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**"BIRTH, DEVELOPMENT AND PROGRESSIVE
INSTITUTIONALIZATION OF THE OMBUDSMAN IN THE
RUSSIAN LEGAL AND POLITICAL SYSTEM"**

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Introduction

Introduction

One of the current trends in governance and legal development in Russia is aimed at establishing a modern, efficient and internationally harmonised system of safeguards of human rights and civil liberties. A fairly recent addition to this system has been the institution of ombudsman as a public authority specialising in exercising and protecting human rights and civil liberties. The introduction of this institution as well as its formalisation at the constitutional and legislative levels has been increasingly relevant and important, as it raises the dealings between the state and the individual to a new level. As an independent public institution resolving conflicts between citizens and government authorities, the ombudsman makes steps, within the scope of his jurisdiction, to restituting individual rights, and helps to enhance the reputation of government.

However, so far the efficiency of the ombudsman's institution in Russia has not been very high, which could be due to the relative "novelty" and insufficient practical experience of this institution, on the one hand, and the fact that this public mechanism to safeguard human rights and civil liberties have been borrowed from nations with "long-established democratic traditions" which belong to different legal systems: Nordic (Sweden, Finland) or Anglo-Saxon (UK, Canada and Australia). As a result, it cannot be fully integrated in the government mechanism unless appropriate changes are made in line with the established national and cultural traditions.

Special laws on the ombudsman in these countries were approved in the times of radical changes in their economic as well as political and legal systems. However, despite all similarities in historic conditions or the state of the political system and civil society, Russia has evolved its own model for the domestic institution of ombudsman with certain unique features.

It is very much appropriate today to take stock of some of the results following from the introduction and functioning of the ombudsman's institution in Russia. The relevance of the research lies in the need to develop a systemic approach to legal

regulation of the ombudsman's activity in Russia, as well as to outline common and specific trends in the evolution of this institution.

Famous Russian scientists have dealt with the Ombudsman Institute – A.S. Avtonomov, M.S. Bashimov, V.V. Boitsova, L.V. Boitsova, R.G. Vagizov, T.A. Vasilieva, I.S. Vlasov, O.B. Vorobiev, V. G. Gladyshev, N.M. Kasatkina, S.A. Knyazkin, N.S. Kolesova, N.Yu. Khamaneva, I.A. Ledyakh, E.A. Lukasheva, A.G. Maiorov, E.G. Markelova, S.N. Matveev, O.O. Mironov (Federal Ombudsman for Human Rights in the Russian Federation in 1998-2004), A. Yu. Sungurov and other jurists. There is a remarkable amount of international scholarly literature on the issue of the development of the Ombudsman institution: Stanley V Anderson, Gerald E. Caiden, Walter Gellhorn, Roy Gregory, Philip Giddings, Donald Cameron Rowat. The main center of the research and publications is the International Ombudsman Institute in Canada, publishing the International Ombudsman Yearbook edited by the professor Linda Reif, and other specialized books.

But until today there is no scientific works developing a systemic approach to the legal regulation of the ombudsman's activity in Russia, outlining common and specific trends in the evolution of this institution and analysing of the role of International Cooperation for Institution Building in the institutionalization of the Ombudsman in the Russian Federation. This is the *raison d'être* of this research, and the core of its actuality and scientific interest.

The main sources of the information are following: The Declaration of Human rights and citizen in the Russian Federation 1991, Constitution of the Russian Federation 1993, Constitutions of the republics subjects of the Russian Federation, as well as Constitutions of the foreign states; international legal documents: The Universal Declaration of Human rights, International pact on civil and political rights, International pact on economic, social, and cultural rights, European convention on human rights and freedoms; relevant current legislation of the Russian Federation and subjects of the Russian Federation. In the preparation of the research official documents and materials, covering the activities of the Ombudsman for Human rights of the Russian Federation and its apparatus were used.

The purpose of this research is to examine comprehensively the outcome of introducing offices of ombudsmen across Russia, which is arguably of scholarly and

practical interest from the point of view of building a system of human rights protection compliant with international standards.

