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Olena ROMTSIV

Lviv Polytechnic National University,
Associate Professor of the Department
of Theory of Law and Constitutionalism
Educational and Scientific Institute of Law,
Psychology and Innovative Education,
Ph.D. in Law, Associate Professor
olena.i.romtsiv@lpnu.ua
ORCID: 0000-0002-3776-7120

PECULIARITIES OF THE UKRAINIAN OMBUDSMAN’S ACTIVITY UNDER MARTIAL LAW

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The article deals with the issues of the Ukrainian Parliament Commissioner for Human Rights in the context of martial law. The author analyses the legislation regulating the work of the Ukrainian Parliament Commissioner for Human Rights and her powers in the field of ensuring and protecting human and civil rights.

The author establishes that the scope of the Ukrainian Parliament Commissioner for Human Rights includes relations between a citizen and state institutions, local self-government bodies, institutions, organisations, associations of citizens, their officials, etc., but most often it is control in the area of relations between a citizen and executive authorities.

The article analyses the work of the Ukrainian Parliament Commissioner for Human Rights in the area of ensuring and protecting the rights and freedoms of children, since they are the most vulnerable category of persons affected by the armed conflict and cannot take care of themselves. In particular, special attention was paid to the problems of deportation of Ukrainian children, possible ways of returning them to Ukraine, and the issue of illegal adoption of children by Russian citizens, including even by the Russian Commissioner for Children’s Rights.

It is determined that the Ukrainian Parliament Commissioner for Human Rights is an independent, politically neutral, one-person body appointed by the Verkhovna Rada of Ukraine, which on a regular basis monitors the observance of constitutional rights and freedoms of man and citizen and protects the rights of everyone on the territory of Ukraine and within its jurisdiction, but it acts informally at its own discretion and, unfortunately, its decisions are not binding. It is noted that the Ombudsman institution belongs to non-governmental national human rights institutions which are established to control and supervise the activities of public authorities and local self-government bodies to ensure that they observe human and civil rights and freedoms, and also participates in the mechanism of restoration of violated human and civil rights and freedoms.

Keywords: Ukrainian Parliament Commissioner for Human Rights, Ombudsman, parliamentary control, human rights violations, human rights protection.

Formulation of the problem. Ukraine, implementing the positive experience of foreign countries and international legal standards for the implementation and protection of human rights and freedoms, is actively

developing and improving the Ombudsman institution. This institution of a human rights defender has long been an integral part of the complex mechanism for protecting democracy in many developed countries.

Today, Russia's war of aggression against Ukraine has created additional conditions for massive violations of fundamental human and civil rights and freedoms, as Europe and the entire civilised world have not seen such cynical and unprecedented violations of international law, the rules of warfare, and human rights and freedoms for decades. All of this, accordingly, has also made adjustments to the activities of all state authorities, including the Ukrainian Parliament Commissioner for Human Rights.

Analysis of the study of the problem. Many scholars have devoted their works to the study of the protection of human and civil rights and freedoms. The issues of the Ombudsman's activities in this area have been studied by: P. Ageev, S. Banakh, V. Barchuk, I. Bilyk, L. Golyak, I. Hryshchenko, E. Davydenko, I. Didkovska, V. Evitov, O. Zhdan, K. Zakomorna, N. Karpachova, V. Kyrylchuk, L. Koval, T. Kuzma, N. Naulik, and others, S. Nesynova, O. Martseliak, A. Rolganchuk, O. Rulik, I. Sira, Y. Tkachenko, L. Usachenko, etc.

However, there are still many problems that need to be addressed as soon as possible.

This article purpose to analyse the work of the Ukrainian Parliament Commissioner for Human Rights, to explore ways and mechanisms of human rights protection and to identify the specifics of the Ombudsman's activities in the context of martial law.

Presenting main material. The history of the introduction of an official who would be authorised to exercise parliamentary control over the observance of citizens' rights and freedoms dates back to 1809. It was then that a revolution took place in Sweden, which transformed the form of government from an absolute monarchy to a parliamentary one. It was then that the Constitution of Sweden was amended to give the Parliament the power to elect the Justitieombudsmannen (Ombudsman). The Ombudsman's competence included: protecting the rights and freedoms of citizens; supervising the observance of laws by judges and civil servants; promoting the equal application of laws; pointing out legislative inaccuracies and considering citizens' complaints [1]. Although more than two hundred years have passed since the first Ombudsman institution was established, the main task of the Ombudsman has remained unchanged: to monitor and supervise the observance of human and civil rights and freedoms by the state institutions, and to effectively protect these rights in case of their violation.

