus will be implemented considering the experience of Russia. Many of them argue that the Belarusian model should focus on

<sup>51</sup> Сергей Субботин, «В Туркмении Вступил В Силу Закон Об Омбудсмене» (РИА Новости) <<https://ria.ru/world/20170101/1485062760.html>> accessed 5 April 2017.

<sup>52</sup> Л.И. Цыганкова, ‘Институт омбудсмeна на постсоветском пространстве: становление, проблемы, перспективы’ (2012) *Vesnik of Yanka Kupala State University of Grodno*. Series 1. History and Archaeology. Philosophy. Political Science.

<sup>53</sup> *Ibid.*

the Belarusian experience and adopt the advantages of other models.<sup>54</sup>

The institutionalization of ombudsman in the post-Soviet countries is a positive step towards ensuring human rights and freedoms and paving the way towards democratization. In this regard, it is vital to observe an interesting relationship between freedom (the Freedom House ranking) and the ombudsman institution in the post-Soviet countries.<sup>55</sup> (see Table 1)

*Table 1. The Relationship between Freedom and the Ombudsman Institution in the post-Soviet states*

Country	Political Rights	Civil Liberties	Freedom Rating	Ombudsman Institution
Armenia	5	4	Partly free	2004
Azerbaijan	7	6	Not free	2002
Belarus	7	6	Not free	Not established
Estonia*	1	1	Free	1993, 1999
Georgia**	3	3	Partly free	2001
Kazakhstan	7	5	Not free	2002
Kyrgyzstan	5	5	Partly free	2002
Latvia*	1	2	Free	1996
Lithuania*	1	1	Free	1994
Moldova**	3	3	Partly free	1998
Russia	7	6	Not free	1998
Tajikistan	7	6	Not free	2008
Turkmenistan	7	7	Not free	2017
Ukraine**	3	3	Partly free	1998
Uzbekistan	7	7	Not free	1997

\* - the states within the EU

\*\* - the states which signed Association Agreements with the EU

<sup>54</sup> Евгений Кечко, «Омбудсмен В Беларуси: Нонсенс Или Реальность?». Последнее Слово, n. 50 (873) 3 Декабря 2012. Белгазета. Новости Беларуси. Белорусские Новости' (*Belgazeta.by*) <[http://www.belgazeta.by/ru/2012\\_12\\_03/slovo/25391/](http://www.belgazeta.by/ru/2012_12_03/slovo/25391/)> accessed 7 April 2017.

<sup>55</sup> 'FIW 2017 Table of Country Scores' (*Freedomhouse.org*) <<https://freedomhouse.org/report/fiw-2017-table-country-scores>> accessed 9 April 2017.

As can be clearly seen in the table, countries succeeding in the ombudsman concept have higher freedom rates than those lacking. However, in case of *Uzbekistan and Russia*, where these institutions were established in the 1990s, such a statement is not appropriate due to the political situation in these countries.

Even though the ombudsman institution in the post-Soviet space is quite young and is still developing it is very popular among the citizens of these countries.

In 2000, *the Parliamentary Advocates of Moldova* received 1005 complaints and there were 4036 personal appeals<sup>56</sup>, in 2010, there were 1732 complaints and 2046 personal appeals.<sup>57</sup> In Ukraine, *Parliament Commissioner for Human Rights* listened to 29500 people in 1998 and in 2010 – more than 82000 people.<sup>58</sup> From the beginning of its activity, the Ukrainian ombudsman received more than 1 million people.<sup>59</sup>

The annual reports of ombudsmen in the post-Soviet countries demonstrate that the overwhelming number of complaints relate to violations of *civil (personal) rights of individuals* which comprise the half from all the complaints.

Receiving and considering complaints from individuals is not the only task of ombudsmen. One more vital direction of their work is to inform the government bodies and society about the observance of human rights and freedoms. In the post-Soviet space due to the low judicial and political culture, this work has gained more popularity and significance. Very often, the citizens are not aware of their rights and freedoms and the protection mechanisms and have very little knowledge on where and to whom appeal in case of a problem. In this regard ombudsmen also commit the role of promoters of their activities (participate in various seminars and conferences, hold public speeches and have close ties with mass media, spread information resources on human rights and related to it issues. All ombudsmen have official websites where everyone can have access to information provided by ombudsmen including annual reports. Such transparency is a powerful lever to influence public opinion, which in its turn affects the activity

<sup>56</sup> Доклад о соблюдении прав человека в Республике Молдова в 2000 году.

<sup>57</sup> Доклад о соблюдении прав человека в Республике Молдова в 2010 году.

<sup>58</sup> Доповідь Уповноваженого Верховної Ради України з прав людини про стан дотримання прав і свобод людини і громадянина в Україні 2000-2001.

<sup>59</sup> Доповідь Уповноваженого Верховної Ради України з прав людини про стан дотримання прав і свобод людини і громадянина в Україні. 2010.

of state officials. As a result, we can see that ombudsmen's educational activity contributes to increasing of legal awareness of human rights and freedoms in society.

The ombudsman institution in the post-Soviet countries has existed for the last 20 years and has already demonstrated positive results of its functioning. Being independent state institutions specializing in problems related to protection of human rights and freedoms, ombudsmen could not only suggest to their administration a complex vision of human rights and freedoms situation, identify the most common violations of human rights and reasons for such violations and propose solutions for them, but also began to carry out an active work within their competence to ensure protection and promotion of human rights.

The evolution of the ombudsman institution in the post-Soviet space is also due to international cooperation of ombudsmen from the post-Soviet countries. For instance, in May 2017, *the High Commissioner for Human Rights of Russia* Tatiana Moskalkova suggested the creation of the Eurasian Ombudsmen Alliance and she has already received the content of her colleagues from Armenia, Azerbaijan, Kyrgyzstan, Uzbekistan, and Tajikistan. In an annual report 2017, it is stated: "In this regard, it is very important to create the Eurasian Ombudsmen Alliance, which at first would unite the human rights commissioners of the post-Soviet countries in the interests of ensuring the protection of the rights of individuals and citizens. People of the post-Soviet countries are united by language, common historical and cultural values and even kinship. Interstate migration processes are strong in these countries."<sup>60</sup>

To sum up the above it should be mentioned that the establishment of the ombudsman institution is of a global nature and is very important for the post-Soviet states in transition which are on their way to a democratic law-abiding state.

In conclusion, it should be recognized that over the last 25 years after the collapse of the Soviet Union the communist countries have faced various difficulties in ombudsman institutionalization (lack of experience, resources, power, etc.). However, the ombudsmen became a tangible force in the life of the societies and the states. If the national

<sup>60</sup> Антон Денисов, «Москалькова Планирует Создать Евразийский Альянс Омбудсменов» (РИА Новости, 2017) <<https://ria.ru/society/20170516/1494429605.html>> accessed 22 May 2017.

governments and the international democratic community take better care of their current challenges, the ombudsmen will contribute more to the future consolidation of democracy and protection of human rights in the region.

2.

CHAPTER 2. COMPARATIVE ANALYSIS  
OF THE OMBUDSMAN INSTITUTION IN ARMENIA,  
MOLDOVA AND UKRAINE

2.1 THE ESTABLISHMENT OF THE OMBUDSMAN INSTITUTION

2.1.1 *Armenia*

The institution of ombudsman – *the Human Rights Defender* in Armenia was established relatively late within the post-Soviet space. On October 21, 2003, *the Republic of Armenia Law “On the Human Rights Defender”* was adopted.<sup>61</sup> In January 2004, the Law came into force.

Prior to this, the Armenian Foreign Ministry and Council of Europe’s Secretariat held a roundtable in Yerevan in early July 1998 to discuss the establishment of an Ombudsman in Armenia. Paruyr Harikian, Presidential Adviser and Chairman of the Presidential Committee for Human Rights, said creating the Ombudsman is possible only by making amendments to the Constitution. He thought that would not be a problem “as the most pro-governmental and most oppositional organizations can’t resist the establishment of the human rights institute.”<sup>62</sup>

According to Article 2 of the RA Law “On the Human Rights Defender”:

“The Human Rights Defender (hereinafter referred to as the Defender) is an independent and unaltered official, who, guided by the fundamental principles of lawfulness, social co-existence and social

<sup>61</sup> ‘Constitutional Law Of The Republic Of Armenia On Human Rights Defender - Human Rights Defender of the Republic of Armenia’ (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/legislation/the-law-on-the-ombudsman.html>> accessed 19 May 2017.

<sup>62</sup> ‘Ombudsman and Human Rights Protection Institutions in OSCE Participating States’ (*Osce.org*) <<http://www.osce.org/odihr/16635?download=true>> accessed 19 May 2017.



justice, protects the human rights and fundamental freedoms violated by the state and local self-governing bodies or their officials.”<sup>63</sup>

The institution was established after consultations with OSCE and the Council of Europe. It was created in accordance with the Principles relating to the Status of National Institutions (The Paris Principles).<sup>64</sup>The Institute of the Human Rights Defender of the Republic of Armenia complies with the requirements and standards of the National Ombudsman Institute. The Institute has an “A” status, which indicates compliance with the Paris Principles, as well as being an accredited National Institute of the United Nations.<sup>65</sup>

Besides, the Human Rights Defender is an independent national preventive mechanism stated by the Optional Protocol to the “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”.<sup>66</sup>

The first Human Rights Defender of the Republic of Armenia was *Larisa Alaverdyan* who was in office in 2004-2006. Alaverdyan was a notable activist in the human rights sphere in Armenia and was the main expert of the Special Committee of the Supreme Council of the Republic of Armenia on Artsakh. Along with the functions of the Human Rights Defender, she was the president of the Foundation Against Violation of Law.<sup>67</sup> Alaverdyan was also one of the members of the Commission on Human Rights under the President of the Republic of Armenia.

Alaverdyan was appointed as Human Rights Defender by the president of Armenia who at that time was Robert Kocharyan. The fact of presidential appointment caused a stir in the Armenian society, opposition forces and among the representatives of international organizations present in Armenia, which criticized this action that

<sup>63</sup> Ibid.

<sup>64</sup> ‘OHCHR | Principles Relating to the Status of National Institutions’ (*Ohchr.org*) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>> accessed 2 April 2017.

<sup>65</sup> *Chart of the Status of National Institutions Accredited by the Global Alliance of National Human Rights Institutions* (GANHRI) <<https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20%2826%20May%202017.pdf>> accessed 26 May 2017.

<sup>66</sup> ‘History - Human Rights Defender of The Republic of Armenia’ (Human Rights Defender of the Republic of Armenia) <<http://www.ombuds.am/en/defender/history.html>> accessed 25 May 2017.

<sup>67</sup> ‘Foundation against the Violation of Law’ (*Favl.am*, 2018) <<http://www.favl.am/>> accessed 26 May 2017.

deprived the members of the Parliament of taking part in such a decision.<sup>68</sup>

Before the adoption of the Law on the Human Rights Defender, the Parliamentary Assembly of the Council of Europe called on the Armenian authorities to create a transparent and credible order for the appointment of an ombudsman, “which will enable the National Assembly, including opposition parties, to express an opinion on the nomination of an ombudsman.” However, this did not happen – that is what caused the dissatisfaction of the opposition parliamentarians. The secretary of the opposition bloc “Justice” Viktor Dallakyan told IWPR that his group refused to meet with Larisa Alaverdyan since she was appointed without their consent.<sup>69</sup>

According to the Law on the Human Rights Defender, the ombudsman is appointed for six years. However, for the full implementation of this institution, it was necessary that the office and powers of the ombudsman be enshrined in the Constitution. And for this, constitutional changes were adopted at a national referendum. Because of the constitutional amendments adopted by referendum on November 27, 2005, several legal norms that stated the role and importance of the Human Rights Defender as a constitutional institution were adopted.

The Constitution guarantees the independence and inviolability of the Human Rights Defender, establishes the duty of the state and local self-government bodies to cooperate with the Human Rights Defender. At constitutional level, the Human Rights Defender became an independent and irremovable official. The Constitution also stipulates that any person held in high esteem by the public may be elected as a Human Rights Defender.<sup>70</sup>

Because of the Constitutional amendments adopted by the referendum in 2015, a separate chapter - *Chapter 10* established the

<sup>68</sup> Zhanna Aleksanian, ‘АРМЕНИЯ: ФУРОР ВОКРУГ НАЗНАЧЕНИЯ ОМБУДСМЕНА’ (*Institute for War and Peace Reporting*) <<https://iwpr.net/ru/global-voices/%D0%B0%D1%80%D0%BC%D0%B5%D0%BD%D0%B8%D1%8F-%D1%84%D1%83%D1%80%D0%BE%D1%80-%D0%B2%D0%BE%D0%BA%D1%80%D1%83%D0%B3-%D0%BD%D0%B0%D0%B7%D0%BD%D0%B0%D1%87%D0%B5%D0%BD%D0%B8%D1%8F-%D0%BE%D0%BC%D0%B1%D1%83%D0%B4%D1%81%D0%BC%D0%B5%D0%BD%D0%B0>> accessed 27 May 2017.

<sup>69</sup> Ibid.

<sup>70</sup> ‘Amendments To The Constitution Of The Republic Of Armenia’ (*Parliament.am*) <<http://www.parliament.am/legislation.php?sel=show&ID=5805&lang=eng>> accessed 28 May 2017.

procedure for the election of the Human Rights Defender, his main functions, performance guarantees, the state's obligation to ensure the proper financing of the activities of the Human Rights Defender, etc.<sup>71</sup>

*Article 103* of the Constitution for the first time stated that the Law on the Human Rights Defender is a constitutional law.<sup>72</sup>

The Constitutional amendments stipulated that the Human Rights Defender is an independent official who ensures the protection of human rights and freedoms by state and local self-government bodies and officials, and in cases defined by the Law on Human Rights Defender – by organizations as well, contributes to the restoration of violated rights and freedoms, improves the normative legal acts related to the rights and freedoms (Article 191).<sup>73</sup>

Nowadays, since February 23, 2016, the functions of the Human Rights Defender in Armenia are carried out by *Arman Tatoyan*.

### 2.1.2 *Moldova*

The establishment of the institution of Parliamentary Advocates (ombudsman) and Human Rights Centre was the next phase in the institutionalization of human rights protection in the Republic of Moldova as well as one of the conditions of the membership in the Council of Europe.

The beginning of the functioning of these institutions in Moldova followed the long and hot debates in Parliament at the beginning of 1997. The decision to establish the ombudsman institution was also supported by the UNDP office in Moldova. The UNDP fulfilled a project called “Support to democratic initiatives in the field of human rights protection in the Republic of Moldova”. The project envisaged the creation of the Human Rights Centre, which in the future had to be transformed into the bureau of ombudsman. The financial support within the project from the side of the UNO was one of the main arguments for the establishment of the ombudsman institution in Moldova. One of the goals was the creation and capacity building of the independent national institution for promotion and protection of human rights. This project has been also supported by the Governments

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

of Sweden and the Netherlands. The Second International Conference on Ombudsman and Human Rights Institutions that was held in spring of 1996 in Chisinau arrived at the similar conclusion, this time in the context of international experience, though. All these experiences were later embodied into the Law on the Parliamentary Advocates enacted in October of 1997. In February 1998, the Parliament appointed three Parliamentary Advocates and assigned equal rights and responsibilities to each of them.<sup>74</sup>

Within the whole post-Soviet space, the Moldovan ombudsman institution is the only one which is a collective body. This institution ensured the protection of all human rights and freedoms by the public authorities, by the organizations and companies, no matter of the type of property and the legal organizational form, by the non-commercial organizations and by decision-makers at all levels.<sup>75</sup>

The three Parliamentary Advocates were Konstantyn Lazar, Aleksey Potynga, and Michal Sidorov. To incorporate this newly established institution into a separate agency, the Moldovan Government has adopted a statute of the Centre for Human Rights in Moldova (CHRM), which was designed as the office of the Parliamentary Advocates.<sup>76</sup>

The first report was presented by the Advocates in April 1999, in which serious human rights and freedoms violations were indicated. During the first year of functioning the Centre for Human Rights received 2500 people with 1000 complaints. The most violated rights according to the complaints were the rights of the second generation – economic and social. The second area of the most violated rights concerned legal procedures in the courts and violation of prisoner's rights.<sup>77</sup>

With the development of the ombudsman institution during the time of the first Parliamentary Advocates, there was an increase in activities in the field of education concerning human rights in the

<sup>74</sup> Alexandr Svetlicinii, *The Institute of Parliamentary Advocates (Ombudsman) In the Republic of Moldova: Part of The National Mechanism for Protection of Human Rights* (Free Law Journal, Vol 1, Number 2 2005).

<sup>75</sup> *Law on the People's Advocate (Ombudsman)* (2014) <[http://www.apt.ch/content/files/npm/eca/Moldova\\_Ombudsman%20Law\\_May2014\\_ENG.pdf](http://www.apt.ch/content/files/npm/eca/Moldova_Ombudsman%20Law_May2014_ENG.pdf)> accessed 1 June 2017.

<sup>76</sup> Alexandr Svetlicinii, *The Institute of Parliamentary Advocates (Ombudsman) In the Republic of Moldova: Part of The National Mechanism for Protection of Human Rights* (Free Law Journal, Vol 1, Number 2 2005).

<sup>77</sup> Larisa Lesenko, *Instytucja Ombudsmana W Państwach Poradzieckich* (Dom Wydawniczy Elipsa 2011).

