



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 and Latvia

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1. General information

Report on the results of the study visit (SV) was developed within the framework of Twinning Project UA/47b "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".

The main purpose of the study visit was familiarization with the operation of the legal system of the Lithuanian and Latvian Republic, the activities of the Ombudsman institution in both countries, exchange of experience and best practices in application of methods and procedures for monitoring of the observance of human rights.

The following institutions were visited during the study visit:

- Seimas Ombudsmen's office of the Republic of Lithuania (review of the activities of the Office of the Ombudsman; review of the structure of the legal system of Lithuania and the role of the Ombudsman Office in it);
- The Constitutional Court of the Republic of Lithuania (review of the powers of the Constitutional Court in the judicial system of Lithuania);
- Institute of law of the Lithuanian Republic (insight into activities);
- State-guaranteed legal aid service (insight into activities);
- Vilnius University Law Clinic (insight into activities);
- Vilnius University (overview);
- State Data Protection Inspectorate (insight into activities);
- Office of Equal Opportunities Ombudsperson (insight into activities);
- Law Faculty of Vilnius University (insight into activities);
- Vilnius Correction House (insight into activity of penal institutions where criminal sentences in the form of imprisonment are served);
- Vilnius Probation Center (insight into activity of the probation service);
- Ombudsman's Office of the Republic of Latvia (insight into activities of the Office of the Ombudsman of the Republic of Latvia; review of the powers of the Commissioner for human rights in the legal system of Latvia);
- The Constitutional Court of the Republic of Latvia (review of the powers of the Constitutional Court in the judicial system of Latvia).

2. Evaluation and results

According to the Agenda of the SV representatives of the Apparatus of the Ukrainian Parliament Commissioner for Human Rights got familiar with the activity of the Seimas Ombudsmen's office of the Republic of Lithuania and its role in legal system of the State.

According to Article 73 of the Constitution of the Republic of Lithuania adopted on 25 October 1992, complaints related to abuse or bureaucracy caused by government officials (except judges) and municipal officials are considered by Seimas controllers. They have the right to submit proposals to the court for dismissal of guilty officials from the office.

Powers of the Seimas controllers shall be established by law.

If necessary, Seimas establishes other controlling institutions. Their system and powers are regulated by law.

“Swedish model” has been taken as a basis when creating structure of Ombudsman institution in Lithuania.

5 Seimas controllers have been operating since 2005. Later the number was reduced to 2: one addresses complaints regarding the activities of public authorities, the other deals with complaints regarding the activities of local authorities.

It's interesting that the Law provides a definition of such concept as bureaucracy: acts of the officials, that instead of solving problem are, in fact, systematically directed at observing excessively complicated procedure or far-fetched formalities; practicing unjustified rejection to provide decisions on cases under jurisdiction of departments; delaying in making decisions or fulfilling their duties and other forms of unsatisfactory or improper management. Another manifestation of bureaucracy is activity of officials when laws or other legal acts are not applied or unsatisfactory applied.

Seimas controllers consider complaints regarding abuse and manifestation of bureaucracy by officials of government institutions, administration, self-government, military and similar institutions.

Complaints are considered within 3 months. The person who filed the complaint is informed within 5 days on terms of consideration of complaint. If necessary, the consideration period may be extended to 6 months, having informed the applicants.

Also Seimas controllers do not consider complaints related to labor relations, complaints that are considered in court and do not check the legality of decisions made by the courts and verdicts.

As mentioned hereinbefore the Seimas controllers do not intervene into lawsuit, at the same time they can address on behalf of a person for dismissal of officials who misuse their office and violate rights of citizens.

Also Seimas controllers do not have the right to appeal to the Constitutional Court.

One of the positive examples of the activity of Seimas controllers is acceleration of Convention on the Rights of Persons with Disabilities. After a complaint submitted to the Controller, relevant appeal to Seimas was prepared; this speeded up the process of ratification.

The term/deadline of submission of complaint by Seimas controller is the same as the term stipulated in the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights", namely 1 year from the date of the actions (after the detection of violations of human and citizen's rights).

Seimas controller does not consider and return complaints to the applicant no later than 7 days

- if a conclusion is made that the subject of complaint is insignificant;
- if the circumstances mentioned in the complaint are not subject of investigation of Controllers;
- if the complaint on this issue has already been considered or under consideration by the court;
- if a procedural decision to open criminal proceeding related to the subject of the complaint is issued.

