



Twinning Project “Implementation of the best European practices
with the aim of strengthening the institutional capacity of the
Apparatus of the Ukrainian Parliament Commissioner for Human
Rights to protect human rights and freedoms (Apparatus)”
No. EuropeAid/137673/DD/ACT/UA

Activity 2.2.3. Drafting recommendations as regards increasing the efficiency of the activities of the ombudsperson on elimination of detected human rights violations, control procedures over fulfilment of ombudsperson’s recommendations, response to the Ombudsperson’s acts of submission on elimination of detected human rights violations

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| Title of Document | Making recommendations effective |
| Short description of document | The recommendations provide information on how to make the recommendations provided by the Commissioner more effective in order to increase the efficiency of implementation. Having in mind that ombudspeople across Europe primarily use reflexive control in ensuring the application of recommendations, these recommendations provide a set of resources inspired by the model of reflexive control that may be applied to increase the efficiency of recommendations. |
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Making recommendations effective

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1 Reflexive Control and the Procedure of Developing Recommendations

1. Each investigation carried out by an ombudsperson ends up with conclusions and recommendations. The latter is a tool of the ombudsperson to achieve change, so an adequate formulation of recommendations is crucial.
2. The recommendations tell exactly what action the body to whom the recommendations are addressed should agree to take. After reading the recommendation provided by the Commissioner, the addressee should understand the recommendation and the parameters of the recommendation; understand specifically what the Commissioner is asking the addressee to do with regard to the recommendations and most likely realise the benefits of implementing the recommendations.
3. Depending on the complexity of the recommendation the Commissioner may or may not include details of how to implement it. However, each recommendation should be concise and should not give rise to doubts and guesses. Uncertainty how to implement recommendations may delay their fulfilment.

A good practice example

Referring to the circumstances determined during inspections at children care establishments and in accordance with Article 19 (1) Paragraph 4 Subparagraph 7 and Paragraph 6 of the Law on Seimas Ombudsmen the Seimas Ombudsmen hereby recommends to the Minister of Social Security and Labour of the Republic of Lithuania to take certain measures to ensure that trainings for social workers on the following topics are organized:

- rights of older persons, persons with disabilities, including application of requirements laid down in the UN Convention on the Rights of Persons with Disabilities;
- management of aggressive behaviour, psychology of conflict;
- prevention of violence (identification of signs of violence, abuse, mockery, appropriateness of measures, etc.).

4. The relationships established in the day-to-day interactions between the Ombudsperson's Office and bodies in jurisdiction will have an impact on the effectiveness of systemic investigations and recommendations aiming at changing

policies or procedures.

5. The effectiveness of recommendations relies on having good working relationships with the bodies in jurisdiction and on developing a mutual understanding of the rationale behind the recommendations and the structural/organizational framework for

A good practice example

For instance, the Seimas Ombudsmen convened a meeting with the General Prosecutor to discuss some points provided in recommendations. It offered the Office of the General Prosecutor a broader understanding of the rationale behind the recommendations provided. Furthermore, it created opportunities for both sides to exchange ideas on how the recommendations can be implemented most efficiently.

their implementation.

1.1 Investigation

6. The process of getting recommendations accepted begins before they are even presented. The credibility of investigations affects the quality and credibility of recommendations. Investigations must compile irrefutable evidence and employ a procedurally fair and thorough investigation process. A critical element promoting accountability and learning process inherent to the implementation of recommendations is the framing of recommendations in a clear, concise, and practical way arising from the investigation. The proposals must be specific, measurable, achievable, result-focused, and time-bound. To put in a nutshell, they must be doable, feasible, and grounded in the realities of any given situation.
7. The Commissioner should focus on ensuring that its draft investigative reports clearly demonstrate that there is a problem and why it needs to be addressed. In the context of securing meaningful change, the investigation must clearly establish that the injustice arises from a systemic failure rather than a one-off occurrence.
8. Furthermore, investigations carried out by the Commissioner must be conducted without bias, impartially and objectively. The Commissioner should not have any preconceptions and make judgments only on the basis of the data collected.
9. A complaint handling system must be modelled on principles of fairness, accessibility, responsiveness and efficiency. The staff who handle complaints must be

skilled in their role and have a positive attitude when dealing with complainants.

10. Finally, there should be a full and objective evaluation of the facts or evidence provided in support of a complaint. Evidence provided either by a complainant witnesses or/and other relevant stakeholders or an institution complained about should not be given added weight or be presumed to be correct. If one version of events is preferred over another, there should be a good reason for this.