Moldovan society: organization of seminars and conferences with participation of Government representatives and social activists, as well as representatives of international organizations.<sup>78</sup>

Nowadays, the Centre for Human Rights is called *The People's Advocate Office* that operates under the Law on the People's Advocate (Ombudsman) No. 52 of 04/03/2014.<sup>79</sup>

The People's Advocate Office is nowadays represented by two ombudsmen. One is *Mihail Cotorobai*. There is also a Children's Rights Ombudsperson within the institution – *Maia Banarescu* who is acting under the mandate of Parliamentary Advocate for protection of children rights.<sup>80</sup> The People's Advocate Office was accredited with "B" status as of May 26, 2017.<sup>81</sup>

The People's Advocate Office is a national institution for the protection and promotion of fundamental human rights and freedoms, is autonomous and independent from any other public authority of the Republic of Moldova. It promotes, monitors and reports the observance of human rights and freedoms at the national level and their protection mechanisms, contributes to the development of national laws in the field and cooperates with other relevant regional and international institutions.<sup>82</sup>

### 2.1.3 Ukraine

The first steps towards the establishment of the ombudsman institution in Ukraine were envisaged within the concept of the new Constitution of the Ukrainian Soviet Socialist Republic in June 1991. In the next projects of the Ukrainian Constitution, the norm concerning the status of ombudsman was also envisaged. The civil society also influenced much and triggered the process of ombudsman's institutionalization in Ukraine.

<sup>78</sup> Ibid.

<sup>79</sup> *Law On The People's Advocate (Ombudsman)* (2014) <[http://www.apr.ch/content/files/npm/eca/Moldova\\_Ombudsman%20Law\\_May2014\\_ENG.pdf](http://www.apr.ch/content/files/npm/eca/Moldova_Ombudsman%20Law_May2014_ENG.pdf)> accessed 1 June 2017.

<sup>80</sup> 'History' (*The People's Advocate (Ombudsman)*) <<http://ombudsman.md/en/content/history-0>> accessed 1 June 2017.\

<sup>81</sup> *Chart of the Status of National Institutions Accredited by the Global Alliance of National Human Rights Institutions* (GANHRI) <<https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20%2826%20May%202017.pdf>> accessed 26 May 2017.

<sup>82</sup> *Perceptions of Human Rights in The Republic of Moldova* (People's Advocate Office and the Office of the United Nations High Commissioner for Human Rights (OHCHR) 2016).

The Ukrainian model of ombudsman was largely designed based on the Polish model, however, as many of the researchers mention, it is the “Russian model” which was taken as an example.<sup>83</sup>

*The Ukrainian Parliament Commissioner for Human Rights* was established in April of 1998 according to the Law of Ukraine “*On the Ukrainian Parliament Commissioner for Human Rights*”. The first Ukrainian ombudsman was *Nina Karpachova*. From 1994 to 1998 she held the position of the Deputy Head of the Committee for Human Rights, National Minorities and International Relations of the Verkhovna Rada of Ukraine. Nina Karpachova has been actively taking up implementation of international standards in the field of human rights into national legislation. She is the author of four draft laws adopted by the Verkhovna Rada of Ukraine of the 13th convocation, in particular: “Adoption of children-orphan” (Chapter of the Marriage and Family Code of Ukraine); Chapter 35-A of the Civil Procedure Code of Ukraine (judicial procedure of the adoption of children-orphan); the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” the Law of Ukraine, establishing criminal liability for trafficking in human beings (Art. 1241 “Trafficking in human beings” of the Criminal Code of Ukraine). In 1995 – head of the Preparatory Committee for the First Parliamentary Hearings on the realization of UN Convention on Elimination of All Forms of Discrimination Against Women by Ukraine. On her initiative and with her direct participation, the National Centre for the adoption of children-orphan was established in 1996 under the Ministry of Education of Ukraine.<sup>84</sup>

Nina Karpachova has been the head of several governmental and parliamentary delegations of Ukraine at international and European conferences on issues of human rights protection. She has taken an active part in the social and political activity in the field of human rights. From 1996 to 1998, Nina Karpachova held the post of the Vice-President of the World Congress of Ukrainian Lawyers. On the 14th of April 1998, Nina Karpachova was elected as the first Ukrainian Parliament

<sup>83</sup> ‘Роль Інституції Уповноваженого Верховної Ради України з Прав Людини У Формуванні Громадянської Та Правової Свідомості Громадян | Лабораторія Законодавчих Ініціатив’ (*Parlament.org.ua*) <<http://parlament.org.ua/2004/09/01/1524/>> accessed 2 June 2017.

<sup>84</sup> ‘Біографія, Nina Karpachova, Ukrainian Parliament Commissioner for Human Rights’ (*First-ombudsman.org.ua*) <<http://www.first-ombudsman.org.ua/en/biography.html>> accessed 2 June 2017.

Commissioner for Human Rights by secret ballot (she received the support of 276 people's deputies). Since 1998 she has been a member of the European Ombudsman Institute; since 2000 – a member of the International Ombudsman Institute. Nina Karpachova is the initiator of the fight against trans-national trafficking in human beings: since 1999, she has been heading the National Coordination Council for the prevention of trafficking in human beings in Ukraine.<sup>85</sup>

According to the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” (December 23, 1997) *Article 4 which stipulates the Legal status of the Commissioner*: “The Commissioner is an official, whose status is stipulated by the Constitution of Ukraine, this Law, the Law of Ukraine «On Civil Service», other laws of Ukraine.

The Commissioner performs his or her duties independently of other state bodies and officials. The activity of the Commissioner supplements legal remedies for violation of constitutional human and citizens' rights and freedoms; it neither repeals them nor results in reviewing the competence of state bodies which ensure protection and restoration of violated rights and freedoms.”<sup>86</sup>

*The Ukrainian Parliament Commissioner for Human Rights* is a classic example of a parliamentary ombudsman, since he/she is elected by Parliament (Article 5 of the relevant Law) by secret ballot, thereby ensuring the high status and legitimacy of the office as well as guaranteeing his/her independence from all branches of state authority, the legislature included. Notably, the Commissioner's term of office does not coincide with the term of the legislature of the Ukrainian Parliament (Article 5 of the Law).

The Ukrainian Parliament Commissioner for Human Rights has been accredited with the “A” status as of May 26, 2017.<sup>87</sup>

Today *Valeriya Lutkovska* is the Ukrainian Parliament Commissioner for Human Rights.<sup>88</sup>

<sup>85</sup> Ibid.

<sup>86</sup> ‘Law of Ukraine “On The Ukrainian Parliament Commissioner For Human Rights”’ (*Www1.ombudsman.gov.ua*, 2018) <[http://www1.ombudsman.gov.ua/en/index.php?option=com\\_content&view=article&id=1145:law-of-ukraine-qon-the-ukrainian-parliament-commissioner-for-human-rightsq&catid=38:2010-12-15-09-15-51&Itemid=25](http://www1.ombudsman.gov.ua/en/index.php?option=com_content&view=article&id=1145:law-of-ukraine-qon-the-ukrainian-parliament-commissioner-for-human-rightsq&catid=38:2010-12-15-09-15-51&Itemid=25)> accessed 3 June 2017.

<sup>87</sup> *Chart of the Status of National Institutions Accredited by the Global Alliance of National Human Rights Institutions* (GANHRI) <<https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20%2826%20May%202017.pdf>> accessed 26 May 2017.

<sup>88</sup> ‘Valeriya Lutkovska, Ukrainian Parliament Commissioner For Human Rights’ (*www1.*

### 2.1.4 Conclusions

The ombudsman institutionalization in the countries of this research can be considered as a “*Western import*” adopted as one of the directions within the democratic transit in the three countries. With the establishment of ombudsman institutions in these three countries, people were given an opportunity to address their complaints and problems regarding the violations of their rights to a special body.

In 1998, ombudsman institutions were established in Moldova and Ukraine, while in Armenia it was established in 2004. This was one of the steps towards democratization and reinforcement of the rule of law in these countries. Besides, this institutionalization was one of the prerequisites for the membership in the Council of Europe.

## 2.2 THE ELECTION, APPOINTMENT AND DISMISSAL OF OMBUDSMAN FROM THE POST

### 2.2.1 Armenia

According to Article 3 of *the Law on the Human Rights Defender of the Republic of Armenia*:

“1. The post of the Defender shall be held by a person *having attained the age of 25*, who has a *high degree of prestige in the society*, who has lived the *last five years in Republic of Armenia*, who is a *citizen of the Republic of Armenia and has right to vote*.

2. The Defender shall be elected *by the National Assembly* by the votes of *more than 3/5* of the total number of deputies from candidates *for a term of 6 years*, nominated by at least *1/5* of the National Assembly deputies.

The Defender should take the following oath upon his/her election:

“Having accepted the commitments of Human Rights Defender I swear hereby to be faithful to RA Constitution and laws, the principles of justice, social co-existence as to defend the human rights and fundamental freedoms of individuals and citizens. I swear to act in an impartial, honest and diligent manner”.



3. The Defender *shall take office on the day when the term of office of the previous Defender expires*. In the event the office of the Defender is vacant at the time of the election, the Defender shall take office on the next day following the election.

4. Next election of the Defender *should be held in the 40 days preceding the termination of Defender's powers.*" <sup>89</sup>

Article 6 of the same law stipulates the following provisions concerning the dismissal of Human Rights Defender from his/her post:

"1. The Defender's powers *shall terminate in the sixth year* following the date of his/her oath.

2. The Defender's powers shall be terminated before the appointed time only if:

1) a verdict of the Court convicting the Defender has entered into legal force;

2) the Defender expatriates the Republic of Armenia or obtains citizenship of another country;

3) the Defender reiterates resignation *no later than 10 days* from he/she submitting a letter of resignation to the National Assembly of the Republic of Armenia;

4) the Defender is declared incapable, missing or deceased by an effective decision of the Court;

5) in case of Defender's death.

3. In case of the existence of bases provided to the second part of the present article, the President of National Assembly informs the deputies about the early termination of Defender's powers.

4. In case of termination of the Defender's powers, *new elections will be called within a month from the date when the post remains vacant.*" <sup>90</sup>

### 2.2.2 Moldova

According to Article 5 of Chapter II of the *Law No. 52 on the People's Advocate (Ombudsman)*:

"1) The Parliament appoints *two People's Advocates*, autonomous

<sup>89</sup> 'Constitutional Law Of The Republic Of Armenia On Human Rights Defender - Human Rights Defender of the Republic of Armenia' (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/legislation/the-law-on-the-ombudsman.html>> accessed 7 June 2017.

<sup>90</sup> Ibid.

from each other, where *one is specialized in the issues of the child rights and freedoms protection.*

2) The People's Advocate is appointed for a *7-year mandate*, which cannot be renewed. The mandate starts on the day of oath.

3) The People's Advocate performs public servant's activity.

4) In the case of cessation before the end of the term of the People's Advocate mandate, a new People's Advocate is appointed *in no more than 3 months.*

5) The People's Advocate is in his/her position until his/her replacement by the successor, except in the cases of mandate ceasing before term or revocation on the grounds provided by Art. 14.

6) Declaration of the state of emergency, siege or war on the whole territory of the country or in some localities *does not suspend* the activity of the People's Advocate and does not restrain his/her duties.”<sup>91</sup>

According to Article 6 of the Law:

1) The People's Advocate position may be held *by the individual corresponding to the following criteria:*

a) citizen of the Republic of Moldova;

b) full legal capacity;

c) license diploma or its equivalent;

d) work experience of *at least 10 years and renowned activity in the sphere of human rights protection and promotion;*

e) enjoying a spotless reputation;

f) knowing the official state language.

2) A candidate for the position of People's Advocate cannot:

a) have criminal records, including served ones, for an intended offence or being amnestied by an amnesty or grace document;

b) have been fired or released of duties from imputable motives.”<sup>92</sup>

The selection of the candidates for the People's Advocate position is stipulated in Article 7, which states:

“1) For the selection of the candidates for the position of People's Advocate a *Special Parliament Commission* is created, comprised from *members of the Human Rights and Inter-Ethnic Relationships Commission and Legal, Appointments and Immunities Commission.*

<sup>91</sup> LAW No. 52 Din 03.04.2014 *On the People's Advocate (Ombudsman)* (2014) <[http://www.apr.ch/content/files/npm/eca/Moldova\\_Ombudsman%20Law\\_May2014\\_ENG.pdf](http://www.apr.ch/content/files/npm/eca/Moldova_Ombudsman%20Law_May2014_ENG.pdf)> accessed 8 June 2017.

<sup>92</sup> Ibid.

The Special Parliament Commission organizes the selection of the candidates for the position of People's Advocate in conformity with the regulations approved by it.

2) The information on the organization and implementation of the selection, requirements for the candidates and documents to be submitted is displayed on the official webpage of the Parliament and published in the mass media at least 20 days prior to the election day.

3) The selection organization and implementation procedure are based on the following principles:

a) *open competition*, through the provision of free access to all individuals meeting the requirements set by the Law;

b) *transparency*, through the provision of information related to the modality of the selection to all the interested parties;

c) *equal treatment*, through the non-discriminating application of the selection criteria and conditions for all candidates.

4) The CVs of the candidates are placed on the official website of the Parliament for public consultations.

5) The selection *is considered valid* if there are *at least two candidates* for each position called for selection. In the case when insufficient files for the selection were submitted or the candidates do not meet the requirements set by the present Law, a repeated selection is called, which is organized *in a 30-day term*.

6) The selection of the candidates for the position of the People's Advocate is organized at *least 3 months before* the expiry of the current People's Advocate.

7) The information on the results of the selection are placed on the official webpage of the Parliament and is published in mass media.”<sup>93</sup>

According to Article 8 appointment procedure is conducted as follows:

“1) The Special Parliament Commission selects the candidates who did gather the biggest number of points at evaluation, 2 for each position of People's Advocate, and is presenting them to the plenary session of the Parliament for the appointment. For each candidate, a motivated review is being prepared.

2) the candidate who did get the votes of the majority of the members of the Parliament is appointed to the position of People's Advocate. If

<sup>93</sup> Ibid.

in the first round no candidate obtains the required number of votes, the candidate/candidates with the most votes are submitted for the next round of selection.

3) In the case when the required number of votes for the appointment of the People's Advocate wasn't met, the Special Parliament Commission *calls a new selection in a 15-day term* which shall be organized in conformity with Art. 7.”<sup>94</sup>

In reference to the early termination of the People's Advocates Article 14 stipulates as follows:

- “1) The People's Advocate mandate *ceases before the term* in the case of:
- a) resignation;
  - b) loss of citizenship of the Republic of Moldova;
  - c) revocation;
  - d) incompatibility;
  - e) impossibility to perform duties for more than 4 consecutive months due to the health condition, confirmed by a medical certificate;
  - f) obtaining an irrevocable court sentence;
  - g) death.”<sup>95</sup>

### 2.2.3 Ukraine

Chapter II of the Law of Ukraine “*On the Ukrainian Parliament Commissioner for Human Rights*” stipulates the provisions regarding the appointment to the post, dismissal from the post and termination of the authority of the ombudsman.<sup>96</sup>

According to Article 5 of the law, the Ukrainian ombudsman is appointed and dismissed *by the Verkhovna Rada of Ukraine by a secret ballot vote*. Only a citizen of Ukraine who has attained the age of 40 on the day of election, has a good command of the state language, high moral qualities, *experience in human rights protection*, and has been residing in Ukraine *for the last five years* shall be appointed to the post.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Law of Ukraine “On The Ukrainian Parliament Commissioner For Human Rights” ([www.ombudsman.gov.ua](http://www.ombudsman.gov.ua)) <[http://www1.ombudsman.gov.ua/en/index.php?option=com\\_content&view=article&id=1145:law-of-ukraine-qon-the-ukrainian-parliament-commissioner-for-human-rights&catid=38:2010-12-15-09-15-51&Itemid=25](http://www1.ombudsman.gov.ua/en/index.php?option=com_content&view=article&id=1145:law-of-ukraine-qon-the-ukrainian-parliament-commissioner-for-human-rights&catid=38:2010-12-15-09-15-51&Itemid=25)> accessed 8 June 2017.

By their written consent candidates for the post of the Commissioner *shall be subject to special check* under the procedure prescribed by Law “*On Principles of Preventing and Counteracting Corruption*”.

Before appointment to the post, candidates for the post of the Commissioner *shall file a declaration of property, incomes, expenditures, and financial obligations to the body which appoints the Commissioner*, under the procedure prescribed by Law “*On Principles of Preventing and Counteracting Corruption*”.

A person *who has a criminal record* that is not expired or expunged for committing a crime unless a person is rehabilitated or a person who has been given an administrative punishment for corruption during the last year *shall not be appointed* as a Commissioner.

The Commissioner shall be appointed for *the term of five years*, commencing from the day of his or her taking oath at the session of the Verkhovna Rada of Ukraine.

The Commissioner is subject to requirements and restrictions prescribed by the Law of Ukraine “*On Principles of Preventing and Counteracting Corruption*”.<sup>97</sup>

According to Article 6 of the Law, *the Chairman of the Verkhovna Rada of Ukraine or no less than one-fourth of People’s Deputies of Ukraine* can make proposals for candidates to the post of Commissioner.

The candidate to the post of the Commissioner shall be nominated *within twenty days*, commencing from the next day after:

- 1) this Law has entered into force;
- 2) the term of office of the Commissioner has expired, his or her authority has been terminated or in the event of his or her dismissal;
- 3) the results of voting have been announced if the Commissioner has not been appointed.

Voting shall be conducted during plenary sessions of the Verkhovna Rada of Ukraine *by a secret ballot vote but no earlier than ten days and no later than twenty days after deadline for nomination of candidates for participation in election*.

The candidate shall not be deemed appointed until he or she receives *the majority of votes from People’s Deputies of Ukraine* making up the constitutional composition of the Verkhovna Rada of Ukraine, with the resolution adopted thereof.

<sup>97</sup> Ibid.