Anonymous complaints are not subject to consideration unless the Seimas Controller decided otherwise.

Seimas Controller cancels the proceedings when applicant himself solved the problem.

Once the complaint is considered, Seimas Controller prepares a certificate, indicating detected during the investigation circumstances and collected evidence and providing legal assessment of the activities of the official.

After investigation Seimas Controller may take one of the following decisions:

- transfer of materials to the investigation bodies in case of detection of violation;
- appeal to the court for dismissal from office of the officials guilty of violation or manifestation of bureaucracy;
- apply to the courts for compensation of moral and material damage caused to the person as a result of violations committed by officials;
- submit proposals to collegial institution or officials on cancellation, suspension or changes to decisions stipulated by law, which contradict laws and other legal acts;
- submit proposals to a collegial institution; head of the institution or to a higher authority to impose disciplinary penalties on officials responsible for violation;
- bring officers' attention to signs of negligence at work, non-compliance with law, ethics violations or official manifestations of bureaucracy.

Seimas Controllers' proposals in regard to cancelling, amending or taking decision, eliminating violations of the law, their causes and conditions, addressed to institutions or officials have to be consider.

Terms of consideration of the proposals and recommendations of the Ombudsman and providing response are not set, but collaboration is taking place.

Since 2014 the Ombudsman of Lithuania has been endowed with the preventive mechanism function. There are currently 450 penitentiary institutions in the Republic of Lithuania. When deciding on carrying out monitoring visits, penitentiary institutions are forewarned. According to representatives of the Ombudsman office, informing the institution about the coming monitoring visits foster institution's activities towards improvement of the detention conditions. Apart from detention conditions NPM specialists also monitor working conditions of employees in these establishments.

One of the positive aspects of the interaction between the State bodies and Seimas controllers is the practice of publication of the list of fulfilled recommendations of the Ombudsman on the institutions' official web pages.

The fundamental idea of the activity of the office of Lithuanian Ombudsman is to be an intermediary between a person and authority, which allows identifying gaps and deficiencies in the legal framework and suggest appropriate ways of improving the regulatory framework.

In the framework of the study visit members of the Apparatus of the Ukrainian Parliament Commissioner for Human Rights got familiar with the activities of the State Inspectorate for Personal Data Protection.

In the framework of the visit, representatives of the Ombudsman had chance to get familiar with:

- the mandate and structure of the Inspectorate;
- the activity of the Inspectorate, in particular educational activities, providing online services to citizens (subjects of personal data) and holder of personal data in the area of cyber security policies for the protection of personal data, etc;
- the legislation of the Republic of Lithuania in the field of personal data protection, laws on the legal protection of personal data on electronic/online communication, on cyber security and the management of state information registries.

It is necessary to point out the mandate of the State Inspectorate in regard to approval of draft legal acts related to legal basis and establishment of registers and state information systems.

In the framework of the SV there was a chance to visit penitentiary institution: Vilnius Correction House (Vilniaus pataisos namai), where convicted men are serving their sentence. A specific feature of this institution is that there is a special block for former officers of law enforcement bodies convicted to serve their sentence.

During the visit a meeting with Mr Izhycka Arvydas, Director of the Institution, was held; participants got familiar with the peculiarities of serving of imprisonment sentence; visited residential sections, penal cameras, psychologist office, production establishments, shops and medical unit. The participants had the opportunity to

communicate directly with inmates and personnel; visit production facilities, store and hospital.

Apart from the activity of penitentiary institution SV participants were also familiarized with the organizational of activities of Vilnius probation Center where sentences not connected with imprisonment are worked-out. Specialist of the Center informed the participants about the legal basis of their activities as well as practical aspects and demonstrated modern means of electronic behavior control of persons under probation programme.

During their visit to the Ombudsman's Office of the Republic of Latvia the participants were informed on legal principles and key areas of activity of the Institution.

The Law on the Ombudsman of the Republic of Latvia entered into force on 01.01.2007. Since that date the Ombudsman Bureau of Latvia started its activity.

The structure of the Ombudsman's Office of the Republic of Latvia: Department for children's rights; Department for protection of civil and political rights; Department for protection of social, cultural and economic rights.

The Ombudsman is independent in his activities and operates according to the law. No one has the right to influence the Ombudsman in the implementation of his/her tasks and functions. The term of office of the Ombudsman of the Republic of Latvia is 5 years, the same as in Ukraine.