Unfortunately, the introduction of the Ombudsman institution in Ukraine was rather late compared to other European countries. First of all, this was due to the fact that Ukraine gained independence only in 1991, and before that its territory was part of several states. As for Ukraine's being a part of the USSR, at that time, the existence of parliamentary control over the observance of citizens' rights and freedoms was impossible due to the socio-political system and Soviet legal doctrine of the time [2].

Ukraine's declaration of independence and the desire of Ukrainian society to establish itself as a legal and democratic state have led to the need to transform the ways and means of monitoring the observance of human rights and freedoms in the country. Taking into account the positive experience of foreign countries in this regard, the Verkhovna Rada of Ukraine introduced a special official in the field of parliamentary control over the observance of human rights – the Commissioner for Human Rights (Ombudsman). And on 23 December 1997, the Verkhovna Rada of Ukraine adopted the Law of Ukraine 'On the Ukrainian Parliament Commissioner for Human Rights' [3] (hereinafter – the Law), which defined the constitutional and legal status of this official.

One of the distinctive features of the constitutional and legal nature of the Ombudsman is that the Ombudsman is a special control and supervisory, human rights body of the state authorities (official). Its introduction is a reaction of the society to the imperfection of the existing human rights system in the country. The society is interested in creating a new, more effective institution that would complement the existing forms of control and supervision in the field of human rights. In exercising its control and oversight and

human rights protection powers, the Ombudsman acts as a balance between citizens, society and the state. It not only mitigates tensions between the state and civil spheres, but also legitimises the state authorities, which, under the influence of this institution, become more responsive to the needs and demands of members of society [4, c. 12–13].

An important feature of the Ombudsman institution is its independence, which is guaranteed by the prohibition of state authorities and any officials to interfere with its activities, the Ombudsman's freedom of choice in considering and resolving cases and a number of other guarantees of its activities. It is a politically neutral body. This status of the Ombudsman does not harm its public image, but, on the contrary, enhances it, since active participation of the Ombudsman in the political life of the country would undoubtedly turn it into a tool of the struggle for power and thus automatically deprive it of any opportunities for impartial, objective and independent decision-making [4, p. 13].

According to Art. 4 of the Law, the Commissioner is entitled to immunity, which undoubtedly facilitates the performance of his duties without fear of outside interference from law enforcement agencies. He also carries out his activities on a permanent basis, even the introduction of martial law or a state of emergency is not a ground for termination of his official duties, as well as the dissolution of the Verkhovna Rada of Ukraine [3].

The purpose of the parliamentary control over the observance of constitutional rights and freedoms of man and citizen, and, accordingly, the Commissioner's activities, is to protect human rights and freedoms enshrined in the Constitution and international treaties of Ukraine; to ensure that the entire vertical of power observes human rights; to prevent any manifestations of discrimination or restrictions on human rights and freedoms, as well as to promote the harmonisation of domestic legislation with the Constitution and international treaties of Ukraine (Article 3 of the Law).

The Commissioner's competence is quite broad in scope. In fact, the Commissioner is vested with powers that no other government official has. According to the Law, the Ukrainian Parliament Commissioner for Human Rights has the right to receive without delay the President of Ukraine, the Prime Minister of Ukraine, central executive authorities, the Chairpersons of the Verkhovna Rada of Ukraine, the Constitutional Court of Ukraine, the Supreme Court of Ukraine and Higher Specialised Courts of Ukraine, other state bodies and a number of other institutions. This right is due to the fact that in urgent cases, direct communication between the Commissioner and the relevant entities is necessary to respond to cases of violations of human rights and freedoms, eliminate them and consolidate efforts to ensure the proper state of observance of human rights and freedoms in Ukraine.

Another important right of the Ombudsman is that he is the subject of a constitutional petition. In accordance with clause 3 of Article 13 of the Law, he/she may submit to the Constitutional Court a petition on the compliance of laws of Ukraine and other legal acts of the Verkhovna Rada, acts of the President, acts of the Cabinet of Ministers of Ukraine, legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea concerning human and civil rights and freedoms with the Constitution of Ukraine, as well as submit a petition on the official interpretation of the Constitution [3]. Granting this right to the Ombudsman guarantees the possibility of responding to cases of attempts to restrict constitutional rights and freedoms of citizens and helps to understand the Constitution more comprehensively and apply its individual provisions in practice. The Commissioner also has the right to make proposals to legislation to improve the implementation of human rights and freedoms.