1.2 Framing Recommendations

11. While the Parliamentary Assembly of the Council of Europe confirmed the importance of the institution of an ombudsman within the national systems for the protection of human rights and of its role in ensuring the proper behaviour of public administration, it reiterated that the findings and recommendations should not have a binding effect. The executive should implement them effectively, or explain promptly and thoroughly the reasons why this cannot be done.¹
12. The Commissioner should try to get into the habit of providing three to five rationale points for any recommendation. Ensuring that the Commissioner has three to five rationale points forces her/him to separate the reasoning into narrowly focused, easily supportable elements. Such separation is important so that the institution to which the recommendation is provided can easily evaluate the strength of each rationale point and quickly identify the advantages of accepting the Commissioner's proposal.
13. The Commissioner should keep in mind that the recommendation asks a public entity to begin doing something in a different way than their current practice. This may have ramifications throughout the institution, so separating the Commissioner's reasoning into narrowly focused, clearly supportable elements, would help to frame recommendation appropriately.
14. If the Commissioner provides more than five rationale points, she/he needs to prioritize them in order of importance, and list only the top three to five. Although an ombudsperson may have more than five reasons to support the recommendation. Providing too many rationale points tends to detract the addressees of recommendations from the importance of any one reason. The objective of the rationale should be for the institution to consider each rationale point as meaningful

¹ Committee on Legal Affairs and Human Rights of the Council of Europe, Report on the institution of Ombudsman, 2003

by itself.

1.3 Sharing and Discussing Recommendations

15. It is important to listen to the views of those who will have to implement the recommendations and to make all affected parties feel part of the process. Circulating a draft report to the body concerned and simultaneously asking for suggestions on how the identified problems could best be addressed within the remit provided by the recommendations.
16. By triggering a dialogue on the recommendations, the parties addressed can comment on their feasibility and how to achieve them. If these suggestions are accepted, bodies appear to have a greater sense of ownership of the recommendations. The result of this method is that recommendations are more realistic and will be more willingly and effectively implemented.

2 Reflexive Control and Following-up on Recommendations

17. The follow-up of recommendations is one of the principles influencing the quality of the implementation of recommendations. Thus, the requirement to respond to the ombudsperson regarding the implementation of recommendations is set in some laws defining the ombudsperson's activity. With this in mind, para 3 of Article 20 of the Law on the Seimas Ombudsmen² stipulates that "the institution and agency or official, to whom this recommendation is addressed, must investigate the proposal of the Seimas Ombudsman and inform the Seimas Ombudsman about the results of the investigation."
18. Further, in case of refusal to implement recommendations, the authorities shall provide well-reasoned arguments supporting their decision. Following this tenor, Article 27 of the Ombudsmen's Act of the Republic of Croatia³ lays down that the bodies shall notify the ombudsperson, within the time limit set by him/her, of the measures undertaken as a result of his/her proposal or recommendation.

² Law on the Seimas Ombudsmen, [last seen on 25 September 2017], available at <http://bit.ly/2yW9XF5>

³ The Ombudsmen's Act of the Republic of Croatia, [last seen on 25 September 2017], available at http://raisee.org/wp-content/uploads/2015/08/ombudsman_act-en.pdf

19. Also, the law provides that if the bodies do not notify the ombudsperson within the set time limit on the measures undertaken or if they do not act in accordance with his/her recommendation or proposal, the ombudsperson shall inform thereof the body authorized for supervision of the bodies. Such provisions provide for the ombudsperson to follow up on recommendations by requesting the supervising authorities to act within their remit and oversee the actions and decisions of the institutions subordinate to them.

2.1 Making Recommendations Visible

20. The requirement for the authorities to whom the recommendations are addressed to publish the findings and recommendations of the ombudsperson on their web page is another measure laid down in the Law on the Seimas Ombudsmen. Such a provision does not only devolve responsibility on the institution to examine the recommendations, but to also make the public aware of the findings and recommendations, the Law provides for transparency of decision making and engagement of the society in the decision-making process.
21. The public support for the institution and public access to the findings of the ombudsperson through the medium of new technologies is also vital in pursuit of improved implementation of the recommendations. Therefore, the Law on the Seimas Ombudsmen provides that the ombudspersons shall observe the principle of openness in their activities: *“The Seimas Ombudsmen shall openly provide information to the public about their activities and the abuse of office by and bureaucracy of officials as well as about other violations of human rights and freedoms”*.
22. In addition, an ombudsperson’s readiness to make recommendations public through various media and social networks empowers civil society to be more active in putting pressure on the authorities that are being advised. The robust post-investigative monitoring process focusing on progress in implementing the recommendations, and reporting publicly on the progress of a body is inherent to the implementation of recommendations. Therefore, it is the responsibility of the officer who conducted the investigation or the team responsible for documenting progress on the implementation of recommendations to follow-up on recommendations.