Should *more than two candidates* be nominated to the post of the Commissioner and none of them is appointed, the Verkhovna Rada of Ukraine *shall repeat voting between the two candidates who have won the majority of votes.*

Candidates to the post of the Commissioner shall be nominated again if none of the candidates received the required number of votes.”<sup>98</sup>

Termination of authority and dismissal of the Commissioner from the post are stipulated in Article 9 which states:

“The authority of the Commissioner shall be terminated in such cases:

- 1) the Commissioner *refuses to further perform his or her duties* by submitting a statement of resignation;
- 2) *verdict of guilty of a court against him or her* has come into effect;
- 3) court decision according to which a person holding the post of the Commissioner is considered *missing or deceased* has come into effect;
- 4) *the newly-elected Commissioner has taken the oath*;
- 5) person holding the post of the Commissioner *has deceased.*”<sup>99</sup>

#### 2.2.4 Conclusions

The table below is provided in order to compare the provisions in the law on ombudsman’s institution concerning the eligibility criteria, election, appointment and dismissal of ombudsman in the three countries of the present study.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

Table 2: Comparative analysis of ombudsman's eligibility, election, appointment and term of office

	The minimum eligible age	The minimum eligible period of residence	Ombudsman's election and appointment	Ombudsman's term of office
Armenia	25	5	By the National Assembly of the RA	6
Moldova	None (10 years of compulsory experience instead)	—	By the Special Parliament Commission of Moldova	7
Ukraine	40	5	By the Verkhovna Rada of Ukraine	5

As one can see in all three cases, the ombudsman is elected and appointed by Parliament, so all the three countries share a *parliamentary model* of ombudsman.

The most detailed law in terms of the ombudsman's election, appointment and dismissal from the post is *the Moldovan Law on the People's Advocate (ombudsman)*.

## 2.3 THE COMPETENCE OF THE OMBUDSMAN

### 2.3.1 Armenia

It is of high importance to see whether such an important aspect as the competence of the ombudsman institution in three countries complies with the provisions of the Paris Principles.

According to Article 2 of the Law on the Human Rights Defender of the Republic of Armenia "the Human Rights Defender is an *independent and unaltered official*, who, guided by the fundamental *principles of lawfulness, social co-existence and social justice*, protects the human rights

*and fundamental freedoms violated by the state and local self-governing bodies or their officials.*”<sup>100</sup> A small remark here is in order: in the Paris Principles Article 1 says the NHRI not only “protects” but also “promotes” human rights.<sup>101</sup>

Article 7 of the Law provides for the competence of the Human Rights Defender who shall consider the complaints of individuals whose human rights and fundamental freedoms have been violated *by the state and local self-governing bodies and their officials only*.<sup>102</sup> The complaints concerning the actions of non-governmental bodies and organizations or their officials shall not be considered.<sup>103</sup> The Paris Principles do not specify which complaints shall or shall not be considered by the NHRI. Therefore, it is within the choice of the state to decide on this issue.

During 2016 the Human Rights Defender received 3844 complaints from which 2547 complaints were from Yerevan.<sup>104</sup>

This article further says that the Defender *cannot intervene into judicial processes but may* ask for information from the courts and has the right of providing advice to those that wish to appeal the decisions and judgments of the court.<sup>105</sup>

As is stipulated in the Paris Principles in the present Law the Defender *shall have the right to attend and speak at Cabinet meetings*, as well as at *meetings in other state agencies when issues related to human rights and fundamental freedoms are discussed*. The Defender shall also have the *right to propose for discussion at these sessions issues related to violation of human rights and fundamental freedoms as well as violations of the requirements of this Law by state agencies or their subordinate agencies or their officials*. The Defender shall also have the *right to attend*

<sup>100</sup> ‘Constitutional Law of the Republic of Armenia on Human Rights Defender - Human Rights Defender of the Republic of Armenia’ (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/legislation/the-law-on-the-ombudsman.html>> accessed 10 June 2017.

<sup>101</sup> ‘OHCHR | Principles Relating to the Status of National Institutions’ (*Obchr.org*) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>> accessed 2 April 2017.

<sup>102</sup> ‘Constitutional Law Of The Republic Of Armenia On Human Rights Defender - Human Rights Defender of the Republic of Armenia’ (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/legislation/the-law-on-the-ombudsman.html>> accessed 10 June 2017.

<sup>103</sup> Ibid.

<sup>104</sup> ‘Statistics - Human Rights Defender of the Republic of Armenia’ (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/statistics.html>> accessed 10 June 2017.

<sup>105</sup> Ibid.



*the sessions of the National Assembly of the Republic of Armenia and make a speech there.*<sup>106</sup>

According to the methods of NHRI operation stipulated in the Paris Principles ombudsman shall have the right to hear any person and obtain any information and any documents necessary for assessing any situation. This provision is elaborated in paragraph 1 of Article 8 it is said that: “The Defender or his/her representative *has the right of a free access, by his/her own initiative, to military units, police detention centers, pre-trial or criminal punishment exercising agencies, as well other places of coercive detention to receive complaints from the persons being there.*” And further it says as follows: “The Defender or his/her representative *shall be guaranteed to have confidential, separate, unrestricted communication with persons in military units, under in preliminary detention or serving their sentence in penitentiaries, as well as persons in other places of coercive detention.*”<sup>107</sup>

Article 17 of the Law stipulates the provisions regarding the presentation of annual as well as special reports and their submission to the Government and Parliament and any other competent body as well as their presentation to the mass media and relevant NGOs in line with the provisions of the Paris Principles (3 a iii).

According to Article 27 of the Law, the Human Rights Defender shall have the right to appeal to the Constitutional Court of the Republic of Armenia, which is also set out in clause 8 of Article 101 of the Constitution of the Republic of Armenia.<sup>108</sup> Thus, during the year of 2016, the Human Rights Defender appealed to the Constitutional Court of the RA on the Issue of Conformity of a Number of Regulations with the Constitution of the RA in September 2016. In the appeal sent to the Constitutional Court by the Human Rights Defender it was mentioned that there was a need to comprehensively regulate the institutions of administrative arrest and detention and to ensure the minimum volume of individual rights.<sup>109</sup>

<sup>106</sup> Ibid

<sup>107</sup> Ibid.

<sup>108</sup> ‘Amendments to The Constitution of the Republic of Armenia Adopted 06.12.2015’ (*Parliament.am*) <<http://www.parliament.am/parliament.php?id=constitution&lang=eng>> accessed 10 June 2017.

<sup>109</sup> ‘Human Rights Defender Addresses Constitutional Court on The Issue Of Conformity of a Number of Regulations with the Constitution - Human Rights Defender of the Republic of Armenia’ (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/media/concourt.html>> accessed 11 June 2017.

Article 6.1 of the Law defines the functions of the ombudsman in the sphere of international law:

“The Defender is recognized as an Independent National Preventive Mechanism provided by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”<sup>110</sup> During 2016, the Expert Council for the Prevention of torture made more than 110 visits to the RA police stations and detention centers, penitentiary institutions, military disciplinary isolation cells in the territory of the Republic of Armenia. Joint visits with the members of the Expert Council for the Prevention of Torture and in some institutions double visits were carried out as well. In particular, problems were identified concerning the conditions of detention of persons deprived of liberty in the penitentiary institutions, the organization of medical service, proper performance of external examination, as well as other issues related to the rights of the detained persons.

Problems with the maintenance, sanitation conditions, provision of food, and external examination of the facilities of detention of the arrested and detained persons were identified in the RA police system. The necessity for raising awareness on the rights and freedoms of the citizens was highlighted too.<sup>111</sup>

### 2.3.2 Moldova

Article 1 of the Law No. 52 on the People’s Advocate (Ombudsman) is fully in accordance with the Paris Principles provisions concerning the ombudsman’s mandate and competence. The People’s Advocates *ensure the protection of all human rights and freedoms by the public authorities, by the organizations and companies, no matter the type of property and the legal organizational form, by the non-commercial organizations and by decision-makers at all levels.*

This main task is supported by *the People’s Advocates’ contribution to the protection of the human rights and freedoms through the prevention*

<sup>110</sup> ‘Constitutional Law of the Republic of Armenia on Human Rights Defender - Human Rights Defender of the Republic of Armenia’ (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/legislation/the-law-on-the-ombudsman.html>> accessed 11 June 2017.

<sup>111</sup> ‘National Preventive Mechanism - Human Rights Defender of the Republic of Armenia’ (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/categories/npm.html>> accessed 11 June 2017.

*of their violation at national level through the improvement of the legislation related to the human rights and freedoms, through international collaboration in this area, through the promotion of the human rights and freedoms and their protection mechanisms.*

As far as one of the People's Advocates is a children's rights ombudsman he or she shall *ensure the protection of child rights and freedoms, at national level, by the central and local public authorities, by the decision-making officials at all levels of the provisions of the UN Conventions for the Protection of the Rights of the Child.*<sup>112</sup>

Article 2 of the Law elaborates on the principles of activity of the People's Advocates among which the main one is to follow the Constitution of the Republic of Moldova, the present Law and other laws of Moldova as well as the international treaties signed by the state. The People's Advocates in their activity should follow *the principles of legality, equality, impartiality, transparency, social equity, democracy, humanism and follows own conscience.*"<sup>113</sup>

Articles 11, 12 and 16 stipulate the rights, obligations and duties of the ombudsman which mainly corresponds to the provisions of the Paris Principles regarding the cooperation of ombudsman with the state bodies. Article 11 sets out the rights of the People's Advocates among which the main ones are: the right to be received by *the President of the Republic of Moldova, by the Chairman of the Parliament and by the Prime-minister* as well as by *the heads and all responsible officials at all levels of public authorities, institutions, organizations and companies, no matter the type of property and legal organization form.* This also concerns *the police inspectorates and their detention places, the penitentiary institutions, criminal investigation isolators, military bases, placement centers for immigrants or asylum seekers, social, medical or psychiatric care institutions, special educational and re-educational institutions or curative and re-educational institutions for juveniles and other similar institutions.*

The People's Advocates shall also have the right *to assist to and speak at the meetings of the Parliament, of the Government, of the Constitutional Court, of the Superior Council of the Magistrates, of the Superior Council of*

<sup>112</sup> Law No. 52 Din 03.04.2014 *On the People's Advocate (Ombudsman)* (2014) <[http://www.apr.ch/content/files/npm/eca/Moldova\\_Ombudsman%20Law\\_May2014\\_ENG.pdf](http://www.apr.ch/content/files/npm/eca/Moldova_Ombudsman%20Law_May2014_ENG.pdf)> accessed 8 June 2017.

<sup>113</sup> Ibid.

*the Public Prosecutors as well as to submit to the Parliament or Government the recommendations on the improvement of the legislation in the area of protection for the human rights and freedoms.*

*What is also important the People's Advocates shall also verify the compliance and accordingly enforcement by the public authorities, by the organizations and companies, no matter of the type of property and legal organization form, by the non-commercial organizations, by the responsible officials at all levels of their duties related to the protection of the human rights and freedoms.*

Unlike their Armenian colleague, the People's Advocates have the right *to act ex officio in cases provided by the Law.*

*The People's Advocates shall have free access to all public authorities, as well as to request and receive from public authorities, from responsible officials at all levels information, documents and materials necessary to perform their duties, including official data with limited access and data from the state secret category in under the law.*

In order to properly solve various kinds of problems, the People's Advocates have the right *to invite subjects for hearings and to receive explanations and information from responsible officials necessary to reveal the circumstances of the investigated matter as well as to request the competent state institutions for judiciary expertise, a technical-scientific and forensic conclusion and the submission of the expert report or protocol on the impossibility to draft such a report; to request the conclusions of the competent institutions on the protection of the human rights and freedoms in the case when there are sufficient grounds to suspect the violation of the rights and freedoms guaranteed by the Constitution of the Republic of Moldova and international treaties the Republic of Moldova is party to. The People's Advocates shall also collaborate with international and regional institutions and organizations working in the area of human rights and freedoms protection. All their activities and results of the investigations should be public.*<sup>114</sup>

According to Article 12 of the Law, the People's Advocate is obliged *to protect the human rights and freedoms in conformity with the Constitution of the Republic of Moldova, with the international laws and treaties in the area of human rights and freedoms which the Republic of Moldova is party to, to perform own duties in conformity*

<sup>114</sup> Ibid.

with the law. In order to provide transparency and independence of the People's Advocate, when starting in the position and each year, he/she *shall submit, by law, a declaration of his/her income, property and personal interests.*" <sup>115</sup>

In Article 16 of the present law, the duties of the People's Advocate are stipulated. Among the main ones is to *receive and review complaints on the violation of human rights and freedoms* and remits, in the set deadlines, written replies on the decisions.

From January 1 to December 31, 2016, the People's Advocates of Moldova received 1108 complaints of which: 987 complaints - the central office of the Ombudsman's Office in Chisinau, 73 complaints received at the Cahul Representation, 28 - at the Comrat Representation, 17 – at Varnita and three at Balti.<sup>116</sup>

In accordance with the Paris Principles, the People's Advocate *submits recommendations to the authorities and/or individuals in key positions on the recovery of rights for the individuals* for whom a violation of their human rights and freedoms was found, as well as *contributing to the amicable solution of the conflicts* between public authorities and individuals; and *contributing to the improvement of the legislation* in the area of human rights and freedoms.

The People's Advocates also *submit proposals and recommendations for ratification or adhering to international instruments in the area of human rights and freedoms* and *provide methodological support* to ensure their implementation;

What is also important is that he/she *intimates the Constitutional Court and initiates matters in courts, submitting his/her opinion at the request of the Constitutional Court.*

The People's Advocates also *promote human rights in the society.*<sup>117</sup>

The competence of children's rights ombudsman is stipulated in Article 17 of the Law which says that *the People's Advocate for the rights of the child provides protection and assistance to the child at his/her request, without seeking the parents' or legal representatives' consent.*

<sup>115</sup> Ibid.

<sup>116</sup> *Report on the Observance of Human Rights and Freedoms in the Republic of Moldova In 2016 (2017)* <[http://ombudsman.md/sites/default/files/document/attachments/raport\\_2016\\_engleza\\_1.pdf](http://ombudsman.md/sites/default/files/document/attachments/raport_2016_engleza_1.pdf)> accessed 11 June 2017.

<sup>117</sup> *Law No. 52 Din 03.04.2014 On the People's Advocate (Ombudsman) (2014)* <[http://www.apr.ch/content/files/npm/eca/Moldova\\_Ombudsman%20Law\\_May2014\\_ENG.pdf](http://www.apr.ch/content/files/npm/eca/Moldova_Ombudsman%20Law_May2014_ENG.pdf)> accessed 8 June 2017.

The People's Advocate for the rights of the child *has the right to act ex officio in order to help the child in difficulty or at risk without seeking the parents' or legal representatives' consent.*

The People's Advocate for the rights of the *child cooperates with any individual, non-commercial organization, institution or public authority acting in the area and decides upon the complaints on the violation of the rights and freedoms of the child.* In order to protect the rights and freedoms of the child, he/she *may initiate court matters.* In his/her activity, *the People's Advocate for the rights of the child is assisted by a special subdivision within the People's Advocate Office.*" <sup>118</sup>

### 2.3.3 Ukraine

According to Article 13 of Chapter IV of the Law "On the Ukrainian Parliament Commissioner for Human Rights", the latter has - as in the case of Armenian and Moldovan ombudsmen - the scope of rights defining his competence. This regards the right *to be received by state bodies, courts, institutions and organizations regardless of their forms of ownership* as well as to attend sessions of Parliament, Government, the Constitutional Court and the Supreme Court of Ukraine and other collegiate bodies. As both Armenian and Moldovan ombudsmen, the Ukrainian Parliament Commissioner for Human Rights has the right *to appeal to the Constitutional Court of Ukraine* with regard to: conformity of the laws of Ukraine and other legal acts issued by the Verkhovna Rada of Ukraine, acts issued by the President of Ukraine, acts issued by the Cabinet of Ministers of Ukraine. The Commissioner also has the right *to make proposals in due course for improvement of legislation of Ukraine in the sphere of protection of human and citizen's rights and freedoms* as well as *to visit, without hindrance, bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, and be present at their sessions.* The Commissioner shall have the right *to review documents*, including those, which contain classified information and obtain copies from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, *irrespective of their forms of ownership*, bodies of prosecution, including court cases.

<sup>118</sup> Ibid.

Access to classified information is provided according to procedure established by the relevant legislation;

The Commissioner shall have the right to *demand from officials and officers of bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, facilitation in conducting inspections regarding the activity of enterprises, institutions and organizations under their control and subordination, and ensure that experts participate in acts of inspection, providing their expertise and respective conclusions; invite officials and officers, citizens of Ukraine, foreigners and stateless persons to submit oral and written explanations* with regard to cases under review.

Like both Armenian and Moldovan ombudsmen, the Commissioner shall have the right to *visit, without prior notification of purpose and time, places defined in paragraph 8 of Article 13 of the Law and interview in such places persons and obtain information on their treatment and living conditions.*

The Commissioner shall have the right to *attend court sessions of all instances, including court sessions held behind closed doors, if legal persons in whose interest the judicial proceedings have been ruled to be held behind closed doors, has given consent;*

He/she has the right to *appeal to a court so as to protect human and citizens' rights and freedoms* of persons who cannot do this on their own due to reasons of health or any other appropriate reasons, and also *attend judicial proceedings* personally or through a representative pursuant to law. The Commissioner has the right to *submit to respective bodies, documents containing his/her response to instances of violation of human and citizens' rights and freedoms, for taking respective measures;*

Paragraph 13 of Article 13 sets out a very important provision which is absent in both Armenian and Moldovan laws – the Parliament Commissioner for Human Rights has the right to exercise control over *ensuring equal rights and opportunities for women and men.*<sup>119</sup>

Article 14 of the Law stipulates the duties of the Commissioner among which the main ones are to honor *the Constitution of Ukraine and the laws of Ukraine, other legal acts, human and citizens' rights and interests*

<sup>119</sup> 'Law Of Ukraine "On The Ukrainian Parliament Commissioner For Human Rights"' ([www.ombudsman.gov.ua](http://www.ombudsman.gov.ua)) <[http://www1.ombudsman.gov.ua/en/index.php?option=com\\_content&view=article&id=1145:law-of-ukraine-qon-the-ukrainian-parliament-commissioner-for-human-rightsq&catid=38:2010-12-15-09-15-51&Itemid=25](http://www1.ombudsman.gov.ua/en/index.php?option=com_content&view=article&id=1145:law-of-ukraine-qon-the-ukrainian-parliament-commissioner-for-human-rightsq&catid=38:2010-12-15-09-15-51&Itemid=25)> accessed 8 June 2017.