The issue of ensuring and protecting human rights by the Ombudsman is particularly relevant in the context of martial law. After all, according to the Ukrainian Parliament Commissioner for Human Rights Dmytro Lubinets, 'The war that the Russian Federation is waging against Ukraine today is a war against human rights. The civilian population of Ukrainian cities and towns is becoming the main target of the Russian army, whose shells want to destroy universal values, freedom and democracy. Not only in Ukraine, but in the world [5].

Today, the Ombudsperson's special attention is paid to ensuring and restoring the violated rights of such categories of persons as children, as they are the ones who need special protection from the state and all its institutions during the war.

Peculiarities of the Ukrainian Ombudsman's activity under martial law

According to the Office of the Prosecutor General, more than 1579 children have suffered in Ukraine as a result of the full-scale armed aggression of the Russian Federation. In particular, as of 31 July 2023, 498 children were killed, another 1,081 children sustained injuries of varying severity, and 13 suffered sexual violence. According to the National Police of Ukraine, 1037 are still missing (15530 have been found). According to the National Information Bureau, 19546 children have been deported and/or forcibly displaced (386 returned). These figures are certainly not final. There is ongoing work to establish them in the areas of hostilities, in the temporarily occupied and liberated territories [6].

For example, the report of the Russian Children's Ombudsman Maria Lvova-Belova for 2022 states that since the beginning of the full-scale war, Russia has 'accepted' about 4.8 million Ukrainians, including more than 700,000 children. The Ombudsperson assures that most Ukrainian children came to Russia with their parents or other relatives.

It is also noted that about 1,500 children from institutions for orphans or children left without care were taken to Russia. 288 children from the Donetsk region were placed in foster care in Russia. Children from the Luhansk region allegedly returned to their institutions, but 92 children were later 'placed' with Russian families. Between April and October 2022, another 380 children deprived of parental care from the territories controlled by the DPR and LPR groups were 'placed' in Russian foster families [7].

The report also confirms that in late summer and autumn 2022, 'due to the situation on the front line', children 'from Kherson, Zaporizhzhia, Kharkiv regions and other territories' were sent 'to sanatoriums and recreation organisations' in the occupied Crimea and Krasnodar Territory of the Russian Federation [7].

By a strange coincidence, in October 2022, the Children's Ombudsman of the Russian Federation also 'adopted' a boy who was illegally taken from Mariupol by the Russian occupiers.

In response, the Ukrainian Parliament Commissioner for Human Rights, Dmytro Lubinets, appealed to the UN Secretary-General's Special Representative for Children and Armed Conflict, Virginia Gamba, to obtain from the Russian side the lists of deported Ukrainian children. In his opinion, today Ukraine urgently needs the assistance and assistance of third countries in returning the children taken by Russia, because with the beginning of the full-scale invasion, Ukraine broke off diplomatic relations with the aggressor country [8].

According to D. Lubinets, 'under the guise of "good deeds", evacuation or recreation, Russia takes Ukrainian children to its territory or the temporarily occupied Crimea. As of today, the Ombudsman's Office has official data on 365 illegal adoptions of Ukrainian children in Russia. However, the real numbers are not known. 'I call on the international community to pay attention to the crimes that Russia is constantly committing against Ukrainian children and to take immediate measures to stop gross violations of international law. I also call on the international community to facilitate the return of all children to the territory of Ukraine. We will work until we bring every child home, and for Ukrainian children, home is Ukraine', Lubinets concluded [8].

The British Ambassador to Ukraine, Melinda Simmons, believes that the Russians are abducting Ukrainian children to wipe out the next generation of Ukraine's defenders. Therefore, in her opinion, Ukraine faces not one, but two issues: the first is the need to return the children to their families, and the second is psychological assistance after brainwashing by the Russians [9].

The Ombudsman exercises its powers by initiating proceedings based on citizens' appeals or acting on its own initiative. The Ombudsman's activities are informal. The informal approach to resolving citizens' complaints about violations of their rights and freedoms distinguishes this institution from other legal, including judicial, means of protecting human rights. The main feature of its activity is a free, simple and understandable method of work for citizens. This is because the law does not provide for any special requirements for complaints filed by citizens. As a rule, such requirements relate only to the deadline for filing a complaint, sometimes to its form [4, p. 13].

