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**Draft Law of Ukraine**

**“ON THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS”**

**LAW OF UKRAINE "ON THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS"**

**(Journal of the Verkhovna Rada of Ukraine (VRJ), 1998, No20, p. 99)**

{On constitutionality of certain provisions see the decision of the Constitutional Court № 5-рп/2000 as of 18.04.2000}

{As amended by the laws

№ 274-VI, of 15.04.2008, VRJ, 2008, № 25, p.240

№ 4652-VI, of 13.04.2012, VRJ, 2013, № 21, p.208

№ 4711-VI, of 17.05.2012, VRJ, 2013, № 14, p.89

№ 5207-VI, of 06.09.2012, VRJ, 2013, № 32, p.412

№ 5409-VI, of 02.10.2012, VRJ, 2013, № 41, p.552

№ 1170-VII, of 27.03.2014, VRJ, 2014, № 22, p.816

№ 1262-VII, of 13.05.2014, VRJ, 2014, № 27, p.914

№ 1697-VII, of 14.10.2014, VRJ, 2015, № 2-3, p.12

№ 77-VIII, of 28.12.2014, VRJ, 2015, № 11, p.75

№ 889-VIII, of 10.12.2015, VRJ, 2016, № 4, p.43

№ 901-VIII, of 23.12.2015, VRJ, 2016, № 4, p.44

№ 1798-VIII, of 21.12.2016, VRJ, 2017, № 7-8, p.50

№ 2136-VIII, of 13.07.2017, VRJ, 2017, № 35, p.376}

**CHAPTER I**  
**GENERAL PROVISIONS**

**Article 1.** Parliamentary control over the observance of constitutional human and citizens' rights and freedoms **and promotion of right of good administration.**

Parliamentary control over the observance of constitutional human and citizens' rights and freedoms and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction is permanently exercised by the Ukrainian Parliament Commissioner for Human Rights (hereinafter referred to as «the Commissioner»). The Commissioner shall be guided by the Constitution of Ukraine, the laws of Ukraine and effective international treaties approved by the Verkhovna Rada of Ukraine.

**Article 2.** The scope of application of the Law

The scope of application of the Law shall extend to relations emerging from the fulfilment of human and citizens' rights and freedoms between a citizen of Ukraine, irrespective of his or her dwelling place, a foreigner or a stateless person, who are on the territory of Ukraine and bodies of state power and local self-government, their officials.

*{Part one of article 2 as amended by the Law № 1262-VII, of 13.05.2014}*

The operation of this Law also applies to relations that arise between juridical persons of public and private law, as well as individuals who are on the territory of Ukraine in cases provided for by a specific law.

*{Article 2 supplemented by part two according to the Law № 1262-VII, of 13.05.2014}*

**This Law establishes the procedure for the investigation of individual complaints arising from implementing the mandate of Commissioner.**

**When investigating the individual complains, the Commissioner shall be governed by the norms of this Law and by the norms of the Law on Citizens Appeals where a direct reference is made thereto by this Law.**

**The investigating procedure of individual complains of different violations of human rights may also be regulated by other laws.**

**The activities of the President of the Republic, members of the Verkhovna Rada of Ukraine, the Government (as a collegial institution), and judges of the Constitutional Court and other courts, do not fall within the scope of this Law.**

*or*

**The activities of the President of the Republic, members of the Verkhovna Rada of Ukraine, the Government (as a collegial institution), and judges of the Constitutional Court and other courts, with the exception of state management and administration of courts, do not fall within the scope of this Law.**

**Article 3.** The purpose of the parliamentary control over the observance of constitutional human and citizens' rights and freedoms

The purposes of the parliamentary control exercised by the Commissioner are:

- 1) protection of human and citizens' rights and freedoms envisaged by the Constitution of Ukraine, the laws of Ukraine and international treaties of Ukraine;
- 2) observance of and respect for human and citizens' rights and freedoms by subjects indicated in Article 2 of this Law;
- 3) prevention of violation of human and citizens' rights and freedoms or the facilitation of their restoration;

- 4) facilitation of the process of bringing legislation of Ukraine on human and citizens' rights and freedoms in accordance with the Constitution of Ukraine and international standards in this area;
- 5) improvement and further development of international cooperation in the area of the protection of human and citizens' rights and freedoms;
- 6) prevention of any forms of discrimination in relation to fulfilment of person's rights and freedoms;
- 7) promotion of legal awareness of the population and protection of confidential information about a person.
- 8) promotion and protection of a person's right to good public administration thereby contributing to securing human rights and freedoms and supervision of the fulfilment by state authorities of their duty to properly serve the people.**

### **Article 3<sup>1</sup>. Right to good administration.**

**Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of Ukraine.**

**This right includes:**

- 1) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;**
- 2) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;**
- 3) the obligation of the administration to give reasons for its decisions.**

### **Article 4. Legal status of the Commissioner**

The Commissioner is an official, whose status is stipulated by the Constitution of Ukraine, this Law, other laws of Ukraine.