*protected by law, ensure the exercise of functions conferred on him or her and fully use the rights given to him or her and to keep confidential information secret even after the termination of his or her authority.*

*The Commissioner shall exercise his or her parliamentary control over the observance of the right to access to public information.*

*The Secretariat of the Commissioner for Human Rights on behalf of the Commissioner ensures that information on requests submitted to the Commissioner for Human Rights under the Law of Ukraine ‘On Access to Public Information’ are made public and provided.<sup>120</sup>*

In Article 15 acts of response of the Commissioner are prescribed:

*“The acts of response of the Commissioner to violations of provisions of the Constitution of Ukraine, laws of Ukraine, international agreements of Ukraine on human and citizens’ rights and freedoms are a constitutional submission of the Commissioner and a submission to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions and organizations, irrespective of their forms of ownership, and their officials and officers.*

*The constitutional submission of the Commissioner is an act of response submitted to the Constitutional Court of Ukraine with regard to the issue of conformity (constitutionality) of a law of Ukraine or any other legal act issued by the Verkhovna Rada of Ukraine, the President of Ukraine and the Cabinet of Ministers of Ukraine, a legal act of the Autonomous Republic of Crimea with the Constitution of Ukraine; and with regard to the official interpretation of the Constitution of Ukraine and the laws of Ukraine.*

*The submission of the Commissioner is a document which is submitted by the Commissioner to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers for the purpose of taking, within the one-month period, relevant measures aimed at the elimination of revealed acts of violation of human and citizens’ rights and freedoms.”<sup>121</sup>*

*The Commissioner can conduct legal proceedings and inspections based on the following grounds as stipulated in Article 16:*

*“The Commissioner shall perform his or her duties on the basis of*

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.



information about acts of violation of human and citizens' rights and freedoms, which he or she obtains through:

1. the appeals of citizens of Ukraine, foreigners, stateless persons or their representatives;
2. the appeals of the People's Deputies of Ukraine;
3. his or her own initiative.”<sup>122</sup>

In Article 17 the provisions concerning the Commissioner's duty to receive appeals of citizens of Ukraine, foreigners, stateless persons or persons acting in their interests are stipulated.

During the year of 2016, the Ukrainian Parliament Commissioner for Human Rights received 23925 complaints.

Like both Armenian and Moldovan ombudsmen, the Ukrainian one must provide Annual and Special reports of the Commissioner according to Article 18.

Annual and Special reports, along with the resolution adopted by the Verkhovna Rada of Ukraine, shall be published in official publications of the Verkhovna Rada of Ukraine.”<sup>123</sup>

With regard to the participation of the Commissioner in international cooperation is stipulated in Article 19.

“The Commissioner participates *in the preparation of reports on human rights submitted by Ukraine to international organizations in accordance with effective international agreements* ratified by the Verkhovna Rada of Ukraine.”<sup>124</sup>

Article 19-1 stipulates *the performance of functions of national preventive mechanism by the Commissioner.*

“The Commissioner is entrusted with *functions of national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.*

To perform the functions of the national preventive mechanism the Commissioner:

1. *makes regular visits to places mentioned in paragraph 8 of Article 13 of this Law*, without prior notice of the time and purpose of such visits and without limits of their quantity;
2. *interviews persons kept in places referred to in paragraph 8 of Article 13 of this Law*, in order to obtain information regarding their treatment

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

and detention conditions as well as interviews other persons who may provide such information;

3. *submits proposals to public authorities, state bodies, enterprises, institutions and organizations regardless the form of their ownership, including those referred to in paragraph 8 of Article 13 of this Law with regard to prevention of torture and other cruel, inhuman or degrading treatment or punishment;*

6. *draws on a contract basis (on a monetary or free of charge basis) representatives of civil society organizations, experts, scholars and professionals, including those from abroad, to regular visits to places referred to in paragraph 8 of Article 13 of this Law;*

7. performs other duties prescribed by this Law.

Every year the Commissioner prepares *a special report on the state of affairs in relation to prevention of torture and other cruel, inhuman or degrading treatment or punishment. This report shall be published in the media and sent to the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine in compliance with the legislation of Ukraine on information.*

When performing the functions of the national preventive mechanism the Commissioner *cooperates with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture formed under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as with the international organizations and relevant bodies of foreign states working in this area.*"<sup>125</sup>

### 2.3.4 Conclusions

Overall, we can conclude that there are many similarities within the competences of the three ombudsmen, but we will focus on the main ones:

1. All three ombudsmen have a wide range of rights, obligations and duties;
2. They all are independent bodies which protect human rights and freedoms in the respective countries;
3. Ombudsmen of all the three states can attend sessions in parliament

<sup>125</sup> Ibid.

and be received by president as well as have the right to speak at government meetings;

4. All the three ombudsmen shall have free access to all public authorities, institutions, organizations and companies;
5. Annual reports and special ones in case of necessity should be presented by them on a regular basis;
6. All ombudsmen are recognized as an Independent Preventive Mechanism provided by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

At the same time, there are some distinctions among them:

1. Moldovan and Ukrainian ombudsmen shall consider all the complaints regarding the actions of any organization no matter the type of property and legal status whereas the Armenian ombudsman shall not consider the complaints concerning the actions of non-governmental bodies and organizations or their officials;
2. Both Moldovan and Ukrainian ombudsmen can attend court sessions and judicial proceedings while the Armenian ombudsman cannot intervene in judicial process;
3. Both Moldovan and Ukrainian ombudsman can initiate matters in courts;
4. The Moldovan ombudsman, unlike the Armenian and Ukrainian ones, can act ex-officio in cases provided by the Law;

Based on the above legal comparison we can conclude that, unlike their colleagues in Armenia and Ukraine, the Moldovan People's Advocates are endowed with wide-ranging powers which should make their role more effective in the process of human rights protection and promotion. The provisions of both the Moldovan and Ukrainian laws on ombudsman are relatively clearer, concrete, and more in tune with the Paris Principles.

3.

THE EFFECTIVENESS OF THE INSTITUTION OF  
OMBUDSMAN, CHALLENGES AND PROSPECTS

3.1 ARMENIA

To provide a comprehensive evaluation of the ombudsman's effectiveness *a set of certain criteria and indicators* should be elaborated:

1. *The assessment of the law establishing the ombudsman's institution.*

Firstly, it should be noticed that *the Law on the Human Rights Defender of the Republic of Armenia* is the least detailed in comparison with the Moldovan and Ukrainian laws. In this regard, the ombudsman's activities in the country might be somewhat hindered. As far as the new Constitution of the Republic of Armenia was adopted by referendum on 6 December 2015, so as to be in line with it, Armenia requested the review by the Joint Opinion of the Venice Commission and the Directorate of Directorate General of Human Rights and Rule of Law (DG-I) of the Council of Europe on the draft amendments to the Law on the Human Rights Defender of the Republic of Armenia, in October 2015.<sup>126</sup>

In this review, a set of recommendations by the commission and the directorate was provided to the draft law. Among the most important ones are the following:

*“Nevertheless, there is a number of important recommendations that the Venice Commission would like to make, and these include, inter alia:*

<sup>126</sup> ‘European Commission for Democracy through Law (Venice Commission) Opinion on the Draft Constitutional Law on the Human Rights Defender’ (*Venice.coe.int*) <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\\_2016033-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD_2016033-e)> accessed 12 June 2017.

*Candidates: providing for a transparent competitive selection of the Human Rights Defender, include proposals from civil society and from political parties in order to enable the selection of highly qualified candidates so as to provide legitimacy to the process;*

*Functional Immunity: including express provisions on the functional immunity of the Defender, Defender's staff and experts of the NPM for words spoken or written, recommendations, decisions and other acts undertaken in good faith while performing their functions.*

*The Human Rights Defender as the National Prevention Mechanism should:*

*Have access to all private and public institutions where persons are held against their will, including "semi-closed" institutions;*

*Guarantee the institutional participation of NGOs in its work.*

*Budget: Consider introducing safeguards against unwarranted cutbacks to improve the Defender's functional independence;*

*Grounds for dismissal: a disqualifying conviction should, as grounds for dismissal due to criminal offences or other acts incompatible with the position of Defender, exclude minor convictions (e.g. minor traffic offences);*

*Pluralism: including gender balance and diversity provisions pertaining to Defender's staff at all levels;*

*Regional presence: Consider introducing a regional presence of the Human Rights Defender or regional ombudspersons in order to provide effective accessibility to human rights protection across the country.*

## *2. The structure and composition of the ombudsman's staff.*

The Human Rights Defender staff is presented by an extensive structure. The Defender has two deputies, assistants and advisors on different aspects. There are also structural and thematic units within the staff office. Currently 22 staff members are working within the ombudsman's office in Yerevan.

Regional representative offices are established in only 3 Armenian marzes (Shirak, Gegharkunik and Syunik). Further establishment of regional representative offices should be taken into consideration so that in order to provide effective accessibility to human rights protection across the country.

The ombudsman's staff constantly improve their knowledge and skills in the field of human rights protection and promotion. Various trainings

and seminars are provided on a permanent basis as the one, which took place on 20-21 May 2017 with the assistance of the European Union and Council of Europe Partnership for Good Governance in the Eastern Partnership Countries for 2015-2017.<sup>127</sup>

3. The assessment of the system of complaints received by the Human Rights Defender.

Those whose rights have been violated can appeal to the Human Rights Defender by written or oral complaint (according to the Law). These complaints can be sent via regular post, can be presented in person and what is very important – an online complaint can be sent with an opportunity to track it on the web site. There is also a hot line, which during 2015 was used by 3786 people, and in 2016 this number grew to 4041. (See *Annex 1, p. 71*)

4. *Statistical information regarding the ombudsman's activities (number of received complaints and appeals, number of complaints by positive results, etc.)*

With regard to the statistical information about the ombudsman's activities, it is publicly accessible on the official web site of the ombudsman's office.<sup>128</sup> The number of complaints received by the Human Rights Defender in 2015 was 3924.<sup>129</sup> In 2016, the number decreased, and it can be considered as a positive change in the human rights and freedoms situation in the country. It might signal the growing trend of the state bodies compliance with the law, proper fulfilment of their functions and respect for human rights and freedoms. (see *Annex 2 and 3, p. 72*)

The number of legal acts, which fell under the ombudsman's expertise – 119 -, doubled in 2016 as compared to 2015. This demonstrates that

<sup>127</sup> 'Seminar On Strengthening The Capacity Of The Human Rights Defender Office' (*Partnership for Good Governance, 2017*) <[http://pjp-eu.coe.int/en/web/eap-pcf/armenia/-/asset\\_publisher/2r5POcLLEtjZ/content/seminar-on-strengthening-the-capacity-of-the-human-rights-defender-office?inheritRedirect=false&redirect=http%3A%2F%2Fpjp-eu.coe.int%2Fen%2Fweb%2Fcap-pcf%2Farmenia%3Fp\\_p\\_id%3D101\\_INSTANCE\\_2r5POcLLEtjZ%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-4%26p\\_p\\_col\\_pos%3D1%26p\\_p\\_col\\_count%3D6](http://pjp-eu.coe.int/en/web/eap-pcf/armenia/-/asset_publisher/2r5POcLLEtjZ/content/seminar-on-strengthening-the-capacity-of-the-human-rights-defender-office?inheritRedirect=false&redirect=http%3A%2F%2Fpjp-eu.coe.int%2Fen%2Fweb%2Fcap-pcf%2Farmenia%3Fp_p_id%3D101_INSTANCE_2r5POcLLEtjZ%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_pos%3D1%26p_p_col_count%3D6)> accessed 12 June 2017.

<sup>128</sup> 'Statistics - Human Rights Defender of the Republic of Armenia' (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/statistics.html>> accessed 12 June 2017.

<sup>129</sup> Ibid.

the role of ombudsman (stipulated by Article 16 of the Law) is gaining more importance as far as provides for the harmonization of the national laws and acts. (*see Annex 4, p.73*)

In 2015 there were 135 rapid responses to claims by positive results, the number increased in 2016 up to 201 which says about the increasing responsiveness of the ombudsman's institution. (*see Annexes 5 and 6, p.74*)

*5. Effectiveness of proposals to state bodies on changing the decisions, rules, organization and methods of work.*

The Human Rights Defender activities in the sphere of recommendations to the state bodies are of high importance. For instance, after the events of July 2016, when violations of human rights by police officers were recorded, the Human Rights Defender appealed to the Constitutional Court, by raising the question of constitutionality of the legislative regulations regarding administrative arrest and detention. These violations mainly related to not immediately informing the person about the reasons of depriving him/her of liberty, not permitting a lawyer to enter the police building, etc.

In December 2016 due to Decree Adopted by the Human Rights Defender the Criminal Court of Appeal of Armenia released a detainee who had health problems and was held in custody at one of the correctional facilities under the RA Ministry of Justice.

“The Court in its ruling paid special attention to the circumstance that the Human Rights Defender considered it to be established that a violation of the detainee's rights has taken place with regard to ensuring conditions for proper medical treatment at the detention facility.”<sup>130</sup>

Accordingly, in the appeal sent to the Constitutional Court by the Human Rights Defender it was mentioned that there was a need to comprehensively regulate the institutions of administrative arrest and detention and to ensure the minimum volume of individual rights.<sup>131</sup>

On January 30, 2017, the Constitutional Court made the decision on the case of conformity of articles 258, 260, 262, 266 and 267 of the

<sup>130</sup> ‘Criminal Court of Appeal Rules to Release Person due to Decree Adopted by Defender’ (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/media/veragnnich-azat-ardzakum.html>> accessed 13 June 2017.

<sup>131</sup> Ibid.

administrative offences code of the republic of Armenia, parts 5 and 6 of article 5 of the law of the republic of Armenia on police service with the constitution of the republic of Armenia based on the application of the Human Rights Defender of the Republic of Armenia.<sup>132</sup>

In May 2017 in Geneva, the Armenian ombudsman revealed his plans concerning his mandate regarding the protection of businessmen's rights which would be a very important direction within the functions of the ombudsman.<sup>133</sup>

Therefore, it can be concluded that role in this field is rather important as it makes changes in the legal system possible and consequently have a positive effect on the protection of human rights and freedoms.

*6. Systematic and objective coverage of the activities of the ombudsman by means of mass communications.*

The activities of the Human Rights Defender of Armenia are always systematically and objectively covered on the official web site of the ombudsman's office. The web site's interface is designed in a proper way. The content regarding the news is always being renewed providing a small information report and photo and/or video material as well.

The website is available in two languages: Armenian and English. One can find on the website information concerning the Defender's activity as well as having access to various publications, materials, legislative sources, to name a few.

What is also important in the nowadays world of speedily growing online social networks – the Defender's office has official accounts on Facebook, Twitter, LinkedIn and Instagram, which can be easily followed. The Defender's activities are also covered by various Armenian mass media, TV channels and radio, which makes possible for all people to get information on ombudsman's activities.

<sup>132</sup> 'The Constitutional Court of the Republic of Armenia' (*Concourt.am*) <<http://www.concourt.am/english/news/index.htm>> accessed 13 June 2017.

<sup>133</sup> 'The Mandate Of The Human Rights Defender In Regard To The Protection Of Businessmen's Rights Has Been Discussed In Geneva - Human Rights Defender Of The Republic Of Armenia' (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/media/gorcarameri-pashtpanutyun.html>> accessed 13 June 2017.



*7. Fruitful preventive activity of the ombudsman.*

It is very much important not only solve certain problems post factum but to pay great attention to preventive efforts and methods. In this regard, the Armenian ombudsman is actively involved in preventive activity. This includes his/her consultations and recommendations to the state bodies, courts and other organizations as well as promotion and educational activities to name a few.

For instance, during the May municipal elections of Yerevan the Defender's Office created a special working group so as to effectively monitor the elections as well as to examine alleged violation of human rights in mass media and social networks.<sup>134</sup>

*8. Constructive cooperation with state, public and international organizations.*

The Armenian ombudsman cooperates with state bodies represented by all three branches of power as well as with 18 civil society organizations this or that way connected with human rights issues. The Defender has close cooperation ties with international organizations such OSCE, Council of Europe, ICRC, UNHCR and many more. This cooperation consists of bilateral cooperation as well as participation in regular meetings, seminars, conferences etc.<sup>135</sup>

*9. Increasing legal awareness among citizens through active educational activities of the ombudsman.*

The promotion of human rights and freedoms is stipulated in the Paris Principles; at the same time, increasing legal awareness of citizens is also very important within the states in transition. That is why the Armenian ombudsman pays much attention to educational activities. For example, On June 14 Arman Tatoyan took part in a meeting-

<sup>134</sup> 'Final Statement on the Work of the Defender's Office during the Municipal Elections of Yerevan - Human Rights Defender of the Republic of Armenia' (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/media/ampopich-haytararutyun-trutyunner.html>> accessed 14 June 2017.

<sup>135</sup> 'The Human Rights Defender have met the representatives of "Full Life" Non-Governmental Organization' (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/media/liarjeq-kyanq.html>> accessed 14 June 2017.

discussion “Morning meeting in Luys” where he presented the role and significance of the Human Rights Defender’s Institution in Armenia.<sup>136</sup>

*10. Public opinion and awareness about the ombudsman’s institution. (based on the online survey)*

In order to learn about the public opinion on the ombudsman’s institution and its activity in the country an online survey was designed. The survey consists of 15 questions, open-ended as well in which a respondent’s opinion is shown. The age composition of respondents is presented by the gap from 22 to 36 years old. The largest part of respondents is students – 10 people. There are also teachers, youth workers and managers.

