



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

**REPORT**

**on the results of the study visit to Lithuania**

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**Kyiv 2018**

## 1. General part

On 2-6 July the delegation of the Secretariat of the Ukrainian Parliament Commissioner for human rights, of 7 people (see list above) visited Lithuania to get acquainted with the best practices in the field of training of personnel of Ombudsman institutions and to exchange of experience in this sphere. On 3-5 July the Commissioner for human rights Liudmyla Denisova visited Vilnius according to an individual short program, which was quickly developed and successfully implemented by the Lithuanian partners and the team of the Twinning Project.

At first there was a **meeting with the Parliamentary Ombudsmen Mr Augustinas Normantas and Mr Raimondas Šukus** and employees of their Office. The institution exists for 23 years. The activities of the Ombudsmen concerning handling of complaints are not based on the Law "On citizens applications", as it is the case in Ukraine. This gives the Office more power and independence, makes it impossible to submit a lot of claims from citizens, foreigners and persons without citizenship against Ombudsmen. This positive Lithuanian experience was taken into account during preparation of the amendments to the legislation of Ukraine on the status of the Commissioner for human rights, the Lithuanian experts suggested "to exclude" the Ombudsman activity from the Law of Ukraine "On citizens' applications".

It is very important that 95% of the recommendations of the Parliamentary Ombudsmen of Lithuania are fulfilled by the relevant authorities. In 2017, the Office sent about 800 acts of response to various state bodies to resolve issues related with violation of human rights. Only in 10% of these cases the complainants were not satisfied with the result and applied to the Office again. This is a very good performance and this positive experience should be studied more thoroughly. Since 2012, the Office monitors the implementation of its recommendations in accordance with the relevant procedure. Usually the violating authority is not told how it has to eliminate the violation. If the violating authority cannot immediately implement the recommendation of the Ombudsmen, it has to develop an appropriate plan (it is also considered the implementation of recommendations).

In this context, it is very important to train employees of the ombudsmen offices to prepare well-reasoned and effective acts of response and recommendations to public authorities which violate the rules, to monitor the implementation of recommendations, to react to the facts of ignoring them. The relevant courses for the employees of the Secretariat of the Commissioner for human rights were delivered by the Lithuanian and Austrian experts within the framework of the Project. Special attention should be paid to the training on these issues.

It is also important to train the staff of ombudsmen offices of to identify systemic issues (preferably in the early stages) and how to effectively work to resolve them, making impossible submission of the mass complaints to the Ombudsman, other public bodies, the courts, the European court of human rights.

In respect of litigation, Office of the Ombudsmen of Lithuania has the right to intervene as a 3rd party, but it does so only in cases when the problem is systemic and concerns many applicants. In this case, Ombudsmen do not substitute advocates, but their participation in the process strengthens the position of victims of violations of human rights, and expert conclusion of the Ombudsman is used by the court to argue its decision. Office of the Ombudsmen of Lithuania also often asks municipalities to apply to the court in the interests of people. This experience is also worth of attention.

The parliamentary Ombudsmen have the right to draw up administrative protocols on violations of human rights, but in practice only once resorted to this measure against the mayor of one of the Lithuanian cities. Ombudsmen try to influence violators with their authority.

**Meeting with the judges of the Court of Appeal of the Republic of Lithuania.** Members of the

Ukrainian delegation got acquainted with the procedure of appointment of judges in Lithuania and its judicial system, guarantees for judges.

In response to the information of the Ukrainian delegation about the systemic problems with violation of reasonable time limits of proceedings in criminal and civil cases in Ukraine (resulting in numerous complaints to the Commissioner for human rights and the European court of human rights), the Lithuanian judges said that there were no such problems in Lithuania. One reason for this is the provision prohibiting the judges to send the case back for further investigation. That is, if the investigators didn't have a good pre-trial investigation, the courts, in any case, consider these cases.

The adoption of such provision is being discussed in Ukraine. As one can see from the Lithuanian experience, this legislative guarantee contributes significantly to the acceleration of the administration of justice, while putting more workload on judges. So it is also necessary to improve the quality of pre-trial investigation and to encourage investigators. The Secretariat of the Commissioner for human rights can actively promote in the need for the adoption of similar legal rules in Ukraine.

### **Meeting with representatives of the *Office of the Equal Opportunities Ombudsperson.***

In Lithuania since 2005 the sphere of equal rights is in the authority of the Office of the Ombudsman for equal opportunities (until 2005 office of the Ombudsman for equality dealt only with gender equality). This Office currently has 17 employees. So many people contribute to the efficient operation and rapid response of the Equal Opportunities Ombudsperson.