*{Part one of article 4 as amended by the Laws № 5207-VI, of 06.09.2012, № 889-VIII, of 10.12.2015}*

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.

The authority of the Commissioner shall not be terminated or limited in case of expiration of term of the authority of the Verkhovna Rada of Ukraine or its dissolution (self-dissolution), declaration of martial law or the state of emergency in Ukraine or in its certain areas.

The Commissioner has a seal with the emblem of Small State Coat of Arms of Ukraine and his or her appellation.

The capital of Ukraine – the City of Kyiv shall be the seat of the Commissioner.

## **CHAPTER II**

### **APPOINTMENT TO THE POST, DISMISSAL FROM THE POST AND TERMINATION OF AUTHORITY OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS**

**Article 5.** Requirements for the candidate for the post of the Commissioner and appointment to the post of the Commissioner

The Commissioner shall be appointed to his or her post and shall be dismissed from his or her post by the Verkhovna Rada of Ukraine by a secret ballot vote.

To the post of the Commissioner can be appointed a citizen of Ukraine who has attained the age of 40 on the day of election, has a good command of state language, **full civil and political rights, good repute**, high moral qualities, experience in human rights protection, **offer every guarantee of independence**, and has been residing in Ukraine for the last five years.

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

Candidates for the post of the Commissioner before appointment to the post shall file to the body which appoints the Commissioner declaration of property, incomes, expenditures, and financial obligations under 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.~~ **A person may not be held to be of good repute and may not be appointed a Commissioner if under an effective court judgement he has been found guilty of commission of a criminal offence or he has been given an administrative punishment for corruption.**

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”.

*{Article 5 as amended by the Law № 4711-VI, of 17.05.2012}*

**Article 6.** The procedure for nomination of the candidates for the post of the Commissioner

Proposals for candidate(s) to the post of the Commissioner shall be made by the Chairman of the Verkhovna Rada of Ukraine or by no less than one-fourth of People’s Deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine. **The Chairman of the Verkhovna Rada of Ukraine or one fourth of Deputies may publicly call for nominations and set a time-limit for their submission. OR The representatives of the civil society should be invited to participate in the selection procedure for the purposes of identifying persons and making recommendations. OR At least one or two candidates shall be proposed according to the received applications from the public call.** A respective Committee of the Verkhovna Rada of Ukraine on the basis of the special check provided for by Article 5 of this Law shall submit its conclusions to the Verkhovna Rada of Ukraine on each candidate to the post of the Commissioner, on how the candidate meets the requirements envisaged by the Law, and on the absence of reasons which would prevent the candidate from holding this post.

*{Part one of article 6 as amended by the Law № 4711-VI, of 17.05.2012}*

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 **a two-third** 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.

Should more than two candidates to the post of the Commissioner be nominated 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.

Repeat voting on the appointment of the Commissioner shall be conducted in accordance with the procedure established by this Article.

Candidates to the post of the Commissioner shall be nominated again if none of the candidates received the required number of votes.

**Save in the event of his dismissal, after expiration of the Commissioner's term, and prior to the selection of a new Commissioner, the Commissioner shall remain in office until his successor has been appointed.**

#### **Article 7.** The oath of the Commissioner

Before assuming his or her post at the session of the Verkhovna Rada of Ukraine, the Commissioner shall take the following oath: «I (first and last name) on assuming the post of Ukrainian Parliament Commissioner for Human Rights, solemnly swear to honestly and scrupulously protect human and citizens' rights and freedoms, conscientiously perform my duties, honour the Constitution of Ukraine and laws of Ukraine, and be governed by justice and personal conscience. I commit myself to acting in an independent and unbiased manner, serving human and citizens' interests».

The authority of the Commissioner shall be effective from the moment of taking oath.

#### **Article 8.** Incompatibility of the post of the Commissioner

The Commissioner shall not have representative mandate, hold any other positions at bodies of state power, perform any other paid or unpaid work at bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, except teaching, scholarly or any other creative activity.

The Commissioner shall not be a member of any political party.

In order to comply with the requirements provided for in the first and second paragraphs of this Article, the Commissioner shall eliminate any incompatibility within a period of ten days following his or her appointment. The Commissioner shall not take the oath until the aforementioned incompatibilities are eliminated.

~~If the incompatibilities mentioned in the first and second parts of this Article emerged during the term of activity of the Commissioner, they should be eliminated within a period of ten days commencing from the day they were discovered.~~

~~If incompatibilities cannot be eliminated over a period of ten days, the Commissioner during this period shall make a statement on the refusal to perform any other duties than that of the Commissioner.~~

The authority of the Commissioner shall be terminated and the Verkhovna Rada of Ukraine shall dismiss him or her from the post, if the Commissioner has not complied with established requirements ~~within the aforesaid period~~. The new nomination of candidates and appointment of the

Commissioner shall be exercised in accordance with the procedure envisaged by Article 6 of this Law.