23. Furthermore, media engagement and the power to publish in an effort to secure implementation of recommendations gives the Commissioner the opportunity to be

A good practice example

After the publication of an article about the failure to implement recommendations of the Seimas Ombudsman concerning a fire-detection system, which was not activated and led to the suffocation of a person in a social care home, the authorities of the municipality and the Fire and Rescue Department showed a more significant commitment to resolving the problem.

critical in highlighting failures to accept and implement recommendations. Moreover, media exposure creates incentives for the authorities to more readily find adequate solutions.

24. By all means, the system of good administration contributes to the better implementation of recommendations by giving some leverage to an ombudsperson on the authorities entitled to supervise subordinated institutions. If the authorities to be advised do not act in accordance with an ombudsperson's recommendation or proposal, the ombudsperson may turn to the body responsible for their supervision. For this reason, the Ombudsmen's Act of the Republic of Croatia provides more effective tools to an ombudsperson if the agency entitled to supervise does not notify the ombudsperson "*within the open deadline on the facts and undertaken measures*" concerning an institution which is under supervision. On this understanding, "*The Ombudsman shall inform thereof the Government of the Republic of Croatia.*"
25. The set of means explained above depicts a mechanism of persuasion which is applied when an agency addressed by recommendations is reluctant to engage in dialogue with the ombudsperson by refusing to provide information on the measures undertaken in the wake of her/his proposal or recommendation. In this way, in preference to coercive actions, the ombudsperson harnesses every means of encouragement to motivate an institution to change its attitudes towards human rights violations expressed in the conclusions complaint investigation.

2.2 Applying Soft Power – Conciliation and Persuasion

26. Given that the ombudsperson is an intermediary between the authorities and the people, she/he shall seek peaceful resolution of a problem. Mediation⁴ is a method of investigation of complaints widely used by the Seimas Ombudsmen's Office. This form of investigation aims at finding a solution to the problem identified in the complaint by using mediation between the complainant and the institution complained of to the Seimas Ombudsman. By addressing the body concerned, the ombudsperson presents the issues related to the contents of the complaint and asks to resolve the problem in goodwill providing arguments and motives for her/his request.
27. In many cases (749 out of 1225), following such mediation by the Seimas Ombudsman, issues raised in the complaint are addressed. Indeed, in some cases, this method does not help, and it results in a thorough investigation of the complaint. The most important advantage of complaint investigation by mediation is that the complaint is examined, and the problem is resolved particularly rapidly – within one month on average. Thus, this enables more efficient and speedier protection of a person's violated rights by focusing on systematic human rights problems, which are relevant to a significant part of society.

A good practice example

A journalist launched a complaint against one of the state institutions which refused to provide public information to him. The Seimas Ombudsperson turned to the institution requesting to provide information to the journalist by indicating the legal bases for the provision of information and reminding of the legal bases for information non-disclosure. By expressing his opinion, the Ombudsperson noted that if it is not possible to provide information, the institutions ought to reply with a justified response both to the journalist and the ombudsperson. Eventually, the institution provided information to the journalist he had requested.

28. Furthermore, the ombudsperson has the authority to seek a friendly solution, or make critical remarks or recommendations with the objective of ending maladministration. Following the classical ombudsman model, the ombudsperson shall have no power to make decisions that are binding on the entity concerned. Instead, the power of persuasion must be used, backed by the thoroughness of the investigative findings, the

⁴ Ombudsperson here is understood as an honest broker who speaks to both sides involved in an argument or disagreement and tries to help the two sides to agree

personal authority of the ombudsperson and the good reputation of the ombuds institution as such.