The Lithuanian legal regulation establishes protection from discrimination on fifteen grounds under the Convention on the protection of human rights and fundamental freedoms and Directives of the European Union regulating the issues of non-discrimination. This list is exhaustive, so the Equal Opportunities Ombudsperson can consider issues of discrimination solely within this set list. At the same time, in case of violation of the principle of equality on grounds not established by legal acts, the applicant may apply to the court or the Committee on labour (in case of violation of rights in labour relations).

The main method of operation of Office of the Equal Opportunities Ombudsperson is dialogue and consensus. Therefore, the main instruments in the work of the Office are recommendations on changes in regulations or practices. The Equal Opportunities Ombudsperson of Lithuania is entitled to exercise a binding requests, namely to draw up protocols to impose fines for failure to provide information, and to make binding orders to eliminate violations and to impose fines in case of discriminatory advertising.

The dialogue and consensus are also used by the Ukrainian Parliament Commissioner for human rights when addressing issues in the field of non-discrimination. At the same time, granting the Commissioner additional authority to issue binding requests to remove discriminatory advertising could lead to more rapid and effective elimination of such violations.

A significant piece of work of Office of the Equal Opportunities Ombudsperson of Lithuania is review of draft laws and sub-legal acts. The ministries and other central bodies of executive power on their own initiative send the drafts of normative-legal acts for obtaining the conclusion about the presence or absence of discriminatory provisions. This experience is very important to implement in Ukraine, because now such expertise of draft legal acts is carried out by units of the standard-setting bodies. At the same time, there is no unified method of evaluation of drafts of normative-legal acts for violations of the principle of equality, so often the examination is purely formal.

Besides, the Office of the Equal Opportunities Ombudsperson of Lithuania is working closely with law enforcement bodies. So, the Equal Opportunities Ombudsperson can forward the information about violations in the sphere of equality to the prosecuting authorities or the police. One should note the positive practice, when law enforcement officials apply to the Equal Opportunities Ombudsperson regarding conclusion on discrimination during investigation of the cases. This practice can be extremely useful in the work of law enforcement bodies of Ukraine. After all, it

must be admitted that very rarely the motive of intolerance is established during the investigation of crimes. One reason for such low figure is the absence of a special expert assessment of the situation regarding the presence or absence of the signs of discrimination in cases under investigation.

Furthermore, it should be noted that the Office of the Equal Opportunities Ombudsperson of Lithuania is trying to reduce formalism in applications to the Ombudsman. Thus, the Office of the Ombudsman receives requests, except for complaints, through the official Facebook account. The Office handles complaints that do not meet all formal requirements (e.g. no signature). We think that this practice is quite appropriate, since we have to admit the low level of legal education in the Ukrainian society. However, this situation cannot be an obstacle for the protection of human rights, including the right to equality.

**Meeting with Chairman of the Seimas Committee on human rights.** The Chairman of the Committee spoke about the positive experience of cooperation with the Office of the Parliamentary ombudsmen, which, among other things, participate in Committee meetings, providing their conclusions on draft laws and initiatives.

The Chairman of the Committee, among the major challenges faced by him and his colleagues named the trend to restrict human rights in the context of intensification of fight against terrorism, ensuring national security. According to him, it is very important to resist these tendencies, because they are supported by political and populist ideas. It is important to combine efforts of the human rights community, first of all, ombudsmen.

In Ukraine this trend, sometimes unreasonable and uncontrollable, also exists. This is due both to global trends and because of the armed conflict in Eastern Ukraine and occupation of Crimea.

**Meeting with the Chairman and judges of the Supreme Administrative Court of Lithuania.**

The system of administrative courts both in Ukraine and in Lithuania is an extremely important element of the national system of protection of human rights.

In Lithuania, the administrative courts each year are processing 35 thousand cases and number of cases is growing every year, because of the restrictions to apply to the administrative court are minimal.

Almost half of all cases (45-47%) is the claims about compensation of moral damage in cases of inadequate conditions of detention in prisons, the violation of article 3 of the Convention on the protection of human rights and fundamental freedoms.

The Lithuanian administrative courts have a well-established practice regarding these cases: in the case of violations they award the compensation to claimants in the amounts established by the jurisprudence of the European Court of Human Rights. Thus the applicants at the national level receive effective legal protection, which includes a monetary compensation (from 11 to 13 Euro per day). This good practice prevents complaints to the European Court of Human Rights. Such practices should be taken over by the administrative courts of Ukraine. Since in many cases Ukrainian prisoners, unfortunately, do not find protection of their violated fundamental right to adequate conditions of detention in Ukraine and are forced to turn to the European judicial institutions, spending significant time and money. The reports of the Commissioner for human rights, who performs the functions of the national preventive mechanism, can actively be used during hearing of such cases in administrative courts.