**Article 9.** Termination of authority and dismissal of the Commissioner from the post

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.

**6) inability to perform duties for more than four months in a row due to unsatisfactory health conditions or inability to work.**

The Verkhovna Rada of Ukraine shall adopt the resolution on dismissal from the post of the Commissioner before the expiration of term to which he or she has been elected, in case of:

- 1) violation of the oath;
- 2) incompliance with the requirements of incompatibility of the post of the Commissioner;
- 3) termination of citizenship of Ukraine;
- 4) ~~inability to perform duties for more than four months in a row due to unsatisfactory health conditions or inability to work.~~

The Temporary Special Commission of the Verkhovna Rada of Ukraine shall conclude whether there are grounds to dismiss the Commissioner from the post.

If such grounds exist, the Verkhovna Rada of Ukraine shall consider this issue and adopt a respective resolution on dismissing the Commissioner from the post following an application by the Chairman of the Verkhovna Rada of Ukraine or no fewer than one-fourth of People's Deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine.

The Commissioner is considered dismissed from the post if the majority of People's Deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine voted in favour of it.

Termination of authority and dismissal of the Commissioner from the post shall be legalized by a respective resolution of the Verkhovna Rada of Ukraine.

### **CHAPTER III**

#### **ORGANIZATION OF THE ACTIVITY OF THE COMMISSIONER**

**Article 10.** The Secretariat of the Commissioner

The Secretariat shall be established in order to secure the activity of the Commissioner. The Secretariat is a legal entity and has its own bank account and established seal.

The structure of the Secretariat, distribution of duties and other issues concerning the organization of its activity shall be regulated by the Regulations on the Secretariat of the Ukrainian Parliament Commissioner for Human Rights (hereinafter referred to as «Regulations»). The Law of Ukraine «On Civil Service» shall apply to the Secretariat staff members. The Regulations and the budget of the Secretariat shall be approved by the Commissioner within the scope of budget expenses allotted

for the Commissioner's activity. The appointment and dismissal of the Secretariat staff members shall be exercised by the Commissioner.

A board of advisors (which can also operate on a voluntary basis), made up of persons having practical experience in the area of protection of human and citizens' rights and freedoms, can be established under the Commissioner with the aim of providing consultation, conducting scientific investigations as well as considering proposals on how to improve the situation with regard to the protection of human and citizens' rights and freedoms.

#### **Article 11.** Representatives of the Commissioner

The Commissioner has the right to appoint his or her Representatives within the allocated funds approved by the Verkhovna Rada of Ukraine.

The organization of activity and scope of authority of the Representatives of the Commissioner shall be regulated by the Regulations on Representatives of the Ukrainian Parliament Commissioner for Human Rights, which are approved by the Commissioner.

#### **Article 12.** Procedure for financing the activity of the Commissioner

Financing for the activity of the Commissioner shall be allocated from the State Budget of Ukraine and will annually be envisaged in a separate line.

The Commissioner shall elaborate, submit to the Verkhovna Rada of Ukraine for approval and implement budgetary outlays.

The Commissioner shall submit financial report in accordance with the procedure established by the legislation of Ukraine.

The Verkhovna Rada of Ukraine and respective bodies of executive power and bodies of local selfgovernment shall create the necessary conditions for operation of the Commissioner, his or her Secretariat and Representatives.

### **CHAPTER IV**

#### **THE AUTHORITY OF THE COMMISSIONER**

#### **Article 13.** The rights of the Commissioner

The Commissioner has the right to:

1) be received, without any delay, by the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, the Prime Minister of Ukraine, the chairmen of the Constitutional Court of Ukraine, the Supreme Court of Ukraine and higher specialized courts of Ukraine, the Prosecutor General of Ukraine, the heads of other state bodies, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers;

*{Item 1 part one of Article 13 as amended by the Law № 1798-VIII, of 21.12.2016}*

2) attend sessions of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, ~~the Constitutional Court of Ukraine, the Supreme Court of Ukraine, and higher specialized courts of Ukraine~~, the collegiums of prosecutors' offices of Ukraine and other collegiate bodies;

3) 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, and

legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea concerning human and citizens' rights and freedoms with the Constitution of Ukraine;

the official interpretation of the Constitution of Ukraine;

*{Paragraph three of item 3 part one of Article 13 as amended by the Law № 2136-VIII, of 13.07.2017}*

**The Commissioner can apply to the Constitutional Court only on the matters falling into his(her) competence.**

3<sup>1</sup>) make in due course proposals for improvement of legislation of Ukraine in the sphere of protection of human and citizen's rights and freedoms;

*{Article 13 supplemented by item 3-<sup>1</sup> according to the Law № 5409-VI, of 02.10.2012}*

**3<sup>2</sup>) apply to the administrative court with a request to investigate conformity of an administrative regulatory enactment (or its part) within the matters falling into his(her) competence;**

4) 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;

5) 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.