In the first question regarding the year of the Human Rights Defender’s establishment only 50% of the respondents chose the correct option. (*see Annex 7, p. 75*) Concerning the knowledge on how the Defender is appointed, only 62.5% of the respondents knew the correct answer. (*See Annex 8, p.75*) Fortunately, all the respondents knew the current Human Rights Defender’s name except for only one person. (*See Annex 9, p.76*)

50% of respondents were aware that the Human Rights Defender has social networks accounts, and 3 respondents were following the Facebook official page, while only one respondent was following the official account on Twitter. (*See Annex 10, p.76*)

An interesting question concerning the public opinion on the overall level of human rights protection in Armenia revealed that 62.5% of respondents thought that it was “poor” while only 37.5% assessed it as “satisfactory”. (*See Annex 11, p.77*) Thus, it can be concluded that people are mainly discontent with how human rights are protected in Armenia.

Only one respondent out of 16 applied to the Human Rights Defender of Armenia and assessed his/her quality of work of the Human Rights Defender office as “satisfactory”. (*See Annex 12, p.77*)

The open-ended question about the respondents’ opinion on possible changes in the election procedure of the Human Rights Defender with

<sup>136</sup> ‘The Human Rights Defender of the Republic of Armenia was hosted by Luys Foundation’ (*Human Rights Defender of the Republic of Armenia*) <<http://www.ombuds.am/en/media/tatoyan-luys.html>> accessed 15 June 2017.

participation of the civil society, NGOs revealed that the respondents who answered this question all agreed that the public opinion should be taken into consideration when electing and appointing a new ombudsman. (*See Annex 13, p.78*)

With regard to the recommendations, almost all the respondents suggested to the ombudsman institution to be more promoted in the society through various means be more independent from the authorities and more proactive. (*See Annex 14, p.78*)

To conclude, it should be mentioned again that Armenia was the last country in the South Caucasus to establish the ombudsman institution in 2004. However, this was not an obstacle on the way to establishing and strengthening a fully and properly functioning institution in the country.

### 3.2 MOLDOVA

#### 1. *The assessment of the law establishing the ombudsman's institution.*

As far as *the Law on the People's Advocates (Ombudsman) of the Republic of Moldova* is concerned, it is very important to take into consideration *the Venice Commission's opinion* regarding this law dated 19-20 June 2015.

The Venice Commission came to *the following conclusions*:

79. *Overall, the provisions of the 2014 Law are in accordance with the applicable standards.* The Venice Commission finds it commendable that, when adopting a legislative framework for the newly designed institution, the Moldovan legislator drew on the key internationally recognized principles relating to the status and the activities of Ombudsman-type institutions, *as laid down in the Paris Principles*. The Law therefore contains important guarantees as regards the mandate of the People's Advocate, its competence (increased with the task of prevention of torture and other cruel, inhuman or degrading treatment) and its operation methods, and reflects a clear effort to strengthen the institution's independence. Some provisions of the Law being very detailed, they could better find their place in a statutory instrument.

80. Nonetheless, to provide conditions for making the above guarantees more effective, it would be important to adopt, in the context of a future revision of the Moldovan Constitution, specific constitutional

guarantees for the election, status, mandate and competences of the Ombudsman, as recommended by the internationally agreed principles governing the establishment and the functioning of such institutions.

81. As regards the 2014 Law, a number of important issues should be further examined and clarified, and relevant provisions of the Law further improved:

- *to provide stronger guarantees for the independence of the institution*, the qualified majority of the Parliament should be required for the election of the People's Advocate (and the People's Advocate for the rights of the child); the early termination decision should be adopted with a higher qualified majority, be based on more clearly specified grounds, preceded by public hearings and involve a challenging procedure in court; wider immunity guarantees should be provided to the People's Advocate (and the People's Advocate for the rights of the child), the two Deputies and the staff of the Office; financial resources suited to the need to ensure full, independent and effective discharge of the tasks of the institution should be provided by the state budget;

- *the position of the People's Advocate for the rights of the child* and his/her autonomous status, as well as his/her operation within the Office of the People's Advocate, should be further specified;

- *the competence of the institution in relation to the private sector and the courts should be reconsidered and clearly specified in the Law*, both for the People's Advocate and the People's Advocate for the protection of the rights of the child. In particular, jurisdiction over courts must be excluded and the related People's Advocate's competence limited at most to issues concerning the judicial administration and, where appropriate, the execution of final judicial decisions;

- *any person under the jurisdiction of the Republic of Moldova* (and not only those residing or having resided on its territory) *should be entitled to lodge complaints* with the People's Advocate and this right *should be extended to legal persons*.<sup>137</sup>

To conclude it should be mentioned that if Moldova accepts the above-mentioned recommendations and changes the provisions both in the Constitution and in the law – the ombudsman's institution will be

<sup>137</sup> 'European Commission for Democracy through Law (Venice Commission) Opinion on the Law on the People's Advocate (Ombudsman) Of the Republic of Moldova' (*Venice.coe.int*) <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)017-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)017-e)> accessed 15 June 2017.

strengthened, which in its turn will affect the protection and promotion of human rights in the country.

In the Universal Periodic Review report submitted by the Office of the People's Advocate (Ombudsman) in 2015, two major issues for the Moldovan ombudsman were highlighted, which are *the insufficient funding and the lack of adequate premises*. The institution is located in a damaged building and the Government has not been able to identify, a building that meets the requirements of the institution over several years. In this regard, the following recommendations were in order:

- Revise Law No. 52 to ensure that it meets international standards and good practice;
- Provide suitable premises and facilities for the Ombudsperson's Office and properly fund the activities of the Ombudsperson.<sup>138</sup>

## 2. *The structure and composition of the ombudsman's staff.*

The People's Advocates Office is functioning according to Chapter VI of the Law.<sup>139</sup> There is a Secretary General who is leading the office, several Heads responsible for specific aspects, their deputies, consultants and specialists as well as including the representatives of the four regional branches (Comrat, Cahul, Varnita and Balti).

At the end of 2016, 36 people worked in the Ombudsman's Office. As far as the dynamics of human resources is concerned, in 2016, compared to 2015, there was a 6% increase in the number of employees. The causes of the increase are: the institution's reorganization process in 2016, the change in the organizational structure of the Ombudsman's Office, and the increase in the number of staff from 55 (in 2015) to 65 units (in 2016).<sup>140</sup>

With regard to gender balance within the ombudsman's office, generalized data reveals that the share of men in the total number of employees (38.9%) is lower than that of women, which is 61.1%. At the

<sup>138</sup> *Universal Periodic Review (UPR), Republic Of Moldova, Other Stakeholders' Reports: National Human Rights Institutions (NHRIs)* (2018) <[http://ombudsman.md/sites/default/files/document/attachments/report\\_a5\\_ombudsman\\_en\\_3\\_0.pdf](http://ombudsman.md/sites/default/files/document/attachments/report_a5_ombudsman_en_3_0.pdf)> accessed 15 June 2017.

<sup>139</sup> *Law No. 52 Din 03.04.2014 On the People's Advocate (Ombudsman)* (2014) <[http://www.apr.ch/content/files/npm/eca/Moldova\\_Ombudsman%20Law\\_May2014\\_ENG.pdf](http://www.apr.ch/content/files/npm/eca/Moldova_Ombudsman%20Law_May2014_ENG.pdf)> accessed 11 June 2017.

<sup>140</sup> *Report on the Observance of Human Rights and Freedoms in the Republic of Moldova In 2016 (2017)* <[http://ombudsman.md/sites/default/files/document/attachments/raport\\_2016\\_engleza\\_1.pdf](http://ombudsman.md/sites/default/files/document/attachments/raport_2016_engleza_1.pdf)> accessed 11 June 2017.

same time, men and women, who hold public positions of public dignity and execution functions, account for 50% each.<sup>141</sup>

*3. The assessment of the system of complaints received by the People's Advocate.*

Those who want to submit a complaint to the People's Advocate may have audience in the ombudsman's office every day from 9:00 until 15:00 except for weekends and holidays, the same concerns the regional representative offices as well. There is also an option to submit a petition on a written paper by regular post or online on the official web site of the ombudsman's office.

Therefore, it can be concluded that the system of complaints' submission is presented by various options which is very important in terms of accessibility

*4. Statistical information regarding the ombudsman's activities (number of received complaints and appeals, number of complaints by positive results, etc.)*

From January 1 to December 31, 2016, the Ombudsman received 1108 complaints of which: 987 complaints - the central office of the Ombudsman's Office in Chisinau, 73 complaints received at the Cahul Representation, 28 - at the Comrat Representation, 17 - at Varnita and three at Balti.<sup>142</sup> (see Annex 15, p.79) Of the 1108 registered complaints 439 (39,7%) were accepted for examination, with the undertaking of the procedural actions under the article 25 of the Law no. 52. During the examination process, acts of reaction were issued, the contest of the institutions and the responsible persons was requested, the necessary information, documents and materials were requested, monitoring visits were carried out, and proposals for amending the legislation etc. were submitted. Of the 439 complaints, 157 (35.8%) were solved, 47 (10.7%) of the complaints being solved partially.

78 complaints (7.1%) were sent to the competent authorities to be examined in accordance with the legislation on petitions.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

From January 1, 2016 to December 31, 2016, the Ombudsman for the child rights' protection received 95 applications. Of the total number of addresses, 65% were admitted for examination. (*see Annex 16, p.79*)

It is also important to see what the most frequently violated rights were in 2016 within the received applications. As a result, the following rights were violated most:

- Free access to justice – 296 (27%) complaints, in which were raised issues concerning: non-enforcement of judgments, delay in the examination of cases in the courts, disagreement with the sentence / judgment given by the courts, access to lawyers, the presumption of innocence, the right to compensation for the damage;
- Security and personal dignity - 230 (20.8%) complaints, in which the petitioners complained about: poor prison conditions in penitentiaries, restricting access to medical services in the places of detention, application of ill-treatment, violation of the detention or arrest procedure, lack of access to information;
- Social assistance and protection - 133 (12%) complaints, which concerns the violation of the right to a decent living, irregularities in the way of calculating the benefits. (*see Annex 17, p.80*)

Of the total number of persons who reported to the Ombudsman's Office 493 (44.49%) are detainees, 73 (6.59%) - employees, 83 (7.49%) - pensioners, 33 (2.98%) - unemployed persons, 41 (3.70%) - disabled persons, 9 (0.81%) - pupils, 3 (0.27%) – students. This means that in Moldova the biggest problem with human rights protection lies within the penitentiaries and detention centers.

Another 591 complaints (53.2%) were rejected under the provisions of the articles 18, 19, 20 of the Law no. 52, indicating to the petitioners the procedures they are entitled to use to defend their rights and freedoms. The rejected complaints either revealed issues that are beyond the reach of the Ombudsman, or were abusive.<sup>143</sup>

To sum up the People's Advocate Mihail Corobotai concluded that in 2016, Moldova made no progress in the field of human rights. Free access to justice, the right to security, personal dignity and the right to social assistance and protection, remain the most violated rights of the citizens in Moldova.<sup>144</sup>

<sup>143</sup> Ibid.

<sup>144</sup> 'Ombudsman: Moldova Made No Progress in Human Rights In 2016' (*Menschenrechte Osteuropa - News & Konflikte Osteuropas*) <<http://humanrights-online.org/en/ombudsman->

*5. Contribution to the legislation improvement process.*

One of the ombudsman's main activities according to the Paris Principles is to contribute to the legislation improvement process. In 2016, there was a growth in number of the documents examined and proposals made: 80 draft normative acts were examined, and the ombudsman expressed his views in terms of their compliance with the human rights standards. At the same time, 15 proposals for modification of the normative framework were formulated, and three notifications regarding the control of the constitutionality of some normative acts. (see *Annex 18, p.81*)

The opinion of the Ombudsman was most frequently requested by the Ministry of Justice and the Ministry of Labor, Social Protection and Family. (see *Annex 19, p.81*)

As can be seen, the number of approved normative acts is large enough. It is noteworthy, however, that much of them were not in the field of human rights. At the same time, some draft legislative acts that have a very important impact from the point of view of respecting human rights have not been sent to the ombudsman for expertise.

*6. Promotion of human rights.*

In 2016, the Ombudsman organized 135 promotional and training activities, compared to 125 in the previous year. The novelty element is the predominance of the training actions compared to the promotion ones - 98 trainings and 37 promotion events. And this was because in the reference period, on the one hand, the emphasis was placed on more complex actions, with four national conferences, an international conference, three roundtables, a children's forum, and, training activities for the population and professionals were all organized according to the new rules and principles, which resulted in better results in the relevant field.

The promotional activities have as main themes: Regular Evaluation of the Republic of Moldova, promotion of children's rights, promotion of the right to health, promotion of the Ombudsman recommendations on improving the human rights situation in our country in the context



of the public presentation of the conclusions of the Report on respect for human rights and freedoms in the Republic of Moldova in 2015, of the “Human Rights Perceptions in the Republic of Moldova” study, conducted by the Ombudsman’s Office with the support of the OHCHR (Oversees major programs in protecting human rights and implementing international rights agreements). In the year 2016, 14 informative materials were elaborated and edited to ensure the coordination of the printing process of eight books published with UNDP and OHCHR.<sup>145</sup>

*7. Public awareness and opinion on the ombudsman’s institution (based on the online survey).*

Online survey which was filled out by 10 respondents (aged from 21 to 36) from Moldova revealed as follows. Only 3 (30%) people out of 10 knew when the ombudsman institution was established in Moldova. The correct name of the ombudsman institution was chosen by 8 (80%) respondents out of 10, the same number knew the name of the current ombudsman and how the ombudsman is appointed. (See *Annexes 20,21,22,23 pp.82-83*)

Almost all the respondents had no idea whether the ombudsman had accounts on online social networks. (See *Annex 24, p.84*)

Half of the respondents thought that the overall level of human rights protection in Moldova was “poor”, while 40% thought that it was “satisfactory”. Only one person applied to the People’s Advocate and assessed the quality of his work as “satisfactory”. (See *Annexes 25 and 26, p.84, 85*)

With regard to the respondents’ idea in terms of considering public opinion and NGOs voice while electing a new ombudsman – 6 respondents out of 7 agreed on it. (See *Annex 26, p.85*)

Concerning the recommendation made by the respondents, the majority wanted more promotion for this institution and dissemination of information regarding its functioning. The following recommendation though deserves most attention: “*To make more assistance of the Ombudsman available in the Transnistrian region of the Republic of Moldova*”. (See *Annex 27, p.85*)

<sup>145</sup> *Report on the Observance of Human Rights and Freedoms in the Republic of Moldova In 2016 (2017)* <[http://ombudsman.md/sites/default/files/document/attachments/raport\\_2016\\_engleza\\_1.pdf](http://ombudsman.md/sites/default/files/document/attachments/raport_2016_engleza_1.pdf)> accessed 11 June 2017.

### 3.3 UKRAINE

#### *1. The assessment of the law establishing the Ukrainian Parliament Commissioner for Human Rights.*

The Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” was amended last time in 2012 and in accordance with these amendments, the National Preventive Mechanism was established.

Generally, the Law conforms to the requirements as set out in the Paris Principles.

#### *2. The structure and composition of the ombudsman’s staff.*

The Ukrainian ombudsman, according to article 11 of the Law, has the right to appoint his/her representatives. Nowadays, Valeriya Lutkovskaya has 8 representatives dealing with different issues related to human rights protection and promotion. The Secretariat of the Commissioner for Human Rights consists of 21 employees including those 8 representatives.

There are also regional representative offices all over Ukraine where around 30 representatives are working at the regional and local levels.<sup>146</sup>

#### *3. The assessment of the system of complaints received by the Parliament Commissioner for Human Rights.*

Petitions to the Ukrainian Parliament Commissioner for Human Rights can be submitted in writing with personal attendance of the ombudsman’s secretariat or by the regular post or by email. There is also an option to file a petition online on the official web site of the Commissioner. The hotline is also available 24 hours

#### *4. Statistical information regarding the ombudsman’s activities (number of received complaints and appeals, number of complaints by positive results, etc.)*

<sup>146</sup> ‘Регіональні Представництва Уповноваженого - Ombudsman’ (*Ombudsman.gov.ua*) <<http://www.ombudsman.gov.ua/ua/page/secretariat/regionalni-predstavnicztva-upovnovazhenogo/>> accessed 17 June 2017.

During 2015, the Parliament Commissioner for Human Rights received 19030 complaints among which 17902 complaints were received from the citizens of Ukraine, foreign citizens and people without any citizenship. 274 complaints were received from the People's Deputies of the Verkhovna Rada, whereas 849 complaints concerned the violated rights of the legal entities.<sup>147</sup>

Of these 19030 complaints, 18076 were accepted for a review. Based on 12392 complaints, legal proceedings were initiated while 94 complaints were sent to the competent authorities. All in all, 11251 complaints were solved with a positive result.<sup>148</sup>

The total number of people who applied to the Commissioner during 2015 was 56865 people. The biggest number of complaints - 3586 were received from the Donetsk region, which is understandable in the light of the internal ongoing conflict.<sup>149</sup>

##### *5. Constructive cooperation with state, public and international organizations.*

The Ukrainian Parliament Commissioner for Human Rights has established contacts with the Verkhovna Rada of Ukraine, the main international organizations such as the UNDP office in Ukraine, OSCE, Council of Europe, EU delegation to Ukraine, UNICEF, IOM as well as various Ukrainian and international NGOs, for instance USAID, Ukrainian Helsinki Human Rights Union and Association of Ukrainian Human Rights monitors, to name a few.

The Ukrainian Human Rights Commissioner is a member of International Ombudsman Institute and European Ombudsman Institute, ICC, European Network of National Human Rights Institutions as well as European Network of Ombudspersons for Children (ENOC).<sup>150</sup>

<sup>147</sup> Доповідь Уповноваженого Верховної Ради України з прав людини про стан дотримання прав і свобод людини і громадянина в Україні (2015).

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> 'Міжнародні Організації, Членом Яких Є Уповноважений Верховної Ради України З Прав Людини - Ombudsman' (*Ombudsman.gov.ua*) <<http://www.ombudsman.gov.ua/ua/page/secretariat/international-cooperation/spivpraczya-z-mizhnarodnimi-organizacziyami/mizhnarodni-obyednannya-chlenom-yakix-ye-ukraina/>> accessed 17 June 2017.

