



Institute of children's ombudsman as a mechanism of protection of juveniles' rights

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Abstract

In this article there are spoken the history and development of the Children's Ombudsman Institute. The article considers special features of the activity of Children's Ombudsman in the world. Has been revealing the issues concerned with the formation and development of Children's Ombudsman in the Republic of Uzbekistan.

Keywords: Children's Ombudsman, Commissioner for Children's Rights, Children's Ombudsman Institution, ENOC

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1. Introduction

As is known, the Ombudsman (or ombudsman) - an independent public body, based on Parliament official, whose purpose is to protect the rights and legitimate interests of the person violated by acts or omissions of administrative bodies and officials. For the first time, the Ombudsman appeared in Sweden in 1809 and throughout the XIX century it remained exclusively Swedish phenomenon.

In other countries, this institution has been gradually penetrated into the XX century. But a truly triumphal procession around the world it is observed only from the middle of the XX century. [p. 96] ^[1]

In the XX and XXI centuries the development of the institution led, on the one hand, to the emergence of specialized Ombudsmen (on affairs military, juvenile, on National Minorities, on health, on information and so on. D.), And on the other hand - the introduction of such a body, not only at the national level, as it was originally, but also at the level of the individual administrative - territorial units. In some countries, ombudsmen work only at the municipal level or (especially in the Federation) federation subjects. Specialty Ombudsman aims mainly to improve their performance. [p. 24] ^[2]

Generally, the Ombudsman for Children's Rights defends the needs, rights and interests of minors, fighting for the observance of the Convention on the Rights of the Child and promotes its dissemination. The Ombudsman may conduct an investigation, give a critical evaluation and publish an opinion, but he did not have the right to change or rescind the administrative measure, administrative decisions. The ombudsman intervenes separately from legal representatives, parents or guardians, protecting the rights of the child in all types of civil and criminal cases, in which children are directly or indirectly involved.

In some countries, the ombudsman is responsible for the use of valuation techniques such as the "child impact assessment" to identify and evaluate all possible consequences on children of various legislative proposals, regulations, etc.

For the first time a post of Children's Ombudsman was introduced in Norway in accordance with the Act on Children's Ombudsman ("Relating to the ombudsman for children") on

March 6, 1981 ^[4]. For thirty-plus years of Children's ombudsman institution he appeared in more than 44 countries: Norway (1981), Canada (1987 - in British Columbia, and later in the rest of Canada), New Zealand (1989), Austria (1989 g), Guatemala (1990), Colombia (1991), Portugal (1992), Sweden (1993), Hungary (1995), Iceland (1995), South Africa (1995.), Spain (1996), Romania (1997), Belgium (1998), Russia (1998), Bolivia (1998), Macedonia (1999), Nicaragua (1999), Lithuania (2000), Poland (2000), Great Britain (2001 - in Wales, in the other realms - later), Denmark (2001), Greece (2003), Slovenia (2003.), Bangladesh (2004), Ireland (2004), Serbia (2005), Cyprus (2007), Bosnia and Gertsigovine (2008), Estonia (2010), the Netherlands (2010-2011 gg.), France (2011), Italy (2011.), Ukraine (2011), Australia (2013), and others. [p. 589-590] ^[5].

Norwegian Barneombudet (Barneombudet) is an independent defender of the rights of children under the age of 17 years. His term is calculated 4 years and may be extended for not more than one consecutive term. Children's Ombudsman (hereinafter CO) in Norway itself defines its methods of work and priorities, has guaranteed access to all documents available to the authorities and institutions dealing with children's rights; he is also free to decide which issues fall within its competence and which means when it uses the resolution. The Administration for Children's Ombudsman in Norway is subordinated to the Ministry of Children and Family Affairs. It determines the budget of the Administration, which was subsequently approved by the Norwegian Parliament. Under CO Administration operates a group of experts constituting a permanent Advisory Committee of CO. Norwegian Children's Ombudsman has become a model of Defender of children's rights. This pattern was seen in other countries, although the models of activity of the Ombudsman for Children are quite diverse.

In Australia in 1989, it was created Agency of child support (Child Support Agency). It is subordinate to the Ministry of family and community issues. In Austria, the Bureau of the child has been functioning since 1989, but, in addition to the central office in Vienna, like Bureau operates in each region. In Finland, the functions of the Children's Ombudsman since

1981 carries a special non-governmental organization. In Spain and Guatemala the Child Rights clubs operate under CO administration. In Canada there are Regional Offices of Commissioners for Human Rights to the fact that there are sections of Commissioners for children's rights in some provincial office (for example, in Quebec since 1979). In Costa Rica, since 1987 operates the Children's Ombudsman of the Ministry of Justice and Mercy; in practice, this Defender is one of the vice-ministers of justice. In Germany, in the Bundestag since 1988 working parliamentary commission on children's rights. In New Zealand in 1989 under the influence of the Norwegian model created Office of the Commissioner for Children's Rights. The Norwegian model has become a model also for Sweden, which in 1992 formed the Institute of Children's Ombudsman.