Key functions of the Ombudsman of the Republic of Latvia:

- ✓ promotion of human rights;
- ✓ promotion of principle of equal treatment, prevention and elimination of all forms of discrimination;
- ✓ assessment and promotion of principles of fair administration in public administration;
- ✓ identification of gaps in legal regulations and law-enforcement practice as well as support in reducing such shortcomings;
- ✓ promotion of awareness and public understanding of human rights, human rights protection mechanisms and the activity of the Ombudsman.

Task of the Ombudsman of Latvia:

- ✓ consideration of appeals;
- ✓ opening a check case to clarify the circumstances laid down in the appeal;
- ✓ when considering a check case provide recommendations to institutions and conclusions on the legality, appropriateness and the principle of good governance in their work;
- ✓ resolve disputes (as provided by law) arising between citizens and institutions, as well as disputes related to human rights among citizens;
- ✓ promote mutual understanding between the parties to a dispute;
- ✓ when resolving disputes related to protection of rights, provide citizens with conclusions and recommendations for the elimination of human rights violations;
- ✓ provide the Saeima, Cabinet of Ministers, local authorities or other bodies recommendations for publication or changes to existing regulations;
- ✓ provide consultations to citizens on issues related to human rights;
- ✓ analyse situation of human rights and provide conclusions on important human rights issues.

The rights granted to the Ombudsman of Latvia are similar to those granted to the Ukrainian Parliament Commissioner for Human Rights, namely to request and receive free of charge documents from state bodies required for complaint investigation; to obtain information necessary for complaint investigation, freely visit at any time and without special permission institutions of closed type; listen to views of a child without his/her parents being there; if the child has expressed a desire, require public explanations or other information, essential for complaint investigation; on its own initiative to open proceedings, to file appeals to the Constitutional Court; to appeal to court in public interest.

The practice of Institution of recruiting a psychiatrist was found interesting.

Another good practice of the Ombudsman Office is the analysis of public opinion on particular issues. The Bureau created a mailbox, where, for instance, parents could send information related to problems their children face in school. By carrying out an analysis of the information received a conclusion was made on poor state of education in schools, which led to introduction of relevant changes into the educational system.

3. Recommendations developed as a result of experience acquired during the study visit

1. In regard to consideration of appeals of citizens.

It is proposed to stipulate a separate order of consideration of appeals to Commissioner in the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights", departing from the practice of the consideration of appeals currently foreseen in the Law of Ukraine "On citizens' appeals".

Points to be stipulated in the Law:

- basic requirements for consideration of appeals depending on their type (oral, written, electronic);
- deadline for consideration of appeals (including those to which a response (explanation) is provided without opening a proceeding; on which proceedings have been opened; consideration of which is denied to citizens);
- in cases when proceedings haven't been opened (for example, if the applicant did not use other available means to protect his/her rights, etc.);
- terms for execution of proceedings (e.g. proceeding to be executed within 3 months, the term may be extended for a period of not more than 2 years);
- the right of the Commissioner to approve a detailed procedure for consideration of applications and execution of proceedings in cases of violation of rights and freedoms.

Another valuable practice is the practice of Latvian Ombudsman related to provision of oral and written explanations to applicants on institutions responsible for the protection of rights in particular areas, which also reduces the number of proceeding opened by Ombudsman, as the proceedings are opened only when relevant authority has not restored violated rights.

In Latvia, when carrying out a proceeding the main focus is placed not on punishing the offender, but on the possibility to reach mutual understanding and related agreements between the applicant and the offender. This experience can also be useful

for Ukraine because the Ombudsman should not be perceived as punishing institution, but a mediating body.

2. In regard to submitting of acts of response by Commissioner

To foresee in the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights", the norm stipulating that prior to submitting the Act by the Commissioner, an appeal with a proposal to the relevant authorities to eliminate violation or explaining Ombudsman's standpoint and suggesting possible solutions to the problematic situation should be submitted. If the problem concerns the constitutionality of laws (regulations) it is proposed to submit an appeal to the Ukrainian Parliament (public body) with a proposal to introduce relevant amendments.

Also, it would be appropriate to foresee a possibility to appeal to the Court:

1. By public authority – submission of the Commissioner;
2. By the Commissioner – decision of state body upon the submission of the Commissioner.

It would be useful for Ukrainian Ombudsman to apply the experience of Ombudsman of Latvia of involving independent experts into complex proceedings.