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

*{Item 5 of Article 13 as amended by the Law, № 5409-VI, of 02.10.2012}*

6) 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 inspection 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;

7) invite officials and officers, citizens of Ukraine, foreigners and stateless persons to submit oral and written explanations with regard to cases under review;

8) visit without prior notification of purpose and time such places:

places in which persons are forcibly held in accordance with a court decision or a decision of an administrative body pursuant to legislation, including temporary detention rooms, cells of National police bodies for detained and delivered persons, places of temporary stay of foreigners and stateless persons who illegally stay in Ukraine, cells for temporary detained military servants, pretrial detention centers, arrest houses, penal enforcement institutions, reception centers for children, public schools and vocational schools of social rehabilitation, centers of medical and social rehabilitation of children, special educational institutions, military units, military detention cells, disciplinary battalions, special centers for detention of persons subject to administrative arrest, city and district departments and units, transport departments, divisions and units under bodies of National police, specialized motor vehicles (including specialized car convoy), court rooms for holding accused (convicted) persons, institution of compulsory treatment;

*{Paragraph two of item 8 of Article 13 as amended by the Law № 901-VIII, of 23.12.2015}*

psychiatric institutions;

units of temporary stay for refugees;

units for transit passengers at checkpoints of state border;

child care centers, orphan homes, shelters for children, children's homes, boarding schools for orphans and children deprived of parental care, centers of social rehabilitation of children with disabilities, centers of socio-psychological rehabilitation of children;  
neuropsychiatric centers,  
geriatric boarding houses; boarding houses for senior citizens and people with disabilities;  
boarding houses for veterans of war and labour;  
social and rehabilitation centers. This list is not exhaustive;

*{Item 8 of Article 13 as amended by the Law № 5409-VI of 02.10.2012}*

8<sup>1</sup>) interview persons who stay in places mentioned in paragraph 8 of this Article and obtain information on their treatment and living conditions;

*{Article 13 supplemented by item 8-<sup>1</sup> according to the Law № 5409-VI of 02.10.2012}*

~~9) attend court sessions of all instances, including court sessions held behind closed doors, if legal person in whose interest the judicial proceedings have been ruled to be held behind closed doors, has given consent;~~

~~10) 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;~~

**appeal to court so as to protect the rights and freedoms of an individual and a citizen in person or via representative in accordance with the law: to apply to the Court to protect the rights and freedoms of persons who due to their physical condition, underage, advanced age, disability or disabilities are unable to protect their rights and freedoms;**

to participate in court cases/trials, proceedings in which were opened upon his claims (applications, petitions (submissions)); participate in cases/trials, proceedings in which were opened upon claims (applications, petitions (submissions)) of other persons at any stage of the trial;

~~initiate, independently of his participation in the trial, revision of court decisions;~~

*{Item 10 of Article 13 as amended by the Law № 1697-VII, of 14.10.2014}*

11) submit to respective bodies, documents containing the response of the Commissioner to instances of violation of human and citizens' rights and freedoms, for taking respective measures;

12) supervise the observance of established human and citizens' rights and freedoms by respective bodies of state power, including those who conduct investigative activities, make proposals for improving activity of such bodies in this area pursuant to established procedure

*{Item 12 of Article 13 as amended by the Laws № 5409-VI, of 02.10.2012, № 1697-VII, of 14.10.2014}*

13) exercise control over the ensuring equal rights and opportunities for women and men;

*{Article 13 supplemented by item 13 according to the Law № 274-VI, of 15.04.2008}*

14) exercise other authorities envisaged by the law.

*{Article 13 supplemented by item 14 according to the Law № 1262-VII, of 13.05.2014}*

**15) act as a mediator where it is seen possible when trying to improve relations amongst the citizen, the administration and public services and (or) trying to reach a friendly solution. The information gathered through the mediation proceeding cannot be later used in the civil or administrative cases in courts without express permission of the interested parties, except in cases of public interest or where the publicity of the agreement reached through mediation is necessary clause for its validity.**

**Persons interfering with the performance of duties and/or requests by Commissioner shall be held liable under the Code of Administrative Violations.**

#### **Article 14.** The duties of the Commissioner

The Commissioner shall honour the Constitution of Ukraine and the laws of Ukraine, other legal acts, human and citizens' rights and interests protected by law, ensure the exercise of functions conferred on him or her and fully use the rights given to him or her.

The Commissioner shall keep the confidential information secret. This obligation shall be effective after the termination of his or her authority.