Administrative courts of Lithuania do not usually take decisions, which oblige state authorities to perform certain actions (to make a decision, to issue the document, etc.). However, such decisions are taken in cases when the person has repeatedly appealed to the administrative court for protection of their rights, but the problem has not been solved by the relevant state authority (for example, the case was heard several times but the claim was not satisfied, and the administrative court then stated that the consideration was inadequate). This problem is also vital in Ukraine.

In the opinion of the judges of the Supreme Administrative Court of Lithuania, administrative justice of their country lacked the instrument of mediation. They are working on in order to introduce it.

An important instrument is also the right of administrative courts to consider pilot cases, but, unfortunately, in 2016 this right was restricted only to cases where the act violated the provisions of the Constitution (according to the Constitutional Court).

**Meeting with the Chairman and judges of the Constitutional Court of Lithuania (with the Commissioner L. Denysova).** In Lithuania, the Ombudsman doesn't have a right to file a constitutional submission, as is the case in Ukraine. Currently, the Parliament is expected to vote on granting citizens the right to lodge individual constitutional complaints (there is such right for citizens in Ukraine).

The President of the Court spoke about the active participation of the constitutional Court of Lithuania in so called "Batumi process", when the decision of the Constitutional Court of the Russian Federation regarding the annexation of the Crimea was condemned.

L. Denysova thanked Lithuania for its support, for making it an example for other countries. In particular for the recent adoption by Parliament of Lithuania of resolution on Oleg Sentsov.

According to the Ombudsman, the situation with observance of rights of Ukrainian political prisoners in Russia is quite serious (especially with Sentsov, Klykh, Gryb, Balukh, Kuku). The mission of the Ombudsman is the humanitarian, not political. In this issue we need assistance from the European institutions (support, applications...).

Chairman of the Constitutional Court said that he and his colleagues need to consider what statement is possible regarding O. Sentsov.

**Meeting at the Ministry of Justice of Lithuania.** During the meeting, the parties exchanged experience on the development and implementation of the Strategy and action plan on human rights. In Ukraine, the Strategy was approved by the President in 2015 and subsequently an action Plan for its implementation. However, the monitoring indicates a very low level of implementation of measures envisaged by the Action Plan. In Lithuania, there is no action plan on human rights yet. The last one was in 2002-2006 Now there are discussions regarding the adoption of a new action plan, since this was mentioned in the recommendations under the universal periodic review (UPR).

During the **meeting with representatives of the State Data Protection Inspectorate of Lithuania** the representatives of the Ombudsman's office were able to get acquainted with the legal and institutional framework for the protection of personal data in Lithuania.

The participants discussed the organizational structure of the State Data Protection Inspectorate, the tasks and powers of the authority, including the procedure for handling complaints and conducting inspections in the field of personal data protection. In particular, the Inspectorate supervises the availability of programs that protect personal data from cyber-attacks.

The participants discussed the results of activities in 2017-2018, in particular, the number of complaints processed, inspections initiated by Inspectorate, approved projects, consultations in the context of comparative analysis.

The issues of public awareness and outreach activities of the Inspectorate were also discussed. In this aspect of the Lithuanian experience is very useful for Ukraine.

The study visit participants also had an opportunity to get acquainted with the main provisions of the legislation of Lithuania in the field of personal data protection and fulfillment of international obligations in this area.

Special attention was paid to changes in the national legislation of Lithuania in connection with the entry into force of Regulation (EC) 2016/679.

There was also a discussion of improvement of legislation of Ukraine in the sphere of personal data protection to bring it into conformity with the provisions of the European legislation in the field of personal data protection, namely the Regulation (EC) 2016/679.

On the datasets, which shall be made publicly available in the form of open data: in Lithuania it is determined that these are raw data stored in the databases of the institutions.

In Ukraine it is established, that public information in the form of open data is public information in a format that allows its automatic processing by electronic means, free and unpaid access to it, as well as its further use.

Our country clearly defined a list of datasets subject to publishing in the form of open data. Requirements for the format and structure of the datasets, the frequency of updates are determined by the Cabinet of Ministers of Ukraine. The Cabinet of Ministers of Ukraine includes to this list information to which access in the form of open data is provided by the law.

However, Lithuania doesn't have an established list of data set which shall be made publicly available in the form of open data. Thus the priority in the publication is given to those datasets that are currently useful and relevant to society. For example, the most relevant data sets in Lithuania there are: spatial, statistical, educational, traffic, weather, business companies, financial, social, scientific, and about the state of the environment. At the same time, this list may be supplemented with new data sets in case of demand or interest. Thus, Lithuania constantly analyzes and responds to the needs of its citizens, which is positive and can be used in Ukraine.