3. On improvement of legislation in the area of personal data protection

Considering the existing practice and some problems related to combining functions of a supervisory body in the field of personal data protection with the mandate of Ombudsman, it is necessary to transfer the functions of protection of personal data to another separate state body.

There is also an urgent need to improve legislation in the field of personal data protection, particularly as regards to state registers; mandatory approval of draft legal acts related to protection of personal data or maintaining registers.

Also, provision of electronic services should be considered.

We consider it possible to strengthen the work performed in relation to educational activities, such as introducing development and publication of summaries on the results of consideration of complaints; publishing answers to FAQ, etc.

4. On access to public information

During the meetings it was stressed that there are no problems concerning the right to access to public information in Latvia and Lithuania.

General parliamentary control over the constitutional right to information is realized by the National Ombudsman. In contrast to Ukraine, in these countries there is no control mechanism ensuring access to public information by bringing to administrative responsibility.

The analysis of legislative provisions governing access to public information in Latvia and Lithuania showed that in comparison to the Law of Ukraine "On Access to Public Information" the specialized laws of these states do not stipulate such a wide range of managers and the types of information, but are limited to state bodies, public funds and property (state or local) and information of public importance.

5. On improvement of activities in fighting discrimination and general recommendations related to consideration of appeals.

The essential peculiarity of the Office of Equal Opportunities Ombudsman of Lithuania is the number of employees, which allows clear division of responsibilities among staff members. Ukraine also needs to increase the number of employees in the units for non-discrimination, which will enhance work in those areas, which currently is not implemented. On the other hand, the Latvian structure, which doesn't foresee a separate unit to combat discrimination, can hardly be applicable in Ukraine. Although, the practice when employees of Ombudsman office possess basic knowledge on anti-discrimination standards should be introduced in Ukraine. It seems interesting that employees working in given departments and dealing directly with discrimination issues mainly specialize on violation of certain rights and not on grounds of discrimination. This experience could be introduced as pilot in Ukraine.

In case of discriminatory job advertisements Lithuania's Equal Opportunities Ombudsman can contact the owner of such advertisement setting deadline to remove such add by the end of the working day. In case of refusal, the Ombudsman may impose a fine. Ukrainian Commissioner for Human Rights would also benefit from such function, since current Ukrainian practice shows that while exchanging correspondence related to discriminatory advertisement, the add continues to be broadcasted.

Another useful for Ukrainian Ombudsman practice may be the Lithuania's Equal Opportunities Ombudsman practice of annual awards to organizations for adhering to the principle of equality throughout the year. Such events are celebrated in a solemn atmosphere, inviting prominent people and in close cooperation with NGOs.

Latvian experience related to citizens' appeals can be useful as well. If citizen's appeal is incomplete or unclear the applicant is requested to provide clarifying information. In case the applicant fails to provide information necessary to open a proceeding within a month, such appeal is not considered. Such experience will allow reducing the number of complaints of the Ombudsman submitted to different bodies.

6. On requirements to candidates for Ombudsman position

We believe that it is necessary to amend the national legislation as to established age requirements to occupy certain positions, including the position of the Commissioner for Human Rights. For example, as in Lithuania, the key factor should not be the person's age, but the accumulated experience, e.g. 10 years of experience in the field of human rights.

7. Regarding the implementation of court proceedings

In order to create effective mechanisms for child protection, address problematic issues concerning children, establish and apply special approaches to this category of persons, introduce trainings for the representatives of the judicial branch engaging Office of the Ukrainian Parliament Commissioner for Human Rights to solve civil cases to ensure the rights and legitimate interests of children and families in which they are raised.

8. On educational / informational activities

Given the fact that a significant number of Ukrainian citizens (families with children) is living abroad, recommendations aiming at familiarizing with the legal framework of foreign states on the protection of children's rights should be developed in partnership with consular institutions of foreign states in Ukraine.

9. On the implementation of the preventive function

To work up the possibility of implementation into NPM practice of comprehensive (durable) monitoring visits to places of detention, as well as increasing the number of re-visits (as practiced by the representatives of NPM of Lithuania).

In the framework of cooperation with the subcommittee on Reforming penitentiary system of the Verkhovna Rada Committee on Legislative Support of Law Enforcement to initiate amendments to the penal law regarding the implementation of good practice by penitentiary institutions and the Probation Service of Lithuania of execution of punishment (implementation by Probation Service of control of behaviour of convicted persons using electronic control devices, organising catering for prisoners in penal institutions using services of catering enterprises etc.).