If the Commissioner has disclosed such information, he or she shall be liable in accordance with the procedure established by legislation.

The Commissioner shall not disclose information that was obtained about personal life of an applicant and other persons related to the application, without their prior consent.

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

*{Article 14 supplemented by part five according to the Law № 1170-VII, of 27.03.2014}*

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.

*{Article 14 supplemented by part six according to the Law № 1170-VII, of 27.03.2014}*

#### **Article 15.** Acts of response of the Commissioner

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 the** ~~are a constitutional submission of the Commissioner and~~ **a submission (recommendation) or binding individual administrative decision** 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.

*{Part two of article 15 as amended by the Law № 2136-VIII, of 13.07.2017}*

**The submission of the Commissioner (recommendation) 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 period of one month, relevant measures aimed at the elimination of revealed acts of violation of human and citizens' rights and freedoms. The entity or official, to whom the submission (recommendation) is addressed, must investigate the submission (recommendation) of the Commissioner and inform in written form not later as 1 month after the receiving of submission (recommendation) about the results of the investigation.**

**The individual administrative decision of the Commissioner means a single act of law application, intended for a particular body of state power, body of local self-government, association of citizens, enterprise, institution, organization, irrespective of their forms of ownership, their officials and officers for exercise of legal measures set by the Commissioner regulated by this law or other laws and aimed at the elimination of revealed acts of violation of human and citizens' rights and freedoms.**

## CHAPTER IV-1 INVESTIGATION OF INDIVIDUAL COMPLAINTS

### **Article 16.** Grounds to conduct legal proceedings and inspections

The Commissioner shall perform his or her duties on the basis of information about acts of violation of human and citizens' rights and freedoms, which he or she obtains through:

- 1) the applications of citizens of Ukraine, foreigners, stateless persons or their representatives;
- 2) the applications of the People's Deputies of Ukraine;
- 3) his or her own initiative.

### **Article 17.** Filing and acceptance of complaints ~~Consideration of applications by the Commissioner~~

The Commissioner shall receive and consider applications of citizens of Ukraine, foreigners, stateless persons or persons acting in their interests, in accordance with the provisions of this Law. ~~of Ukraine «On Applications of Citizens.~~

**The complainant shall have the right to file a complaint with Commissioner about the abuse of office by or by bureaucracy of officials if he believes that his rights and freedoms have been violated thereby.**

**As a rule, complaints shall be filed in writing. If a complaint is received verbally, by telephone or if the Commissioner establishes from the mass media or other sources the presence of elements of abuse of office by the officials, bureaucracy or instances of violation of human rights and freedoms, the Commissioner may open investigation into the matter on his own initiative.**

**Verbal or written applications of complainants, which contain not complaints about officials but requests for explanations, other information or requested documents, etc. shall not be treated as complaints.**

~~Applications shall be submitted to the Commissioner in a written form within the period of one year after disclosure of the act of violation of human and citizens' rights and freedoms. In case of exceptional circumstances, this period can be extended by the Commissioner, but should not exceed two years.~~

While **considering on acceptance of** application the Commissioner shall:

1. initiate proceedings on violation of human and citizens' rights and freedoms;
- ~~2. explain what measures the person who has filed an application with the Commissioner should undertake;~~
3. forward an application, as appropriate, to the body which is competent to consider the case, and control the consideration of this application;
4. ~~decline~~ **refuse** consideration of an application.

~~The Commissioner shall not consider applications which are under review in courts, and shall terminate legal proceedings that have been initiated if the person concerned has filed an application, statement or complaint to the court. The activities of the President of the Republic, members of the Verhovna Rada, the Prime Minister, the Government (as a collegial institution), the Hight Audit institution and judges of the Constitutional Court and other courts, municipal councils (as collegial institutions) shall be outside the Commissioner's powers of investigation. The legality and validity of procedural decisions of the prosecutors, pre-trial investigation officials shall also be outside the Commissioner's powers of investigation, however, complaints about~~

**the actions of the prosecutors, pre-trial investigation officials, which violate human rights and freedoms, shall fall within the investigative jurisdiction of the Commissioner. The Commissioner shall not investigate complaints arising from the labour legal relations and about the legality and validity of court decisions, judgements and rulings. Notification on accepting an application for consideration or refusal to accept an application for consideration shall be submitted in a written form to the person who has filed it. The refusal to accept an application for consideration shall be grounded. The Commissioner shall not consider applications questioning the soundness of a court's ruling.**

#### **Article 17<sup>1</sup>. Anonymous complaints**

**Anonymous complaints shall not be investigated unless the Ombudsperson decides otherwise**

#### **Article 17<sup>2</sup>. Time Period for Filing a Complaint**

**Applications shall be submitted to the Commissioner in a written form within the period of one year after disclosure of the act of violation of human and citizens' rights and freedoms. In case of exceptional circumstances, this period can be extended by the Commissioner, but should not exceed two years.**