This aim is achieved by addressing the following **objectives**:

- analysing the concept of the institution of ombudsman and its place in the system of government in Russia and other European countries;
- examining common and specific conditions underpinning the establishment and evolution of this institution in Russia;
- delineating general constitutional legal principles in the organisation and operation of the ombudsman's institution as well as their specific implementation in the country's constitutional legislation;
- studying the regulatory framework of the ombudsman's status, the manner in which his institution is created, and specific features of this public institution's structure;
- identifying key functions of the ombudsman in Russia, and considering the specific powers to implement these functions;
- looking into the efficiency assessment of the ombudsman in the Russian Federation, and the ways to enhance the efficiency.

This research draws on the effective legislation of a number of European countries which regulate ombudsmen and their interaction with other public institutions, as well as the practical results achieved by ombudsmen (annual statements and reports), and the research and methodological literature both by ombudsmen themselves and by political scientists.

In order to assess the process of institutionalization of the Ombudsman Office of the Russian Federation and its relationships with other mechanism for the protection and promotion of fundamental rights, the present research adopts an interdisciplinary and comparative approach. These are also main pillars of the international cooperation, which influenced the development of the Ombudsman in the Russian Federation. Development of the Ombudsman institution has diverse but closely connected aspects that require an interdisciplinary approach. The disciplines mainly involved are economy, law, and political sciences, as well as a solid base in analytical and comparative methods. Each of these disciplines includes relevant aspects for the

development of Ombudsman (e.g. various institutional aspects and policies). Since the process of the development and institutionalization of the Ombudsman is unique for each country, but with different sides and components, it is important that the various disciplines be coherently coordinated.

The variety of local situations and the role of the international institutions, as well as the variety of actors and functions involved, make comparative approach particularly important. The diachronic comparison is fundamental for illustrating the importance of the “dynamic legacies” that actors obtain from their past experiences, and the skills and capabilities accumulated, which influence the way in which policy makers structure organization.

The research is divided into 5 chapters.

Chapter One provides a review of the constitutional framework of the Russian Federation, paying special attention to the main changes leading to current constitutional framework and making particular reference to issue that have a bearing on the Ombudsman: division of powers, territorial structure, structure of the public administration. The chapter also examines rights and their guarantees in the constitutional framework of the Russian Federation, the role of international instruments for rights protection, complimentary function of the Ombudsman to other mechanisms for the protection and promotion of human rights, legislation on Ombudsman in the subjects of the Russian Federation.

Chapter Two provides a review on historical origins and development of the Ombudsman, in a general, worldwide perspective. It considers the main changes in the contemporary development of the Ombudsman, includes comparison with the development of the Ombudsman in other countries with post-authoritarian countries. It outlines typologies of Ombudsman institutions, according to their competences, their relations with the state powers and their relationships with other mechanism for the protection and promotion of fundamental rights.

Chapter Three reports on the phases of the establishment of the Ombudsman in the Russian Federation, starting from the Peter the Great until the adoption of the Federal Constitutional Law in 1997. A second phase covers the period from the appointment of the first Ombudsman and the period of his mandate until the new Ombudsman was nominated in 2004. The third paragraph outlines the main changes

during the mandate of the Ombudsman Mr. Lukin. The last paragraph reports on particularities of the establishment of the Ombudsman institution in the subjects of the Russian Federation.

Chapter Four provides all elements of the institutionalization of the Ombudsman in the Russian Federation: development of the legislation on the Ombudsman, role and functioning of the Ombudsman office in term of competences, relations of the Ombudsman of the Russian Federation with other mechanism for the protection and promotion of fundamental rights, territorial relations. The paragraph 3 outlines current status of the Ombudsman in the Russian Federation, including its economic impact. The last paragraph lists the most important initiatives of the Federal Ombudsman for Human Rights and the Government of the Russian Federation in the sphere of the Human Rights.

Chapter Five outlines innovative approach to the evaluation of the development of the Ombudsman for human Rights in the Russian Federation: provides analysis of the international cooperation and international relations after World War II, establishment of the Rule of Law and primarily role of judicial reform, Russian Federation and its legal Reform and most important projects finance by the international donors in the sector of the Ombudsman for Human rights in the Russian Federation.

Conclusions are presented in the last chapter.