## 6. *Promotion of human rights.*

The current ombudsman of Ukraine and her secretariat are involved in active promotion of human rights in the country. Various meetings, seminars and conferences on certain issues of human rights protection and promotion are held on a regular basis.

For example, on the International Day of child's protection this year, the representative of the Ukrainian Parliament Commissioner for Human Rights took part in a two-day training within the frameworks of the "School of children's rights" in Odessa. The main aim of this event was to increase children's legal awareness of their rights and in general to promote respect for human rights among young generations.<sup>151</sup>

On 24 of May, the Ukrainian ombudsman held training on human rights issues for the Kyiv City Council and Kyiv City State Administration. The participants at the training session had an opportunity to further their knowledge about the functioning of the European Court of Human Rights as well as to get more acquainted with the European Convention on Human Rights and Freedoms concentrating on article 8 and 10.<sup>152</sup>

Successful promotion of activities in today's conditions depends much on the social online networks. In this regard, the Ukrainian ombudsman has an official account on Facebook as well as a video channel on YouTube where different speeches, interviews, seminars and conferences with participation of the ombudsman are available for watching.

## 7. *External evaluation of ombudsman's activities.*

In the Universal Periodic Review report, which assessed the human rights situation in 2013-2015 in Ukraine, there is positive feedback on the work of the Parliament Commissioner for Human Rights. It says as follows: *"The work of the Parliamentary Commissioner for Human Rights was positive in this period. The secretariat of the Commissioner*

<sup>151</sup> 'Тривас Дводенний Тренінг У Рамках «Школи Прав Дитини» В Одесі - Ombudsman' (*Ombudsman.gov.ua*) <<http://www.ombudsman.gov.ua/ua/all-news/pr/trivaye-dvodennij-trening-u-ramkah-shkoli-prav-ditini-v-odesi/>> accessed 17 June 2017.

<sup>152</sup> 'Розпочався Тренінг З Питань Прав Людини Для Представників КМДА І Київської Міської Ради - Ombudsman' (*Ombudsman.gov.ua*) <<http://www.ombudsman.gov.ua/ua/all-news/pr/24517-el-rozpochavsvya-trening-z-pitan-prav-lyudini-dlya-predstavnikiv-kmda-i-ki/>> accessed 18 June 2017.

*continued implementation of the national preventive mechanisms under the Optional Protocol to the UN Convention against Torture, and the effect of this mechanism gradually affects the attitude of the staff to the imprisoned. The Office of the Ombudsman has made real steps to protect the public from the actions of the separatists. This includes participation in the evacuation of children's homes from the zone of antiterrorist operation, freeing of prisoners, transfer of prisoners to the territory controlled by the State."*<sup>153</sup>

The report also highlighted a very important step taken by the Ukrainian ombudsman's institution regarding the issues of discrimination in Ukraine. The ombudsman's intentions in this field led to the establishment and approval in December 2013 of the "Strategy on Prevention and Combating Discrimination in Ukraine for 2014–2017" and Action Plan for 2015, which was developed by the office in close cooperation with civil society institutions.<sup>154</sup>

It further concludes: "*The government (of Ukraine) has not carried out such activities at all; work on raising awareness about the issue of discrimination is done by NGOs in cooperation with the Parliament Commissioner for Human Rights.*"

#### *8. Public awareness and opinion on the ombudsman's institution (based on online survey).*

The online survey aimed to learn about the public awareness of Ukrainian residents about the institute of ombudsman's institution and the public opinion about the role of the ombudsman in the protection and promotion of human rights.

The age representation of 30 respondents was from 17 up to 49 years old. With regard to the occupation of the respondents – 10 of them were students, while there also were several humanitarian workers, teachers, lecturers, one publicist and one official.

Only 13 respondents (43.3%) knew when the ombudsman's institution was created, whereas only 16 respondents (53.3%) knew

<sup>153</sup> *Interim Stakeholders' Report Within Universal Periodic Review (UPR) Mechanism* (General edition: S Kolyshko, O Martynenko, A Bushchenko / Ukrainian Helsinki Human Rights Union 2015) <[https://www.upr-info.org/sites/default/files/document/ukraine/session\\_14\\_-\\_october\\_2012/upr\\_coalition\\_ukraine\\_mid-term\\_2015\\_eng.pdf](https://www.upr-info.org/sites/default/files/document/ukraine/session_14_-_october_2012/upr_coalition_ukraine_mid-term_2015_eng.pdf)> accessed 18 June 2017.

<sup>154</sup> *Ibid.*

what the ombudsman's institution is called in Ukraine. 18 respondents (60%) knew the name of the current Parliament Commissioner for Human Rights. With regard to the appointment of the ombudsman – only 16 respondents (46.7%) chose the correct answer. The question about their awareness on ombudsman's presence in social networks revealed that only 10 respondents (33.3%) knew that the ombudsman has social network accounts. (*See Annexes 28, 29, 30, 31, 32 pp.86-87*)

18 respondents (60%) consider the overall level of protection of human rights in Ukraine as “poor”, while only 6 respondents (20%) as “satisfactory”. The question which was aimed to learn whether the respondent's rights have been ever violated and whether he/she has in this regard applied to any specified entities revealed that only 1 person (3.3%) did apply to somewhere as a result of violation of his/her rights. (*See Annexes 33, 34, p.88*)

Only 1 person has applied to the Parliament Commissioner for Human Rights. (*See Annex 34, p.89*) With regard to the question regarding possible changes in the election and appointment procedure with consideration of public opinion, NGOs etc., – 5 out of 11 respondents who answered this question agreed that public opinion and consultations with the competent NGOs was required within this issue. (*See Annex 35, p.89*)

Finally, the last question of the survey revealed the recommendations regarding the ombudsman's services. The majority had no recommendations while some respondents recommended more promotion for this institution in a form of active PR-campaigns as well as more independence and openness. Also, one respondent recommended “*to have more power in influencing improvement of human rights adherence in Ukraine.*” (*See Annex 36, p. 90*)

## CONCLUSIONS AND RECOMMENDATIONS

In general, when discussing the ombudsman institution as a speedily evolving phenomenon it should be mentioned that

- it is an easily reached resource of power, close to people;
- it has a speed of review and response;
- an important feature of the ombudsman institution is also a greater trust or “creditworthiness” on the part of ordinary citizens;
- the ombudsman institution corrects the imbalance between residents and the government;
- lastly, it increases the responsibility of officials.

The work of the ombudsman becomes effective only when *the dualistic principle* of his/her competence is observed. On the one hand, this is a *reaction to violations* of human rights and freedoms, which citizens talk about in their complaints, the media, and various social institutions (public and even state). On the other hand, the possibility of *preventive actions* through the analysis of legislation, the study of bills and the forecasting of the development of the situation when decisions are taken by the authorities on specific issues.

The uniqueness of the ombudsman institution is that through it, feedback is carried out between the authorities and the population. Through the reaction to citizens' appeals, the ombudsman carries out an important function - creating an atmosphere of more precise, organized and responsible activity of state institutions. The systemic, transparent and legitimate work of these institutions for citizens is the ideal result for which the work of the ombudsman is directed. If an official of a state body has committed a violation of human rights, and even more so if such violations occur systematically, it is a signal that it is necessary to adopt such legislative or organizational decisions that will eliminate the systemic problem of violation of the rights and freedoms of citizens.

The human rights ombudsman is one of the last state institutions, referring to which a citizen hopes that in solving his/her problem the state system will proceed from his/her interests, take his/her point of view into account and provide him with qualified legal assistance. This is the qualitative difference between the activities of the ombudsman and the work of a lawyer, who is a private person and provides his/her services only as a professional in jurisprudence.

Due to the collapse of the Soviet Union, the problem of human rights has sharply escalated in the region. Moral, legal and social problems have emerged in the societies of these countries.

In this regard, a special place belongs to the ombudsman's institution, which aims to protect and promote human rights. The ombudsman's institution in the post-Soviet space have different names but have almost similar functions as independent non-judicial legal protection mechanisms.

As the analysis of the laws regulating the activity of the ombudsman in Armenia, Moldova and Ukraine shows, there is a sufficient number of borrowings of the norms between the laws of these countries.

As far as there are no universal requirements for the national ombudsman, states contribute to the "model" of the ombudsman on the basis of national traditions. In the laws under consideration, representative bodies of local self-government, public associations and NGOs are not entitled to nominate an ombudsman. It seems possible to discuss this issue to further bring the ombudsman closer to civil society.

Since the concept of the ombudsman implies high competence in matters of law, it is important to preserve high educational qualification for candidates in the countries of post-Soviet space as is stipulated in the countries of this research. The practice of Moldova and Ukraine on the issue of motivated conclusions on each candidate for the post of ombudsman on compliance with the requirements may be taken by legislators of Armenia.

At the time of the state crisis, the rights and freedoms of citizens require increased control and protection measures. In this connection, it would be advisable to provide by law the the possibility of extending the powers of the ombudsman for a period of emergency or martial law.

The ombudsman's activity should be guaranteed by the impossibility of appealing against the ombudsman's decision in any state bodies or public organizations.

Annual and special reports of ombudsmen, in my opinion, are the



direct and most powerful weapon of any ombudsman, which turns to be effective. To increase the effectiveness of annual reports there could be the obligation of the state bodies and their officials to send to the ombudsmen a written list of specific measures to remedy the situation established by the law.

The complaints review process has similarities and differences between the three countries. The Law of Ukraine separately provides that the ombudsman of Ukraine can begin to check the facts of violation of the rights and freedoms of citizens, received from the People's Deputies, which opens new opportunities for effective cooperation.

Ombudsmen of Armenia, Moldova and Ukraine pay much attention in their work to improving the legislation, but not all of them are entitled to legislative initiative. In my opinion, the right of the Armenian, Ukrainian and Moldovan ombudsmen to address only the subjects with the right of legislative initiative with proposals for introducing changes and amendments to the national legislation is insufficient. In this regard, it seems advisable to discuss the issue of making appropriate amendments to the Constitution of Armenia, Moldova and Ukraine, including ombudsmen in the list of subjects with the right of legislative initiative.

Ombudsmen of the three countries are active in the field of establishing international cooperation on human rights, which greatly facilitates the process of development of the ombudsman's institution, especially in matters of an organizational nature. The joint activity of ombudsmen and foreign representatives of foreign states on the territory of these countries significantly speeds up the solution of many issues in restoration of the violated rights of citizens and has the prospect of further development.

As the analysis of the laws has shown, the relations of the ombudsmen of three countries with the means of mass communications, human rights NGOs, representatives of the main religions of the country are not regulated. This makes the establishment of direct contacts between the ombudsman and representatives of NGOs and religious associations necessary. A form of such interaction could be the exchange of experience in activities, assistance to the ombudsman in monitoring the violation of human and civil rights and freedoms. It is obvious that in general such cooperation is necessary, because if human rights institutions do not work together as elements of one big mechanism, then society will remain half way in building a stable system of ensuring

and protecting the rights and freedoms of citizens. Thus, the functions of the ombudsman are different. He/she is engaged in both human rights and educational activities in the field of human rights. Along with the restoration of the violated rights of citizens, the purpose of the activity of the ombudsman, based on the principles of legality, justice, democracy, humanity and publicity one of the main aims is to prevent violations of human rights and freedoms.

With regard to direct recommendations to the ombudsman institution in three countries of the study, they are as follows.

### *Armenia*

1. Armenia should keep adhering to the recommendation made by the Venice Commission in terms of the new draft law on the Human Rights Defender of the Republic of Armenia;
2. The idea of extending Defender's mandate in terms of protection of businessmen's rights and freedoms should be supported by the state and further fulfillment will be a great asset within the functions of the Armenian ombudsman;
3. It would be useful to create a position of Children's Rights Defender with a separate mandate (as in case of Moldova) so as to ease the work of the Human Rights Defender and at the same time address the children's rights related problems with more efficiency;
4. Regional representation should be provided in all marzes of Armenia;
5. It is advisable also to pay more attention to the issues of gender equality and domestic violence in the country;
6. LGBTI rights and freedoms should be properly addressed.

### *Moldova*

1. Moldova should, as in the case of Armenia, adopt recommendations made by the Venice Commission so as to strengthen the ombudsman institution;
2. Strong promotion campaign and activities are needed so as to increase general legal awareness in people and public awareness about the People's Advocates functions. In this regard, the ombudsman's representation in the most popular social networks of Moldova is a high-priority need.
3. As far as the human rights situation in the country did not improve

in 2016 as compared to 2015 it is advisable for the People's Advocate and his office to put as much efforts as possible to change the situation to the better;

4. In connection with the previous recommendation, the ombudsman's staff should be optimized.

### *Ukraine*

1. The Ukrainian ombudsman's official web site should be updated on time. A lot of materials, statistics and legal documents are not available either in English or in Russian, though these are also the languages of the web site.
2. It is advisable for the Parliament Commissioner for Human Rights pay more attention to the ongoing conflict in Southeast Ukraine and impartially not taking any side of the conflicting parties acts a peace negotiator;
3. More regional offices of the Ukrainian Parliament Commissioner for Human Rights should be created, and the Commissioner should pay more visits to the Representatives to regions of Ukraine;
4. The proactive monitoring as well as other forms of observations should be used for conducting monitoring of human rights observance in the socio-economic and humanitarian area;
5. Despite being present on social networks and having a quite effective media coverage, the results of survey demonstrated that it is not enough for increasing public awareness. In this regard, the Commissioner should develop an effective strategy and technology of communication with the media.

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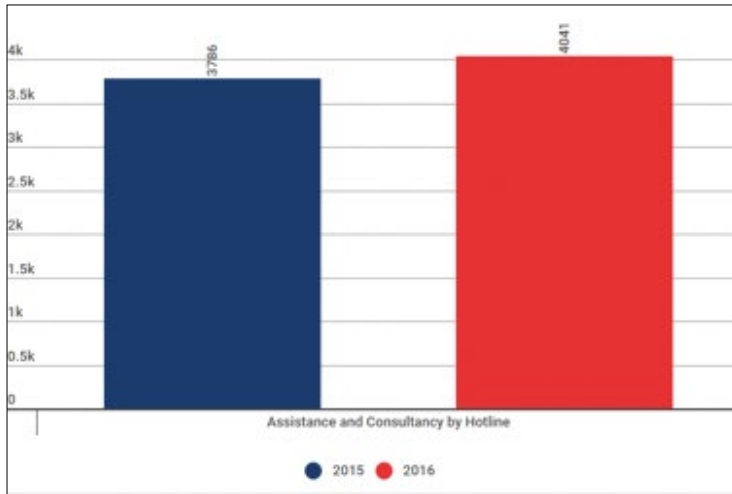
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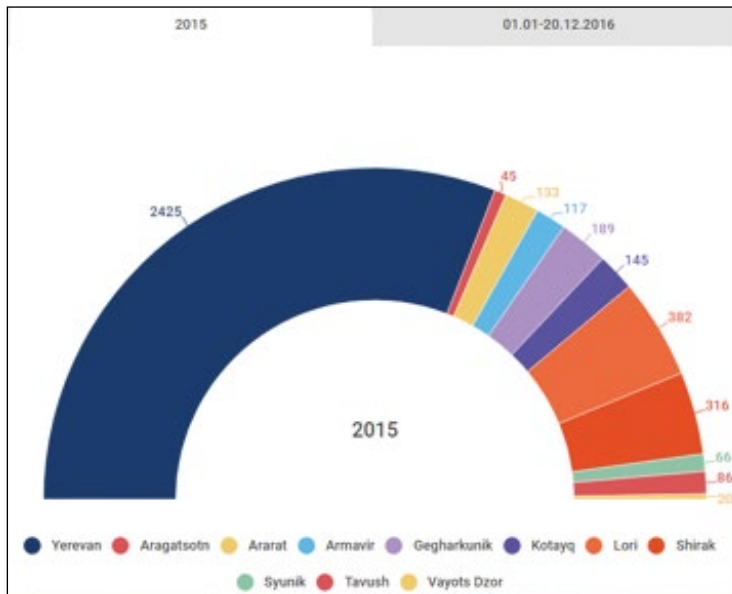
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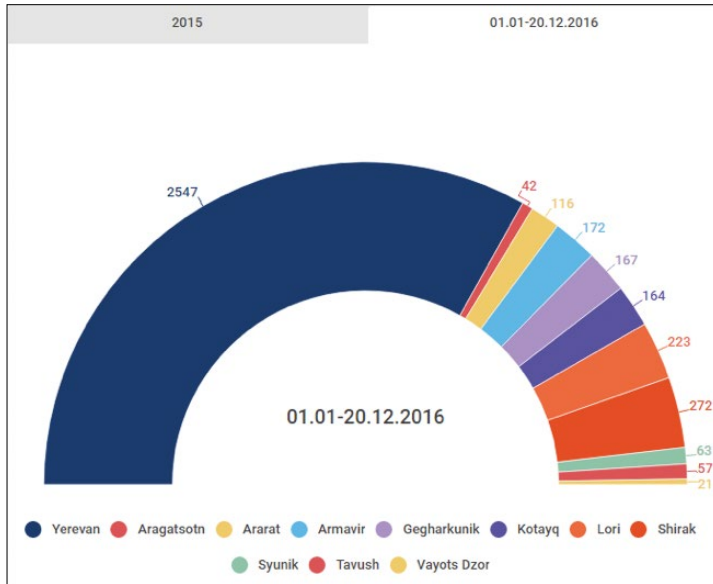
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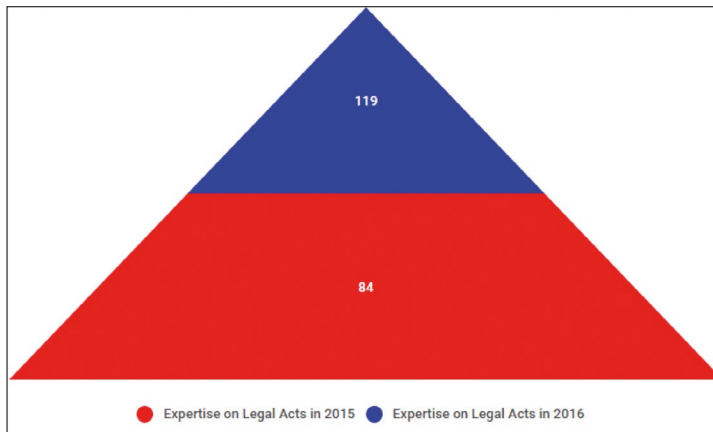
Annex 2. The number of complaints received in 2015