In addition, it was also discovered that each year people have more questions regarding the data set which shall be made publicly available in the form of open data. This circumstance can be characterized as positive, since the activity and the interest of society to this issue are increasing.

During a **meeting with the Dean of the Law faculty of Vilnius University Thomas Davulis** members of the Ukrainian delegation got acquainted with the activities and initiatives of the faculty in the field of human rights; the education system in this area.

An important example of ensuring the right of universities to autonomy is the recent decision of the Constitutional Court of Lithuania that the merging of the 3 universities in the country was carried out with violation of the procedure and without proper regard to the interests of these institutions.

In the framework of the study visit (**On 5 and 6 July in the Training centre of the National Court Administration**) experts in the sphere of equal rights and opportunities also conducted **trainings** on "the Impact of anti-discrimination legislation of the European Union on the national legal system", about the European Union legislation in the sphere of prevention and combating discrimination, particularly the practice of the European Court of human rights and national institutions.

Another training course on "Equal treatment in access to goods and services" (Thomas Davulis) was devoted to the peculiarities of European Union legislation regulating the access to goods and services and violation of equality principle in access to goods and services in Lithuania.

During the training on personal data protection system in Lithuania, the participants learned about the status and mandate of the State Data Protection Inspectorate, as well as real examples of the inspection activity.

Training "Prevention of torture at the national level and monitoring by the ombudsmen of Lithuania" (Christina Brajevic) was devoted to the activities of the National preventive mechanism in Lithuania, which is vested on the office of the Parliamentary ombudsmen.

Among the activities that ensure the effective operation of the NPM in Lithuania are: preparation and implementation of the annual action plans; differentiation of monitoring visits and corresponding methodology; thorough preparation for monitoring visits; involvement of experts; providing ratios, objectivity and reliability of the information collected; data management system; control of recommendations implementation; adherence to the monitoring principles; mobilizing additional resources.

A lot of attention is paid to the monitoring of implementation of recommendations given to places of detention according to the results of the NPM visits. This ensures a high level of implementation of these recommendations (80% in 2017).

## 2. Evaluation and results

The study visit was organized at a high level.

During meetings and trainings the participant receives a lot of useful information regarding best practices in the field of activities of national human rights institutions of the Republic of Lithuania, their cooperation with state bodies and institutions. This information was distributed to colleagues of the Secretariat of the Commissioner for human rights (in particular, NPM Department), who had not participated in the visit, and can be used in the activities of the institution.

### **3. Recommendations/comments:**

**3.1. Cooperation and exchange of experience of Ombudsman institutions of Ukraine and Lithuania are currently extremely topical and important, because now there are processes in Ukraine aimed at strengthening the institutional capacity of the Ukrainian Parliament Commissioner for human rights as an independent Institution among other state bodies. Such processes are primarily related to legislative changes, including to the Law of Ukraine "On Ukrainian Parliament Commissioner for human rights", developed with the active participation of the Lithuanian experts;**

**3.2. It is important that during the visit, employees of the Ombudsman's office had the opportunity to learn not only activities of the office of the Ombudsmen of the Republic of Lithuania but also of other state bodies: Parliament, Constitutional Court, administrative courts, etc. During the study visit, the participants could explore the interaction of public institutions with the Ombudsman to ensure human and civil rights and freedoms, as well as restoration of rights in case of violations. Ukraine should learn some positive lessons from such cooperation.**

**3.3. The support of the Secretariat of the Commissioner by the experts of the Twinning Project in terms of harmonization of legislation of Ukraine on personal data protection to bring it in line with European standards is extremely important. Such support was manifested in the preparation and provision of relevant legislative proposals, their panel discussion with experts in this sphere, as well as providing opportunities to get familiar with the activities of the institutions responsible for the protection of personal data in Lithuania, namely the State Data Protection Inspectorate.**

**3.4. During the training for the employees of the Secretariat it is important, taking into account the positive experience of the Ombudsman's Office of Lithuania, to pay special attention to the preparation of quality and effective acts of response and recommendations, to monitor their fulfillment, to react to the facts of ignoring them.**

**3.5. It is also advisable to study more deeply and take into account the positive experience of Office of the Equal Opportunities Ombudsperson of Lithuania in elaboration of draft laws and sub-legal acts to provide the ministries and other Central bodies of Executive power with the conclusion concerning the presence or absence of discriminatory provisions and relevant conclusions for law enforcement authorities within criminal proceedings.**

**Given the above, we consider it necessary to continue cooperation and collaboration of the offices of the Ombudsmen of Ukraine and Lithuania on exchange of experience, expertise, conducting joint communication activities.**