As you can see, the main development of the children's ombudsman institution falls on the 1990s.

The trend towards the creation of the institute in the world Children's Ombudsman was due to several reasons. First of all, the adoption and subsequent ratification by UN member states of the Convention on the Rights of the Child 20 November 1989 [6]. At present, the said UN Convention, ratified by 191 UN member countries except the USA and Somalia. Another reason - the critical situation of children rights in the world, which was noted by the World Summit for Children in 1990, which was held at the UN headquarters in New York [p. 20-21.] [7].

UNICEF published in digest "the Institute of Commissioners for Children's Rights," there are four basic methods of formation on children's rights Ombudsman institution:

1. Institute CO established by a special law adopted by the Parliament (Norway, Sweden, Iceland, Luxembourg);
2. Institute of the CO established in accordance with the legislation on protection of children's rights, according to which the Ombudsman's functions are directly related to the execution and enforcement of the relevant law (Austria, New Zealand);
3. CO position is not created on a statutory basis, as established in the framework of existing public bodies; these ombudsmen are as a public authority accountable to the state (Canada, Spain, Denmark, Germany);
4. Institute of the CO established non-governmental organizations and working under their auspices (Finland, Israel) [8].

To date, developed following the model of Children's ombudsman:

1. **The Executive Ombudsman.** An illustrative example – Children's Rights Commissioner for the President of the Russian Federation, which is appointed by the President of the RF.
2. **An independent ombudsman.** In this case, the example is the Children's Rights Commissioner in England.

The peculiarity of the English Commissioner (Children's) is that it is a non-state public institution (NDPB - nondepartmental public body), established to promote the interests and wishes of children living in England, and not an institution to protect their rights.

In this regard, it is unable to "promote" interests only one child. Commissioner is appointed by Head of State (Her Majesty), but after the appointment is not subject to either her or the Parliament of the country.

In Finland, and Israel the term "ombudsman" is used to refer to the activities of non-governmental non-governmental organizations. Thus, the activities of these organizations identified with the activities of the Ombudsman [p.9] [9].

3. *The Parliamentary Ombudsman.* It is in the legislative branch of government, appointed (elected) by the Parliament and is accountable (or controlled by) him. He has broad powers and is independent from the Parliament. For example, Children's ombudsman of the Republic of Bashkortostan (Russian Federation).

This model is the most typical as historically ombudsman emerged as a parliamentary oversight body of the administration.

In some countries the Children's Ombudsman have narrower competence. For example, in Finland, an ombudsman acts exclusively as a defender of individual complaints filed either by children or on their behalf. In Norway, the Children's Rights Commissioner, along with the protection of the individual interests of children represents the interests of Norwegian children in general. Swedish Ombudsman has no authority to review specific cases and works to strengthen and expand the rights and interests of all children.

Despite the fact that the institution of children's ombudsman in each country has its own characteristics, in the activities of ombudsmen child can distinguish similarities consist in the performance of the following functions:

1. Protecting the rights of the individual child and to the representation of their interests.
2. Investigation of the cases of individual complaints of children.
3. Monitoring the implementation of legislation relating to child protection.
4. Making recommendations to the state authorities to change in the field of child protection legislation.
5. Promote awareness about the rights of the child as the children themselves, as well as adults.
6. Acting as mediator in cases of conflict between parents and children.
7. Submission of reports on progress and on the status of child rights issue.

Thus, the ombudsman institution is an effective protection of the rights of children in the world. As the experience of states that have created at institutions authorized for children's rights, the existence of these institutions is an important mechanism to protect the rights and interests of children, as the children's rights ombudsman are independent bodies with the right to speak on behalf of children and at the same time focuses its activities exclusively to the protection of their interests.

In order to coordinate the efforts of children's ombudsmen form the European Network of Children's Ombudsmen (ENOC). The European Network of Ombudsman for Children (ENOC) was founded in 1997 and unites 44 independent organizations from 35 European countries working in the field of protection of children's rights.

ENOC regularly holds meetings to discuss urgent problems and share experiences. For example, in 2011 the children's ombudsmen met in Warsaw, in 2012 - in Paris, in 2013 in Brussels, and in 2014 in g.Edinburg.

Despite the fact that the European Network of Children's Ombudsman was created in 1997, and every children's ombudsman to seek to enter it, in practice between themselves

authorized no effective cooperation in the event of specific problems.