Annex 3. The number of complaints received in 2016

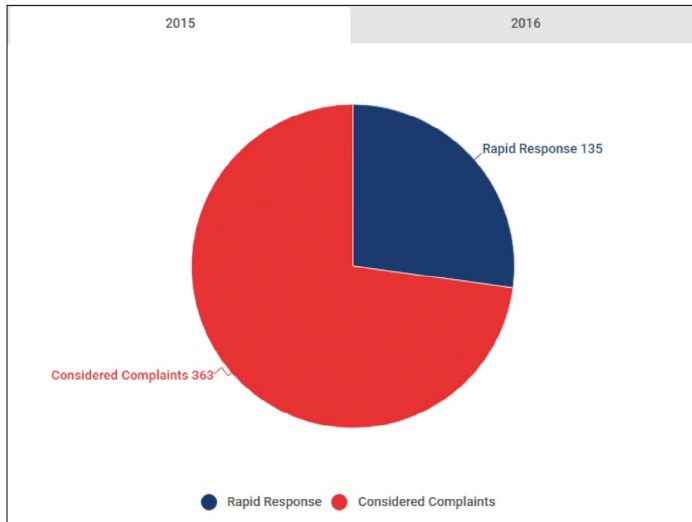


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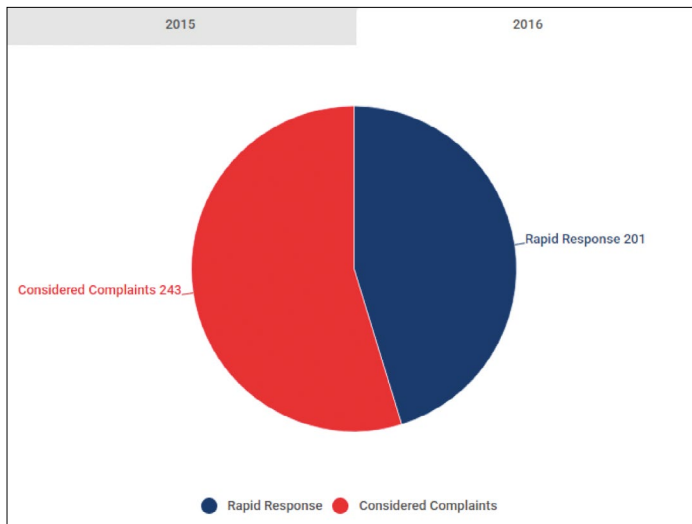




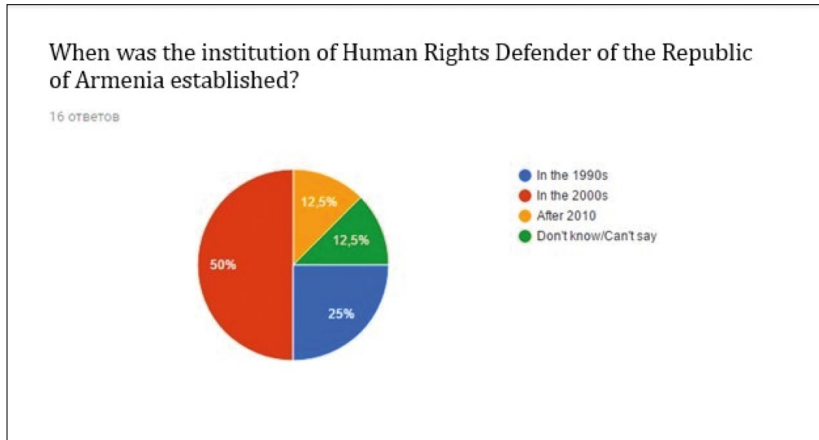
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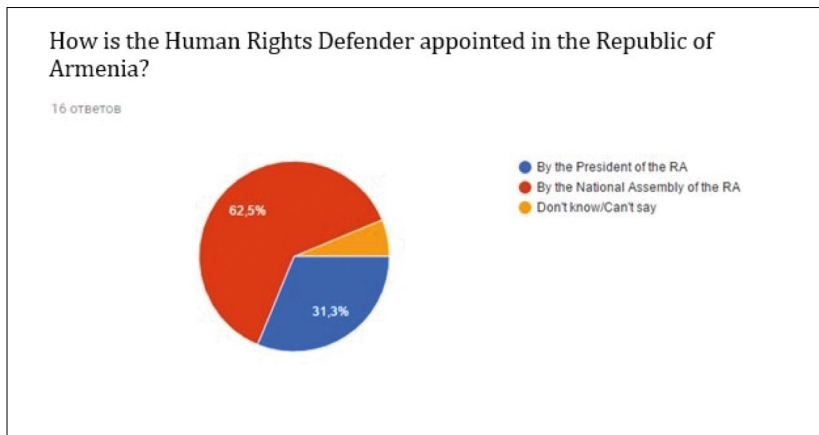
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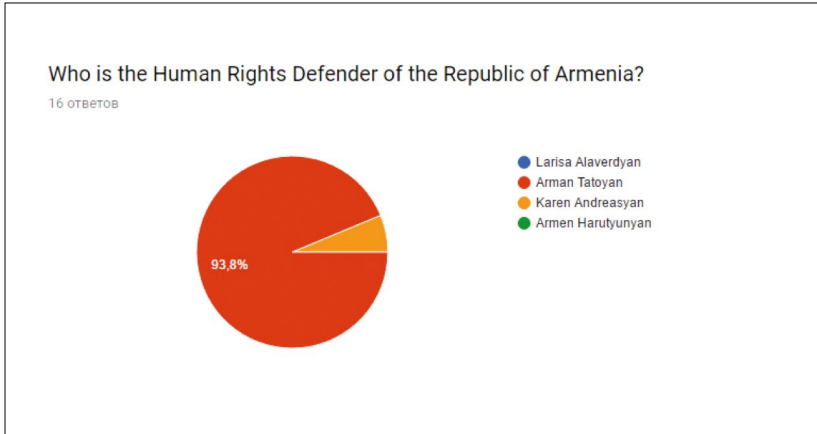
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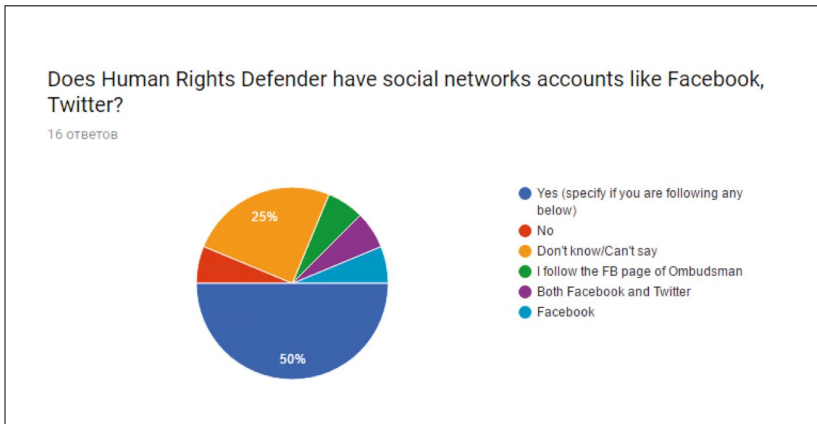
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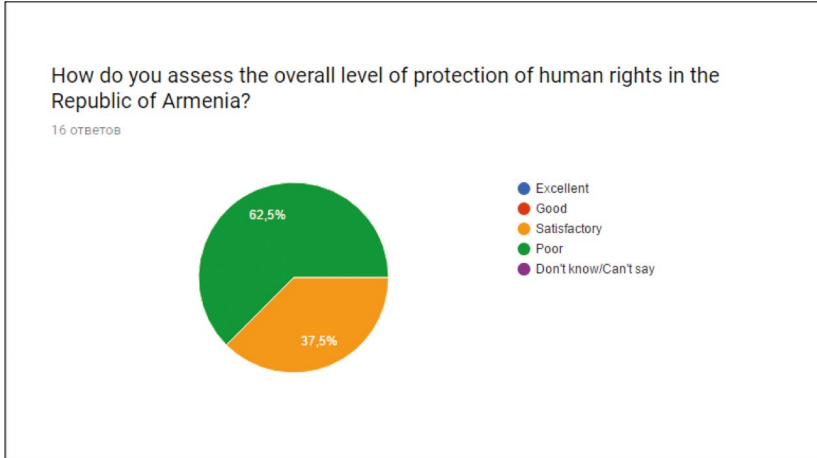
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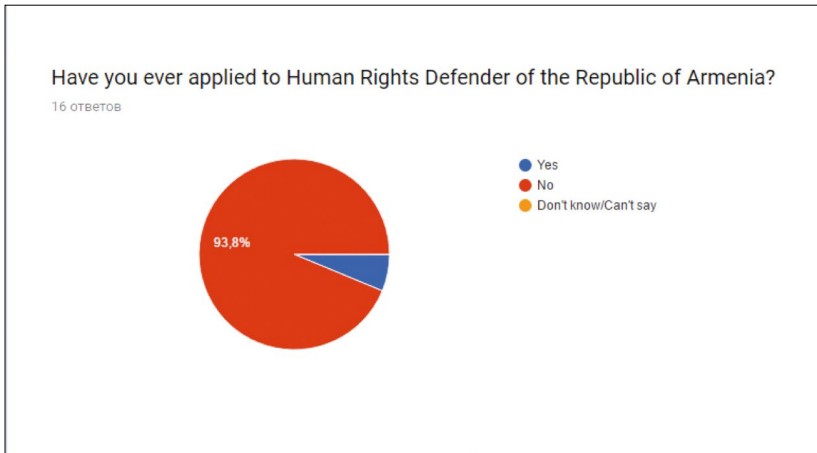
*Annex 10*



*Annex 11*



*Annex 12*



*Annex 13*

Would you like to change the election procedure of the Human Rights Defender? For instance, make public opinion (citizens, NGOs and so on) be considered as well?

4 ОТВЕТА

That would make the process more transparent. Because most of the people even do not know the name of the human rights defender. This way that would be more informed. Because every time when a person takes part in creating something, then he/she feels more responsible in conserving that, whether it is an institution or a value. Because the ombudsman is selected and it is know only to a close circle of people.

Yes. The election can be more based on citizen's choice (referendum or with participation of NGO and other non state bodies)

yes, it should be elected by civil society

I would prefer the election of the human rights defender was made taking into consideration the public opinion through various discussions, hearings, the opinion of the NGOs is also very important in this respect.

*Annex 14*

What recommendations do you have regarding the Ombudsman's services?

16 ОТВЕТОВ

Be less partisan.

-

I would like to remind them that they must protect the nation rights not the governments ! That is the main problem.

Be free not under pressure of the authorities

To be completely independent, more open to communicate with press and be proactive

To work on the awareness and information spreading in the society about the institution, the human rights and freedoms. To make sure annual reports are available online and translated at least into Russian and English. But that they are available soon, not like the report of 2014 reached the public in 2016 )))

The ombudsman is very dependent from the state as all the main functions of its office depend on state ( election, budget, list of main responsibilities). So it would be much better to make this structure more independent.

to not forget that their obligation is the protection of human rights but not obey the authorities

I would like the activities of the Ombudsman and its personality were more open to people. Another important factor is the independence issue of Ombudsmen's work. Its activities are very dependent on the authorities.

*Annex 15*

**What recommendations do you have regarding the Ombudsman's services?**

16 ОТВЕТОВ

Be less partisan.

-

I would like to remind then that they must protect the nation rights not the governments ! That is the main problem.

Be free not under pressure of the authorities

To be completely independent, more open to communicate with press and be proactive

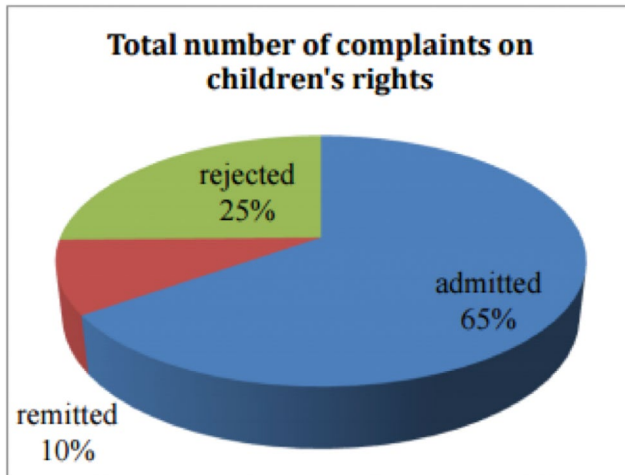
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*Annex 16*



*Annex 17*

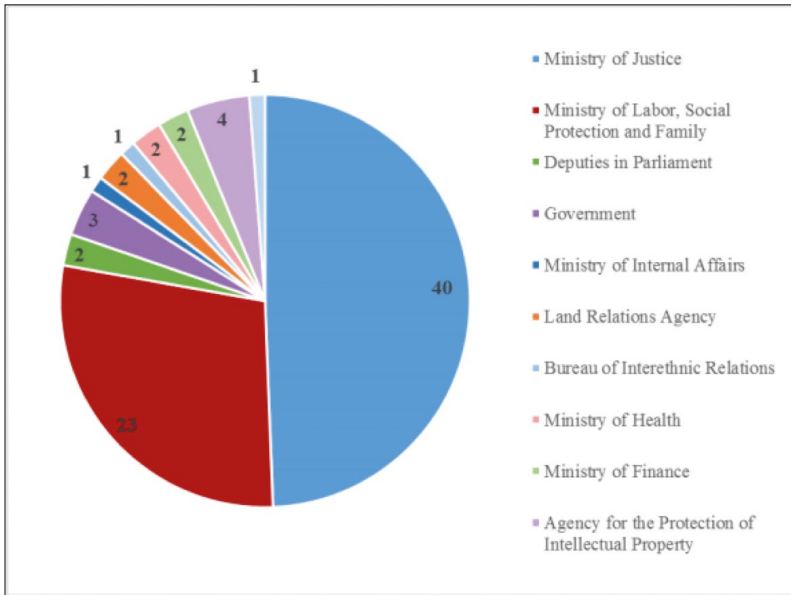
**Classification of appeals according to the allegedly injured right,  
compared to 2015 and 2014**

<b>Theme</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>
<b>Free access to justice</b>	<b>296</b>	<b>259</b>	<b>265</b>
<b>Security and personal dignity</b>	<b>230</b>	<b>195</b>	<b>190</b>
<b>Right to social assistance and protection</b>	<b>133</b>	<b>91</b>	<b>154</b>
<b>Private property</b>	<b>49</b>	<b>80</b>	<b>148</b>
<b>Access to information</b>	<b>116</b>	<b>75</b>	<b>78</b>
<b>Right to work</b>	<b>74</b>	<b>48</b>	<b>70</b>
<b>Family life</b>	<b>72</b>	<b>65</b>	<b>92</b>
<b>Right to defense</b>	<b>35</b>	<b>35</b>	<b>40</b>
<b>Intimate and private life</b>	<b>6</b>	<b>3</b>	<b>6</b>
<b>Right to training</b>	<b>20</b>	<b>4</b>	<b>20</b>
<b>Right to petition</b>	<b>8</b>	<b>19</b>	<b>21</b>
<b>The right to free movement</b>	<b>2</b>	<b>8</b>	<b>6</b>
<b>Right to health care</b>	<b>40</b>	<b>33</b>	<b>49</b>
<b>Personal freedoms</b>	<b>5</b>	<b>7</b>	<b>8</b>
<b>Right to administration</b>	<b>6</b>	<b>6</b>	<b>7</b>
<b>Right to citizenship</b>	<b>2</b>	<b>2</b>	<b>9</b>
<b>Right to vote and to be elected</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>The right to a healthy environment</b>	<b>6</b>	<b>4</b>	<b>-</b>
<b>Others</b>	<b>8</b>	<b>9</b>	<b>147</b>

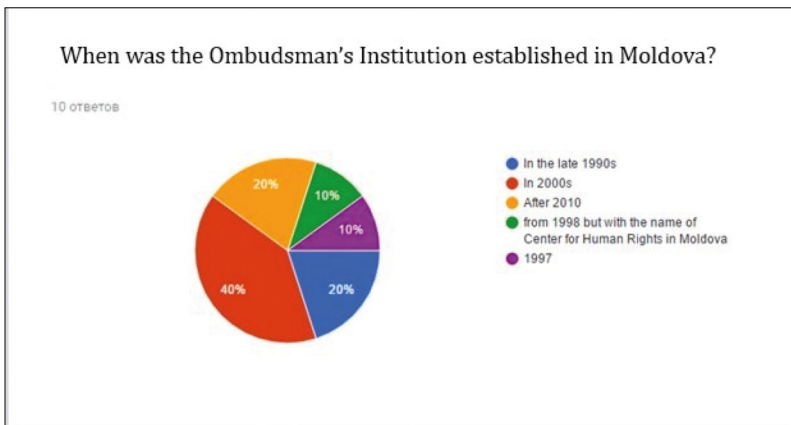
*Annex 18*

	<b>2015</b>	<b>2016</b>
<b>Opinions on draft normative acts</b>	<b>60</b>	<b>80</b>
<b>Proposals to improve the legislation</b>	<b>8</b>	<b>15</b>
<b>Referral to the Constitutional Court</b>	<b>2</b>	<b>3</b>