#### **Article 17<sup>3</sup>. Requirements of Complaint**

**The following shall be stated in the complaint:**

- 1) the addressee - the Office of the Commissioner;**
- 2) full name and address of the complainant;**
- 3) full names and positions of the officials against whom the complaint is filed, the institution or agency in which they are employed;**
- 4) a description of the decision or actions complained about, the date and the circumstances under which they have been performed;**
- 5) a formulated request addressed to the Commissioner;**
- 6) the date on which the complaint has been drawn up and the complainant's signature.**

**Attached to the complaint may be:**

- 1) a copy of the contested decision;**
- 2) the available evidence or its description;**

**Non-compliance with the form of the complaint prescribed by paragraph 1 of this Article or failure to present the required particulars may not be grounds for refusing to investigate the complaint, except for anonymous complaints and cases where the investigation may not be opened due to insufficiency of facts of the matter, while the complainant fails to submit the facts on the Commissioner's request or in case the text of the complaint is illegible.**

#### **Article 17<sup>4</sup>. Refusal to Investigate a Complaint**

**The Commissioner shall make a decision to refuse to investigate a complaint within 7 working days from the date of receipt thereof informing the complainant about this if:**

- 1) the Commissioner comes to the conclusion that the complaint has no substance;**

- 2) the complaint is filed after the deadline set in Article 17-2 of this Law;
- 3) the circumstances indicated in the complaint are outside the Commissioner's investigative jurisdiction;
- 4) a complaint relating to the matter has already been resolved or is pending in court;
- 5) a procedural decision has been taken to open pre-trial investigation in relation to the subject matter of the complaint;
- 6) the Commissioner comes to the conclusion on the expediency of investigating the complaint in another institution or agency.

Where a decision is taken to refuse to investigate a complaint, grounds for refusal must be specified. In the cases where the complaint falls outside the Commissioner's remit, refusal to investigate shall also indicate the institution or agency the complainant may address on the matter.

A complaint filed repeatedly after its investigation shall not be investigated except in cases where new circumstances are indicated or new facts are presented. If the complainant abuses the right to apply to the Commissioner, correspondence with such a complainant may be ceased upon the decision of the Commissioner.

If the circumstances specified in paragraph 1 of this Article are disclosed in the course of complaint investigation the complaint investigation shall be discontinued.

#### **Article 17<sup>5</sup>. Time-limits for Complaint Investigation**

A complaint must be investigated and the complainant must be given a response within 3 months of the day of the receipt of the complaint, except for the cases where the complexity of circumstances, abundance of information or continuity of actions being complained about necessitates prolongation of the complaint investigation. The complainant shall be notified of the Commissioner's decision to extend the time-limit for the complaint investigation. Complaints shall be investigated within the shortest time possible.

#### **Article 17<sup>6</sup>. Scope of Complaint Investigation**

The Commissioner shall investigate the circumstances specified in a complaint and draw up a statement stating the circumstances disclosed and evidence collected in the course of investigation as well as giving legal evaluation of the official's activities. The statement shall be signed by the Commissioner or representative of the Commissioner. The statement of the Commissioner shall be presented to the complainant as well as announced in the official website of the Commissioner's Office. The statement may also be submitted to the head of the institution or agency where the investigation has been conducted or the official whose actions have been subjected to investigation, also, as necessary, the head of a superior institution or agency as well as other institutions or agencies. In cases where the statement contains information which constitutes a State, official, commercial or bank secret as well as information about personal data protected under laws, not the full text of the statement shall be presented and announced.

#### **Article 17<sup>7</sup>. Decisions of the Commissioner**

Having completed the investigation the Commissioner shall take a decision to:

- 1) recognise declare the complaint as justified;

2) dismiss the complaint;

3) discontinue the complaint investigation.

**The period of complaint investigation shall be excluded from the limitation period which laws allow for the imposition of disciplinary penalty.**

**The investigation of a complaint shall be discontinued if the circumstances addressed in the complaint disappear during the investigation or the problems addressed in the complaint are resolved in good will through the mediation of the Commissioner as well as in other cases established by this law.**

#### **Article 18.** Annual and Special reports of the Commissioner

During the first quarter of every year, the Commissioner shall present to the Verkhovna Rada of Ukraine an Annual report on the situation with the observance and protection of human and citizens' rights and freedoms in Ukraine by 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, whose acts (acts of inaction) resulted in a violation of human and citizens' rights and freedoms, and on the shortcomings discovered in legislation on human and citizens' rights and freedoms. **During the debate on the general annual report at the session of the Parliament, the Commissioner may personally present a summary of the report and ensuing conclusions.**

The Annual report should refer **to the activities of the Commissioner**, cases of violation of human and citizens' rights and freedoms, in relation to which the Commissioner has undertaken necessary measures, results of the inspections conducted within the period of one year, conclusions and recommendations aimed at improving the situation with regard to securing human and citizens' rights and freedoms.