In addition, unlike the human rights commissioners, Children's Ombudsman do not constitute an international organization, which complicates the dialogue between them at the international level. The situation that arose around the brother Dima Yakovlev, could be solved much faster and more effectively in the international dialogue of children's ombudsmen Russia and the United States. This is a sore issue for the country's adoption of Russian children by foreign families, as well as the adoption of the "Act Dima Yakovlev"^[10] in the memory of the deceased Russian orphan due to the negligence of their adoptive parents July 8, 2008 in the US. During the event the Russian children's ombudsman Pavel Astakhov carried out activities aimed at both the adoption of the Act, and the ban on adoption of Russian children by foreign families.

In India instead of the Children's Ombudsman functions The National Commission for Protection of Child Rights (NCPCR). India, being a UN member, has been actively involved in the organization, so it is not surprising that the country has signed the Convention. At independence in 1947, India embarked on the democratic path of development, which is reflected in the Constitution as the prohibition of all forms of discrimination and a focus on individual rights and freedoms of the child. In particular, it is worth noting the emergence of organizations, both public and private, who see to it that children have access to primary and secondary education and to health care, are not subjected to violence and forced labor. One of the main organizations of Delhi is to protect the rights of children by the Commission.

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament (December 2005). The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group.

The Commission visualises a rights-based perspective flowing into National Policies and Programmes, along with nuanced responses at the State, District and Block levels, taking care of specificities and strengths of each region. In order to touch every child, it seeks a deeper penetration to communities and households and expects that the ground experiences gathered at the field are taken into consideration by all the authorities at the higher level. Thus the Commission sees an indispensable role for the State, sound institution-building processes, respect for decentralization at the local bodies and community level and larger societal concern for children and their well-being.

So, it seems that the experience of the Institute of the Children's Rights Commissioner and the principles of its activities are essential for all States experimenting with the idea of the defense of children's rights, including the Republic of Uzbekistan.

Accession of the Republic of Uzbekistan to the UN CRC contributed to the formation of state policy in the field of protection of children's rights, which is consistently implemented the activities of state bodies and public authorities on the ground to establish an effective mechanism of legal regulation of relations arising in connection with the

implementation and protection of children's rights. In this regard, the priority direction of state policy in Uzbekistan is to create the necessary legal and organizational conditions and guarantees for the respect and protection of children's rights.

January 7, 2008, despite the fact that Uzbekistan has more than 100 laws regulate certain rights and freedoms of the child, the Law of the Republic of Uzbekistan "On guarantees of child rights" came into force. This law is the first in the history of Uzbekistan codified legal act in the field of children's rights. According to its intended purpose it is intended to regulate the relations connected with the definition of the legal status of the child, legally guarantee the rights and freedoms of the child.

Adoption of the Law "On guarantees of child rights" has created the possibility of establishing in Uzbekistan Children's ombudsman, and to lay the institutional and legal framework for the special protection of children. Currently in Uzbekistan formed the conceptual basis of the introduction of the post of children's ombudsman, developed the concept and the draft law "On Children's Ombudsman", which took the necessary public and international expertise.

The Children's Ombudsman concept of the bill defined:

1. The main ideas, goals and subject of legal regulation, the circle of persons who are covered by the bill, their basic rights and obligations;
2. Place of the future regulatory legal act of the children's Ombudsman in the system of the current legislation, the value of which will have a bill for the legal system;
3. A general description of the foreign law enforcement on child activities of the Ombudsman;
4. Socio-economic, political, legal and other consequences of the adoption and implementation of the normative legal act of the children's Ombudsman in Uzbekistan.

The concept of the draft law "On Children's Ombudsman" provides such functions of Children's Ombudsman, as a method of applications of citizens about violation of children's rights, the settlement of disputes between the children, their legal representatives and bodies of state power and administration, as well as between children and their legal representatives, the provision of free legal assistance to children and their legal representatives and advice to children's institutions and organizations, the right to go to court to protect the rights of children in difficult circumstances and making the relevant authorities of proposals for improving the welfare and protection of children's rights mechanisms.

According to the concept, a children's ombudsman should be given the duty of submission to the Parliament and the President of the Republic of Uzbekistan annual report on its activities, which should be the subject of discussion by civil society institutions.

Children's Ombudsman shall be entitled to obtain the necessary information and documents related to the provision of children's rights, free access to organs and officials, and obtaining from them clarifications, conducting audits of their activities with the involvement of experts and specialists and the introduction of applications for the prosecution of persons guilty of violating the rights of the child^[11].

The concept is also the basic form of organization of activities of Children's Ombudsman in the field of public awareness, including children, on the international and national standards and observance and protection of children's rights through the establishment of appropriate educational and consulting structures for children and their legal representatives, as well as

the conduct and publication of systematic studies analyzing the situation of children in difficult life circumstances.

Working Group, chaired by Fund "Sen yolg'iz emassan" (You are not alone") developed a draft law "On Children Ombudsman", which was presented to the Cabinet of Ministers and its working version - the Legislative Chamber of Oliy Majlis. To date, work is continuing with the public to promote the ideas of the need for a children's Ombudsman in Uzbekistan.

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