



This project is funded by the European Union

ACTIVITY 2.2.3.

I MISSION REPORT (February 05-09, 2018)

1. BASIC PROJECT INFORMATION

1.1. Twinning Number: UA/47b

1.2. Title: 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)

1.3. Beneficiary Country: Ukraine

1.4. Member State: Lithuania/Austria

2. ACTIVITY INFORMATION

2.1. Activity No and Title: Component 2. 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

2.2. Start date: 2017.11.01 **and end date of the Activity:** 2018.03.31

2.3. Experts:

1. Ms. Barbara Liegl (key expert); Ludwig Boltzmann Institute of Human Rights; 2018.02.05-09.
2. Ms. Dieter Schindlauer; Ludwig Boltzmann Institute of Human Rights; 2018.02.05-09.
3. Ms. Jurgita Paužaitė-Kulvinskienė; Law Institute of Lithuania; 2018.02.05-09.
4. Ms. Elena Masnevaitė; Law Institute of Lithuania; 2018.02.05-09.
5. Mr. Vytautas Valentinavičius; Seimas Ombudsmen's Office of the Republic of Lithuania; 2018.02.05-09.

6. Mr. Vigintas Višinskis; Court of Appeal of Lithuania Law Institute of Lithuania (via Law Institute of Lithuania); 2018.02.05-09.

7. Mr. Irmantas Jarukaitis; Supreme Administrative Court of Lithuania; (via Law Institute of Lithuania); 2018.02.05-09.

2.4. Tasks

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.

2.5 Description according to Terms of Reference

Subsequently, based on the findings from the conducted analysis in 2.2.1 and taking into account the experience gained through the study visit from 2.2.2, the concrete recommendations to increase the efficiency of the activities of the Ombudsperson on elimination of detected human rights violations, control procedures over fulfilment of Ombudsperson's recommendations to ensure their implementation and response to the Ombudsperson's submitted recommendations on elimination of detected human rights violations in general and in the areas of data protection, equal rights and non-discrimination, access to public information in particular will be drafted.

MS experts under the leadership of Key expert and close cooperation with the Ombudsperson and Apparatus will prepare the concrete recommendations and documents to be improved, with regard to the best European practice.

In particular recommendations will deal with the following topics:

- the nature of various types of the Ombudsperson decisions and rationale of its binding and non-binding character in various areas of human rights protection;
- the proposals and good practice examples for achieving the effective implementation of Ombudsperson recommendation;
- the proposals and good practice examples on the structure, content and development process of the Annual reports as systemic recommendations of the Ombudsperson;
- the refinement of control procedures;
- the procedure and possibilities and possible outcomes of mediation as the Ombudsperson activity for strengthening confidence in her actions and leadership role.

2.6 Meetings

Meeting 1, 05.02.2018: Ms Olena Smirnova, Deputy Head of Apparatus of the Commissioner for Human Rights to discuss implementation of enforcement activities and possibility to assist with preparation of the new Law on access to public information and personal data protection.

Meeting 2, 06.02.2108: Mr. Denys Onyshchenko, Head of the Unit for Information Technologies, and Mr. Pavlo Slavynsky, Chief Specialist, Unit for Information Technologies

(*responsible for maintaining data base*) to learn more about the technical details of the appeals data base and the data base on information requests.

Meeting 3, 07.02.2018: Ms. Olena Chorna, Head of the unit for children's rights, Department for Observance of the Rights of Child, Non-discrimination and Gender Equality, and Ms. Hanna Levenko (*responsible for entering data into the data base*) to learn more about the way the data base is used in daily work.

Meeting 4, 07.02.2018: Mr. Vitalii Deineka, Head of the Department for documentation and reception of citizens to learn more about registration and allocation of work in the context of the data bases currently on use.

Meeting 5, 09.02.2018: Ms Iryna Kushnir, Representative of the Commissioner for drafting of constitutional appeals and observance of the right to access to public information, Head of the Department of personal data protection.

3. RESULTS OF THE ACTIVITY

3.1. Results achieved

Results to be achieved: The 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 developed.

Documents to be delivered: The 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 (deadline for Part 1 is December 1, 2017; deadline for Part 2 is March 1, 2018):

The recommendations are based on findings during previous missions within Activity 2.2.1:

1. Key elements of the analysis and assessment during these previous missions:
 - The role of the Parliament Commissioner for Human Rights in eliminating human rights violations – approaches and challenges
 - Development and implementation of recommendations based on individual appeals
 - Development and implementation of systemic recommendations
 - The role of the Commissioner in law-making
2. Framework of the analysis and assessment established
 - Roles and self-understanding of classical ombuds institutions
 - European standards for the quality of recommendations

- Human Rights Based Approach as an EU instrument
 - changing the analytical lens and making the link to human rights standards and principles and
- contributing to the development of the capacities of duty-bearers to meet their obligations and/or of rights-holders to claim their rights
- Multiple mandates of the Commissioner – consequences for the effective elimination of human rights violations
- Commissioner has a broad range of instruments aiming at eliminating human rights violations
- Recommendations based on individual appeals
 - quality of recommendations
 - recommendations as demands and coercion
 - acceptance and readiness to act upon recommendations
 - vigilance as a necessary virtue of the Commissioner and her Apparatus in getting recommendations implemented

3. Status quo

- Submissions to the Constitutional Court - rarely used (due to previous experiences with such submissions)
- Systemic recommendations
 - current practice of adopting systemic recommendations
 - channels of adopting systemic recommendations
 - consequences for the authority and the restoration of human rights violations
 - acceptance and readiness to act upon systemic recommendations
- Role of the Commissioner in law making – indirect participation in law making
- Tools and instruments currently in use by the Commissioner and her Apparatus and their potential for improving the impact of recommendations
 - Annual reports
 - Special reports
 - Data management system
 - Active sharing of recommendations (visibility)

3.2. Results achieved in Mission I:

The following documents have been fully finished and are provided in Annex 1-6 to this Report:

1. Recommendations on how to further increase the efficiency of instruments aiming at the elimination of human rights violations

Annex 1: Adapt to the new roles and challenges that are brought by the application of a human rights based approach for national human rights institutions (Dieter Schindlauer)

Annex 2: Recommendations on drafting of recommendations, based on individual complaints (Irmantas Jarukaitis, Jurgita Paužaitė-Kulvinskienė and Vigintas Višinskis)

Annex 3: Making recommendations more effective (Vytautas Valentinavičius)

Annex 4: Recommendations on the development and content of the annual reports (Dieter Schindlauer and Vytautas Valentinavičius)

Annex 5: General Instrument: Framework for Adoption and Facilitation of Implementation of Systemic Recommendations (Elena Masnevaite)

Annex 6: Data management as a tool for increasing the effectiveness of recommendations of the Parliamentary Commissioner for Human rights in eliminating detected human rights violations (Barbara Liegl)

Date: 2018-03-29

Expert: Barbara Liegl