And this is a very positive point, because in the context of armed conflict, citizens do not always have the physical, material, time or even psychological ability to follow the bureaucratic procedure to protect their violated rights. Instead, ombudsmen, being sympathetic to such situations, can interpret the established

requirements quite flexibly and freely and accept complaints for consideration even if certain conditions are not met.

It should be noted that, according to the legal nature of this institution, it is not empowered to make final decisions in a case, but can only try to persuade a particular public authority to consider the appealed issue. The task of the Ombudsman is to convince public authorities of the need to restore violated human rights, to make certain changes in the mechanism of their functioning, especially in the area where massive human rights violations are committed [4, p. 14].

Conclusions. Unfortunately, the problem of mass violations of human rights is extremely relevant in Ukraine today, so society has high hopes for the effective work of the Ombudsperson in protecting these rights.

To summarise, the importance of the effective functioning of the Ukrainian Parliament Commissioner for Human Rights in times of war lies, firstly, in the oversight and rapid response to existing cases of violations of human rights and freedoms in Ukraine. Secondly, his activities are aimed at preventing such violations and making proposals to improve the legal status of citizens. Thirdly, the right to apply for the protection of one's rights is guaranteed to every person regardless of citizenship, gender, religion or political beliefs, which embodies the principle of equality.

By implementing a number of tasks assigned to him/her, the Ombudsman contributes to the development of Ukraine as a state governed by the rule of law, in which a person, his/her life and health, honour and dignity, inviolability and security are truly recognised as the highest social value, regardless of whether in peacetime or martial law, with an effective mechanism for protecting these rights, and are not declarative. We believe that ensuring the effective and independent exercise of the rights and duties assigned to the Ombudsman is a key to Ukraine's quicker victory over the aggressor state and its integration into the European community.

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Олена РОМЦІВ

Національний університет "Львівська політехніка",
доцент кафедри теорії права та конституціоналізму
Навчально-наукового інституту права,
психології та інноваційної освіти,
кандидат юридичних наук, доцент
olena.i.romtsiv@lpnu.ua
ORCID: 0000-0002-3776-7120

ОСОБЛИВОСТІ ДІЯЛЬНОСТІ ОМБУДСМЕНА УКРАЇНИ В УМОВАХ ВОЄННОГО СТАНУ

У статті розглянуто питання про проблеми діяльності Уповноваженого Верховної Ради України з прав людини в умовах воєнного стану. Проаналізовано законодавство, яке регулює роботу Уповноваженого Верховної Ради України з прав людини, його повноваження у сфері забезпечення та захисту прав людини та громадянина.

Встановлено, що сферою діяльності Уповноваженого Верховної Ради України з прав людини є відносини між громадянином і державними інституціями, органів місцевого самоврядування, установами, організаціями, об'єднаннями громадян, їх посадовими особами тощо, але найчастіше – це контроль у площині взаємовідносин "громадянин – органи виконавчої влади".

У статті проаналізовано роботу Уповноваженого Верховної Ради України з прав людини у сфері забезпечення та захисту прав і свобод дітей, оскільки вони є найвразливішою категорією осіб, які постраждали від збройного конфлікту, і самостійно про себе подбати не можуть. Зокрема,

особливу увагу присвячено проблемам депортації українських дітей, можливим способам повернення їх в Україну, питанням незаконного всиновлення їх громадянами росії, в тому числі навіть Уповноваженою рф з прав дитини.

Визначено, що Уповноважений Верховної Ради України з прав людини – це незалежний, політично нейтральний, одноособовий орган, що призначається Верховною Радою України, який на постійній основі здійснює контроль за додержанням конституційних прав та свобод людини і громадянина та захист прав кожного на території України і в межах її юрисдикції, проте він діє неформально на власний розсуд і сила його рішень, на жаль, не має обов’язкового характеру. Зазначено, що інститут омбудсмена належить до недержавних національних правозахисних інститутів, які створюються для контролю та нагляду за діяльністю органів державної влади та органів місцевого самоврядування задля дотримання ними прав та свобод людини і громадянина, а також бере участь у механізмі відновлення порушених прав і свобод людини і громадянина.

Ключові слова: омбудсмен, Уповноважений Верховної Ради України з прав людини, захист прав людини, парламентський контроль, порушення прав людини.