2.3 Applying Hard Power – when Conciliation and Persuasion Does Not Work

29. Without a doubt, mediation cannot be used in all situations, so proportionate measures shall be applied to eliminate human rights abuses or violations of laws or other legal acts. Thus, the Law on the Seimas Ombudsmen provides for measures “*to recommend to the collegial body or official to repeal, suspend or amend the decisions which are contrary to the laws and other legal acts, or propose to adopt decisions the adoption whereof has been precluded by abuse of office or bureaucracy*”. In case the bodies thereof are reluctant to take any measures, the Seimas Ombudsman has the right “*to apply to the administrative court with a request to investigate conformity of an administrative regulatory enactment (or its part) with the law or Government resolution*”.⁵ It should not be forgotten that the activities of the ombudsperson are based on the principle of reflexive control, which encompasses persuasion, conciliation, and mediation. For that reason, the founding laws give a broad spectrum of tools to the ombudsperson so that she/he can use them in tackling problems related to human rights violations or abuse of office.
30. If the institution does not accept a recommendation, the ombudsperson can turn to an authority authorised for supervision or submit a special report to the Parliament. The Law on the Ukrainian Parliamentary Commissioner for Human Rights lays down that the Commissioner, “*If necessary <...> 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.*” However, this kind of strategy does not always deliver satisfactory results, and this procedure has had very limited success, either in Ukraine where the Parliament (Verkhovna Rada) refuses to hear reports produced by Commissioner or in other countries where Committees on Human Rights oversee the findings. Several countries use media engagement and the power to publish in an effort to secure implementation of recommendations.

⁵ Law on the Seimas Ombudsmen, [last seen on 25 September 2017], available at <http://bit.ly/2yW9XF5>

Likewise, in Austria, the television programme “*Advocate for the People*”⁶ and the media exposure involved creates incentives for the authorities to find solutions.

The TV programme “*Advocate for the People*” offers citizens who have experienced unfair treatment by authorities or “overly powerful” adversaries a platform to publicly present the issue at hand and achieve, if possible, a consensual solution. First the facts and the perspective of the complainants are presented. This is followed by a discussion of pro and contra arguments in the TV studio. The three Ombudsmen of the Austrian Ombudsman Board provide two new cases under the heading of “Citizens against Public Offices and Authorities” for each programme. An additional case is provided by also lawyers, patient advocates and other ombudsmen. The essential element of the programme is a section called “Follow-up”. All cases that have not been solved during previous broadcasts are followed up on by the journalists of the Austrian Broadcasting Corporation and the further developments are presented in one or two short contributions per programme.

31. The social media should also play an important role in making recommendations visible. The apparatus of the Commissioner may publish summaries of recommendations giving a concise overview of the problems recommendations address. This creates opportunities for civil society to engage in decision-making processes and put pressure on local authorities to impose control measures. Furthermore, the society may contribute to the implementation of recommendations by providing human or material support to the institution to which the recommendations provided.

A good practise example

The Seimas Ombudsmen's Office published recommendations which were provided to one of the social care institutions for the elderly. The institution lacked physical and other meaningful activities for residents, especially various games to improve the motor or mental skills of the residents. After the summary of recommendations had been published on social media networks, they were shared among members of the local community who donated various games, including puzzle games, to the social care institution thus contributing to the implementation of recommendations.

32. The explicitness of the decisions of the ombudsperson may help to enhance the implementation of recommendations; however, the possibility to discuss issues laid down in decisions shall be offered. The ombudsperson should be open for discussions that aim at better implementation of recommendations. Above all, openness and

⁶ The Austrian Broadcasting Corporation, see <http://tv.orf.at/buergeranwalt>

fairness are the most crucial principles on which the activity of the ombudsperson is built. Finally, the ombudsperson shall be ready to facilitate discussions so that there are no hindrances for the implementation of recommendations.

33. A robust post-investigative monitoring process should also be applied. A major element of this strategy include a recommendation in every report that the body report back to the Ombudsperson – in writing and at specific intervals – on its progress in implementing the recommendations. The Ombudsperson has to then analyse these reports, report publicly on the body’s progress as well as monitor relevant information from other sources, for example from other complaints.
34. Launching another investigation is considered to be a last resort to be used only when key problems identified in the initial investigation have been ignored or not dealt with effectively. Moreover, a special team or advisers can be assigned the task of following-up on the implementation of recommendations.
35. Finally, follow-up investigations may be undertaken to ensure that changes promised have been achieved. Follow-up investigations include consideration of written submissions on the outcome of action plans, site visits, random file inspections and interviews with staff including frontline staff, complaint handlers and senior

A good practise example

The Seimas Ombudsmen’s Office received a complaint that the recommendations provided by the Seimas Ombudsmen were implemented improperly. The Seimas Ombudsman organised a field visit to follow-up on the implementation of recommendations and discussed the issues raised in the complaint with the representatives of a municipality. Eventually, it was established that recommendations had not been implemented accordingly.

managers.