If necessary the Commissioner shall present to the Verkhovna Rada of Ukraine a Special report (reports) on separate issues regarding the observance of human and citizens' rights and freedoms in Ukraine.

The Verkhovna Rada of Ukraine shall adopt a resolution based on Annual and Special reports presented by the Commissioner.

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.

**In connection with the submission of reports, the Commissioner may make recommendations to the Verkhovna Rada of Ukraine concerning the elimination of defects in legislation. If a defect relates to a matter under deliberation in the Verkhovna Rada of Ukraine, the Commissioner may also otherwise communicate his or her observations to the relevant body within the Verkhovna Rada of Ukraine.**

*OR*

#### **Article 18<sup>1</sup>.** Right to propose recommendations for the amendments of laws

**The Commissioner has the right to propose recommendations to the Verkhovna Rada of Ukraine for the introduction of amendments or additions to existing laws or other legislative innovation in respect of matters related to his mandate any time when in the course of the exercise of his/her jurisdiction it deems necessary.**

**When fulfilling this right, the Commissioner has the right to participate in parliamentary sessions and meetings, to attend the meetings at the Government and other state institutions where matters of human rights and good administration are discussed with the right to speak.**

## **Article 19.** Participation of the Commissioner in international cooperation

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.

## **Article 19<sup>1</sup>.** 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 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;
- 4) 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;
- 5) performs other duties prescribed by this Law.

Interview of persons referred to in paragraph 2 of part 2 of this Article shall be carried out in private and under conditions that preclude the possibility of wiretapping or eavesdropping. At the request of the Commissioner, if necessary, such interview can be carried out in the presence of an interpreter, a doctor, workers of institutions mentioned in paragraph 8 of Article 13 of this Law, and in case of an interview of a minor, his or her legal representative, teacher or a psychologist.

Representatives of civil society organizations, experts, scholars and professionals involved by the Commissioner on a contractual basis to perform functions of the national preventive mechanism, on the grounds of a separate written order of the Commissioner visit places mentioned in paragraph 8 of Article 13 of this Law and in compliance with requirements of part 3 of this Article may interview persons kept in such places with the view of obtaining information about treatment of those persons and their detention conditions.

Classified information, as well as confidential information obtained by the Commissioner, representatives of civil society organizations, experts, scholars and professionals engaged by the Commissioner to perform functions of the national preventive mechanism during interview of persons kept in places specified in paragraph 8 of Article 13 of this Law, is used in compliance with legislation of Ukraine on information.

At the request of the Commissioner state authorities, state bodies, enterprises, institutions and organizations regardless of form of ownership shall provide information on the number of persons kept in places specified in paragraph 8 of Article 13 of this Law, the quantity of such places and their location as well as any other information concerning the treatment of people and their detention conditions.

A separate structural unit for the prevention of torture and other cruel, inhuman or degrading treatment or punishment shall be established in the Secretariat of the Commissioner. This structural unit shall be established on the basis of the equal representation of men and women as well as

national minorities. The unit shall consist of experts from various areas who possess professional qualifications.

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.

Expenditures on financing the national preventive mechanism shall be provided in the State budget of Ukraine.

*{Chapter IV supplemented by Article 19-<sup>1</sup> according to the Law № 5409-VI, of 02.10.2012}*

## CHAPTER V

### GUARANTEES OF SECURING THE ACTIVITY OF THE COMMISSIONER

**Article 20.** General guarantees of the activity of the Commissioner

Interference from 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 into the activity of the Commissioner shall be prohibited.

The Commissioner is not obligated to provide explanations on details of cases which are being considered or have been closed by the Commissioner.

The Commissioner shall enjoy the rights to immunity during the entire period of tenure. He or she cannot be held criminally liable without consent of the Verkhovna Rada of Ukraine or be subject to administrative punishment imposed by judicial procedure, be detained, arrested, searched as well as be subject to personal examination. No one except the Prosecutor General of Ukraine can inform the Commissioner on the suspicion of a criminal offence being committed. Should the legislation on guarantees of activity of the Commissioner, his or her Representatives and Secretariat staff members be violated, the offending persons shall be held liable in accordance with the legislation in force.

*{Part three of Article 20 as amended by the Laws № 4652-VI, of 13.04.2012, № 1798-VIII, of 21.12.2016}*

Upon the expiration of the term of tenure for which the person has been elected to the post of the Commissioner, he or she shall be provided with the job (post) previously held before the appointment and which is retained for him or her during the period that he or she performs the duties of the Commissioner, or he or she shall be provided with another equivalent job (post) at the same enterprise or, if it is impossible, with his or her consent, at another enterprise, institution, organization.