Annex 19

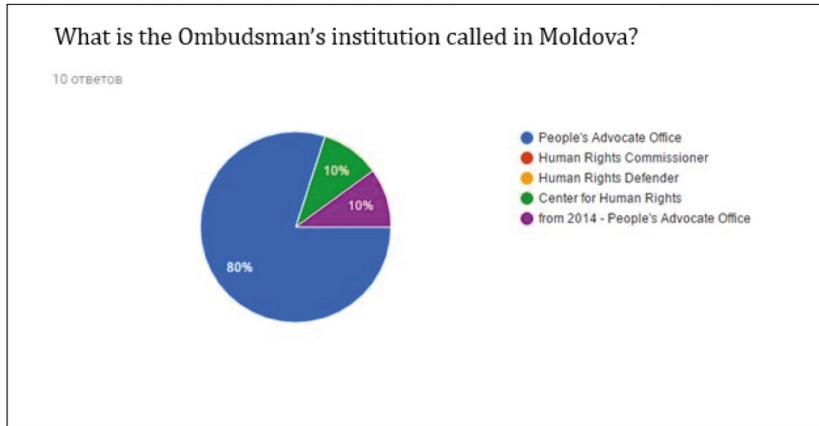


Annex 20

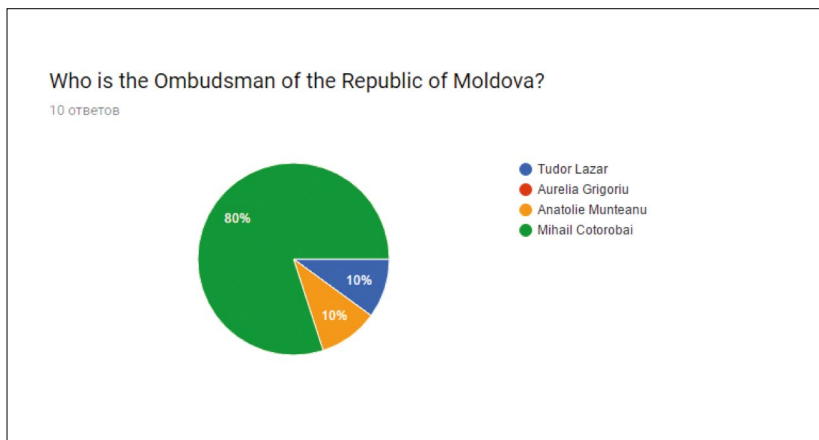




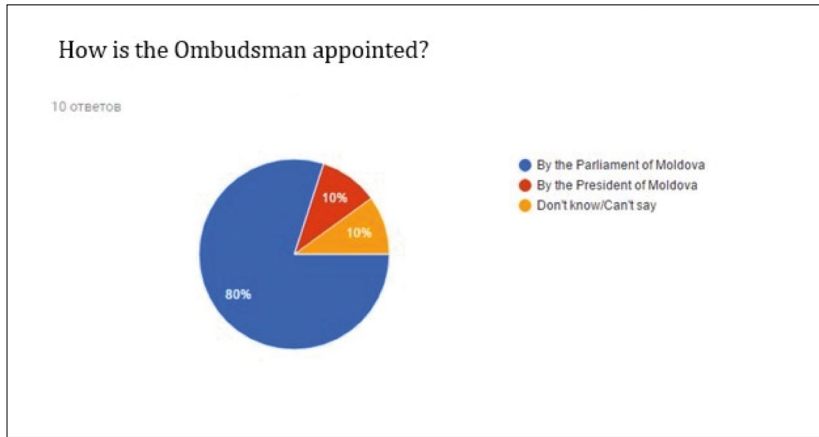
*Annex 21*



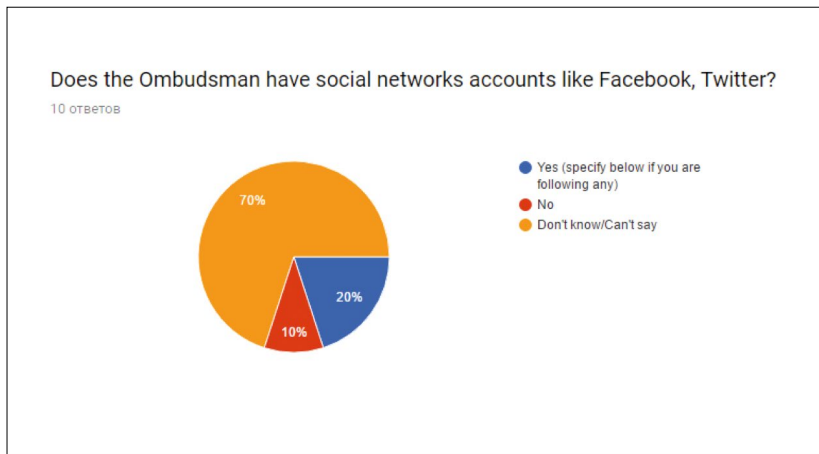
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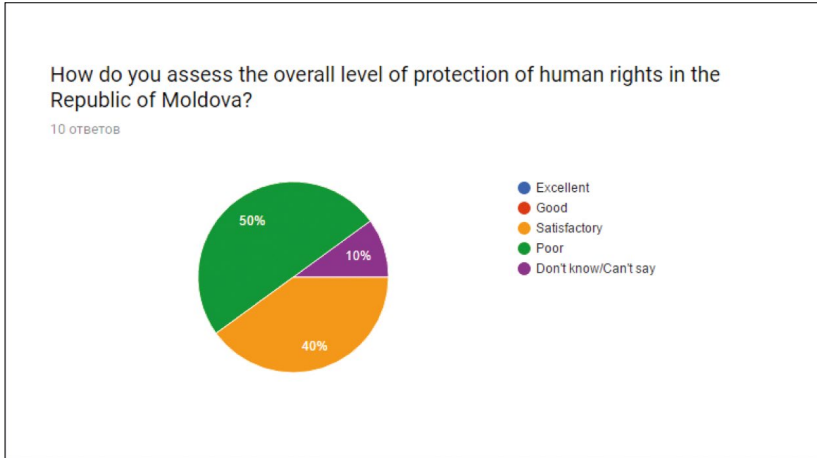
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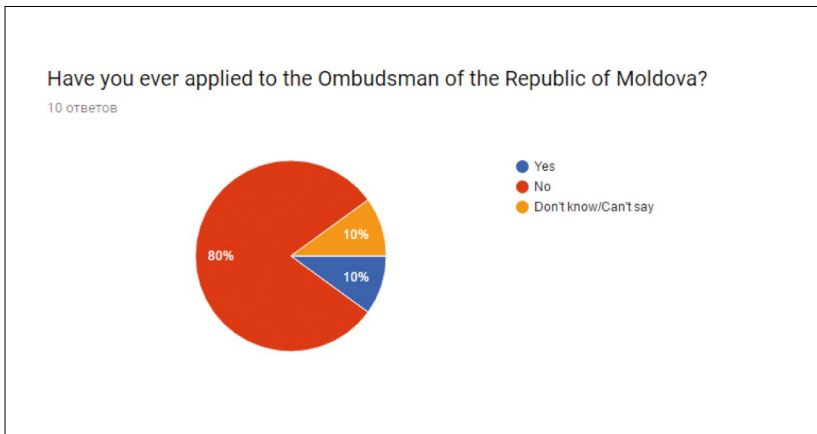
*Annex 24*



*Annex 25*



*Annex 26*



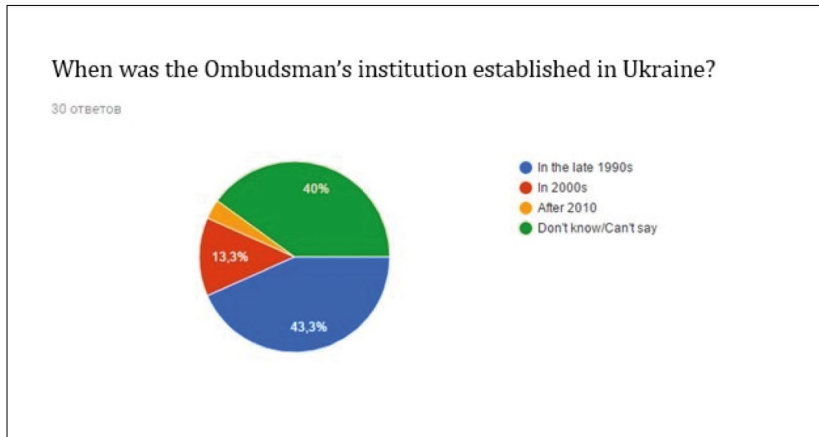
Annex 27

Would you like to change the election procedure of the Human Rights Defender? For instance, make public opinion (citizens, NGOs and so on) be considered as well?

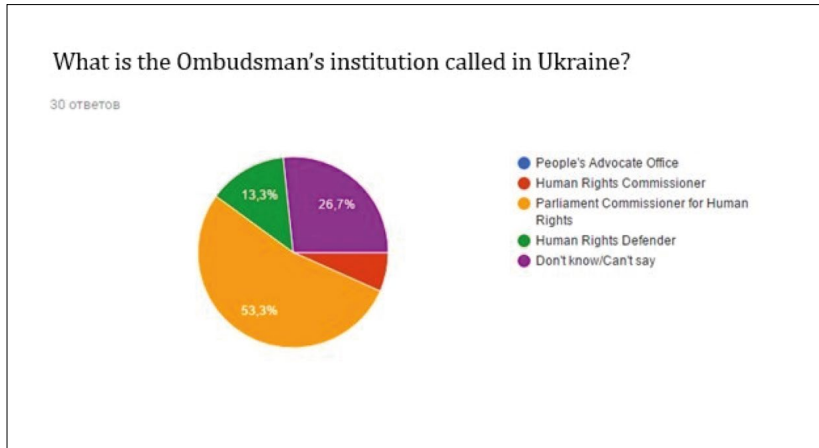
7 ОТВЕТОВ

in the election of the Ombudsman should attend the Parliament of Moldova
all citizens
Yep
More transperry in proces of election procedure of the ombudsman
citizens, NGO
Yes
Yes, the public opinion and the voice of human rights NGOs would be very useful and important on my opinion

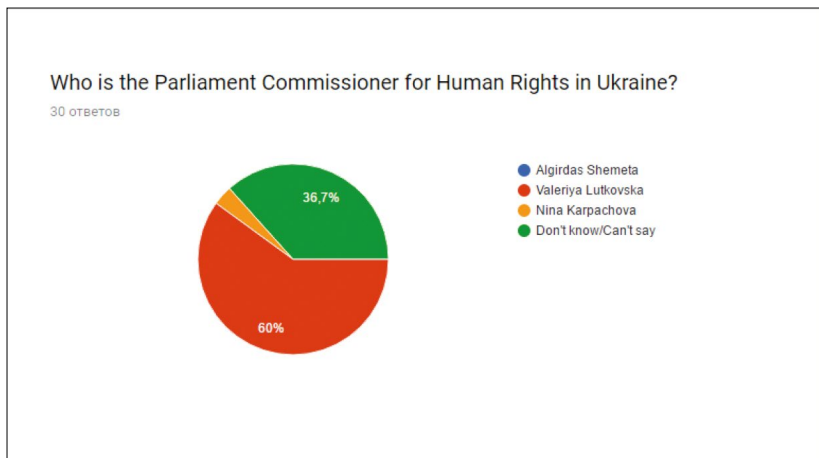
Annex 28



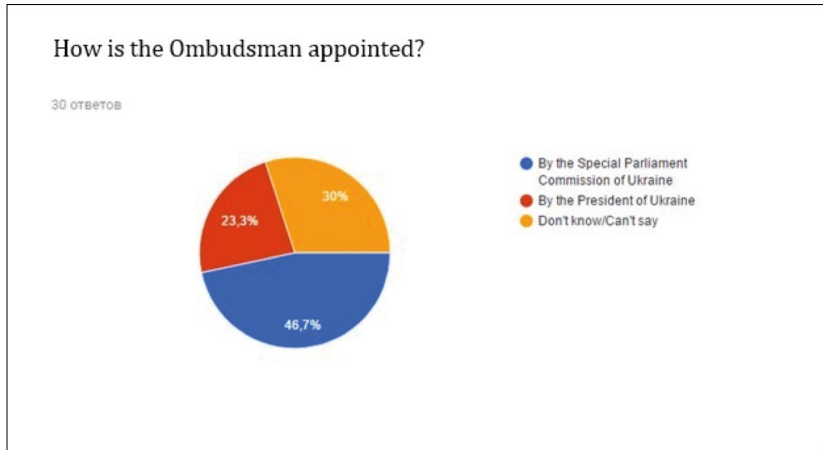
*Annex 29*



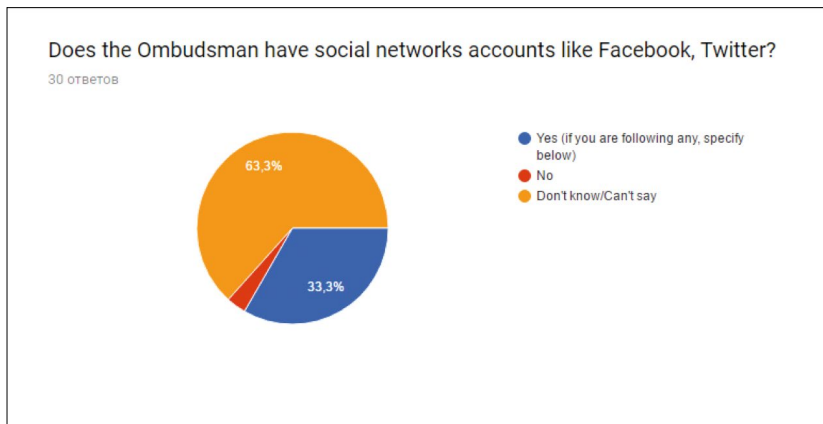
*Annex 30*



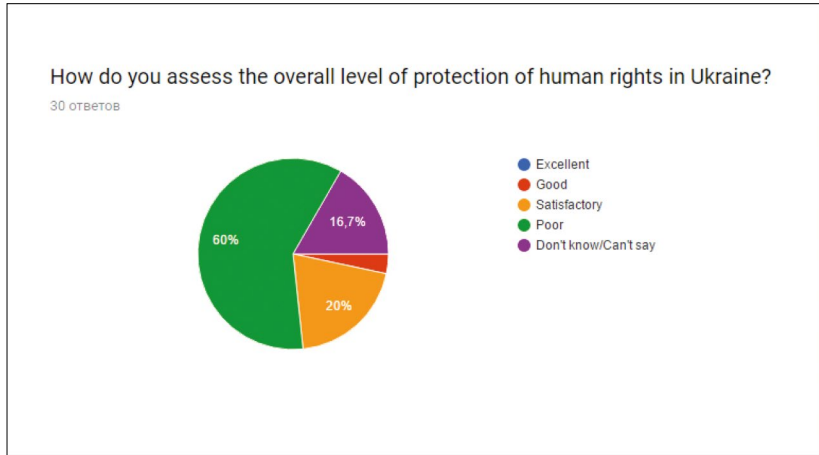
*Annex 31*



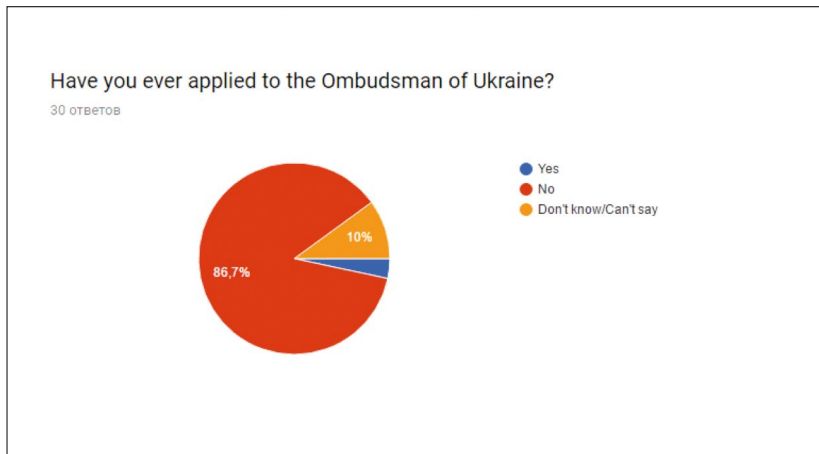
*Annex 32*



*Annex 33*



*Annex 34*



*Annex 35*

Would you like to change the election procedure of the Human Rights Defender? For instance, make public opinion (citizens, NGOs and so on) be considered as well?

11 ОТВЕТОВ

can't say, don't have an opinion on this matter

Yes

I don't think of it

Not in this period of the Ukrainian history. Currently, there is a variety of "local experts" who claim that their opinion shall be taken into account while appointing government servants though they do not have appropriate background in the field neither are authorities on the issue. For the time being, it is better that the election procedure is placed within the realm of highly qualified commission rather than highly biased active citizens. As for the NGOs involvement, my inclination would be rather positive although there is a reservation for the NGOs which function through the foreign fundings (UN agencies, EC, USAID, DFID, SIDA etc). Although they may inspire best international practices, there is a possibility of being "Western-biased" in terms of neglecting Ukrainian human and social capital.

no

I dont care

I think, overall citizens should be aware about, who is considered for this role and relevant organizations should be consulted.

I don'ts know the current election procedure.

*Annex 36*

What recommendations do you have regarding the Ombudsman's services?

30 ОТВЕТОВ

Be more open and make some things to gain confidence of the people

Have not

More information people should receive about Ombudsman, his functions, role and results of work. Many of Ukrainians even do not know what this person do.

I don't have any idea

To be absolutely independent from politics and fulfill his/her duties

I haven't any recommendations

Probably better engagement with the public. As well as stronger advocacy on behalf of the conflict-affected and displacement-affected populations in the Eastern Ukraine whose rights are grossly violated.

i dont have

It is useless in current Ukrainian context

To have more power in influencing improvement of human rights adherence in Ukraine.

Raise awareness about ombudsman's services





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