The life and health of the Commissioner, his or her Representatives employed on a permanent basis, shall be indemnified in the form of a mandatory state social insurance according to the legislation on mandatory state social insurance.

*{Part five of Article 20 as amended by the Law № 77-VIII, of 28.12.2014}*

**Article 21.** Guarantees of protection of human and civil rights during applying to the Commissioner

Anyone can apply to the Commissioner without any restriction and hindrance in accordance with the procedure envisaged by effective legislation. Privileges or restrictions related to race, skin colour, religious or other beliefs, sex, ethnic and social origin, financial status, place of residence, language and other such factors are forbidden when applying to the Commissioner.

Person deprived of liberty can file an application to the Commissioner or his or her Representatives in writing. In this case, restrictions related to correspondence shall not be applied.

Correspondence from this individual shall be dispatched to the Commissioner within the period of twenty-four hours.

Correspondence addressed to the Commissioner and his or her Representatives from persons who are detained, arrested, held in custody, or in various types of prison facilities and facilities where medical treatment is forcefully applied, as well as from other citizens of Ukraine, foreigners and stateless persons, irrespective of their place of residence, shall not be subject to any censorship and inspection.

Those persons who have committed acts prohibited by this Article shall be held liable in accordance with effective legislation.

**Article 22.** Obligation to cooperate with the Commissioner

Bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, officials and officers addressed to by the Commissioner shall cooperate with him or her and assist him or her, as appropriate, in:

1) ensuring access to materials and documents, as well as under provisions of the legislative acts on the protection of classified information;

*{Item 1 part one of Article 22 as amended by the Law № 1170-VII, of 27.03.2014}*

2) providing information and explanations with regard to the factual and legal basis of their acts and decisions;

3) considering proposals of the Commissioner to improve their activities in the area of protection of human and citizen's rights and freedoms and during one month from the date of receipt of such proposals providing the Commissioner with a reasoned written response.

*{Part one of Article 22 supplemented by item 3 according to the Law № 5409-VI, of 02.10.2012}*

Any refusal of 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 to cooperate as well as deliberate concealment or the provision of false information, illegal interference into the activity of the Commissioner with the purpose of counteraction shall incur liability in accordance with effective legislation.

## CHAPTER VI

### CONCLUDING PROVISIONS

1. This Law shall become effective on the day of its publication.

2. The Cabinet of Ministers of Ukraine shall, by 1 February 1998:

provide the Verkhovna Rada of Ukraine with proposals on bringing legislative documents of Ukraine in conformity with the Law of Ukraine «On the Ukrainian Parliament Commissioner for Human Rights»;

bring resolutions of the Government of Ukraine in conformity with this Law;

ensure that ministries and other central bodies of executive power of Ukraine review and repeal normative acts which contradict this Law.

**President of Ukraine L. KUCHMA**

**Kyiv, 23 December 1997**

**No776/97 – BP**

ANNEX 2

**Amendments to the Law of Ukraine "ON THE CONSTITUTIONAL COURT OF  
UKRAINE"**

The Law on the Constitutional Court of Ukraine shall be hereby amended as follows:

1. The following Article shall be inserted into Chapter 10 "Consideration of Cases in the Constitutional Court":  
'Article (76 or 77). Order of Hearings  
1. The cases shall be heard by the Constitutional Court in the order determined according to the date of the opening of the proceedings.  
2. Notwithstanding Paragraph 1, the following cases shall be heard as a matter of priority:  
1) the cases referred in Paragraph 3 of Article 75 of this Law;  
2) the cases in the proceedings opened on the basis of the submissions of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights;  
3) the cases involving numerous submissions or complaints regarding the same legal provisions.  
3. The precise order of hearings shall be determined by the Court in accordance with the provisions of Paragraphs 1 and 2.'
2. Article 83 shall be supplemented by the following Paragraph 3:  
'3. The final acts of the Court (decisions, judgments, conclusions), foreseen in Paragraph 1 of this Article, shall be adopted and announced within one month after the closure of proceedings in accordance with Paragraphs 2 and 3 of Article 75 of this Law.'

**Amendments to the CODE OF ADMINISTRATIVE JUDICIAL PROCEDURE OF  
UKRAINE**

The Code of Administrative Judicial Procedure shall be hereby amended as follows:

Article 171 shall be supplemented by Paragraph 2<sup>1</sup>:

'2<sup>1</sup>. The right to apply to the administrative court with an abstract petition for review of conformity of a regulatory administrative act (part thereof) shall be vested in the Commissioner of the Verkhovna Rada of Ukraine for Human Rights. The Commissioner of the Verkhovna Rada of Ukraine for Human Rights shall apply to administrative courts only on the matters falling into his(her) competence.'