The theoretical importance of the research is marked by the additional value of the statements and conclusions proposed. Systemic approach to legal regulation of the ombudsman's activity in Russia, as well as outlined common and specific trends in the evolution of this institution are developing the sector of the constitutional law science. The research is summarizing the theory and practice of the of the legal regulation of the of the activities of the Ombudsman as a state body providing defence of human rights and freedoms not only at the national but also on international level, definitions, describing constitutional legal status of the Ombudsman on Human Rights are systemized.

Practical importance of the research is defined by the innovative approach and conclusions of the work and recommendations, which could be used for the harmonization of the current legislation, including the Constitution of the Russian Federation, and the constitutions of the subjects of the federation. Theoretical outcomes

and the practice of the legal regulation of the Ombudsman activities, outlined in this research could be used in the educational institutions for the course of the constitutional law and could be used as the bibliography for further development of the research.

Chapter 1.

**Constitutional Framework of the
Russian Federation**

Constitutional Framework of the Russian Federation

1.1. Rights and their guarantees in the constitutional framework of the Russian Federation

The supreme value of the democratic, federative and rule-of-law abiding state which the Russian Federation has declared itself to be, is, according to Article 2 of its Constitution,¹ the human being, his rights and liberties, whereas their recognition, observance and protection are the duty of the State.

The constitutional duties of the Russian Federation to recognise, respect and protect human and civil rights and liberties include civil, political, social, economic and cultural rights of an individual as well as collective rights of small indigenous peoples (Article 69 of the Constitution of the Russian Federation²) and ethnic minorities (Article 71, paragraph (c), and Article 72, part 1, paragraph (b) CRF), who are, in compliance with Article 45, part 1 CRF, guaranteed uniform state protection.

The federal concept of the State structure in the Russian Federation is grounded in a balance of the interests of equal constituent entities, having regard for their ethnic individuality and their geographical and other characteristics. The right to self-determination within the Russian Federation is given substance through various ethnic autonomous areas and autonomous ethnic cultural organisations.

The combination of the principles of self-determination and federalism proclaimed in the Constitution is enshrined in the federal law³ that defines the principles and procedure governing the apportionment of jurisdiction and authority between the

¹ The Constitution of the Russian Federation was adopted by referendum on 12th of December 1993. Since then there were 9 modifications related to the list of the subjects of the Federation (in 1993 there were 89 subjects of the federation and nowadays Russian Federation has 83 subjects of the federation). Several political principals creating the basis of the concept of the Russian state: multinational people, sovereignty, declaration of human rights and freedoms. Yu.A. Dmitriev, ed., *Constitution of the Russian Federation: doctrine commentary (article by article)*, Delovoi Dvor, Moscow, 2009

² CRF in what follows.

³ Federal Law 119 FZ of 4 June 1999, “On principles and procedures governing the apportionment of jurisdiction and authority between the State authorities of the Russian Federation and their counterparts in the constituent entities of the Federation” in *Rossiyskaya gazeta*, 24.06.199

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State authorities of the Russian Federation and their counterparts in the constituent entities of the Federation⁴. The Act guarantees the equality of the constituent entities of the Federation in the apportionment of jurisdiction and authority, and declares encroachment on the rights and interests of the constituent entities inadmissible and ensures the alignment of the interests of the Federation and its constituent entities. Together with other legislation adopted pursuant to it,⁵ the Act has largely done away with earlier doubts about the effective coordination of activities between the Federation and its constituent entities.

The role of local self-determination within the system of elected bodies in the Russian Federation has increased substantially. Over the past few years, the necessary legal foundations have been laid, in accordance with international standards, for local self-determination to be introduced and to function. Local self-government is playing an ever-increasing role in the establishment of civil society in the Russian Federation, being both a means of bringing such a society about and an inseparable component of such a society.⁶

Russian State policy attaches particular importance to introducing and developing ethnically targeted legislation providing legal protection in accordance with the principles of international and Russian law,⁷ for the most vulnerable ethnic cultural communities.⁸

⁴ The Russian Federation – Russia is a democratic federative law-governed state with a republican form of government. Article 1. *Constitution of the Russian Federation*, Legal Literature, Moscow, 1993

⁵ Federal Law N184-FZ from 6 October 1999 “On general principles of the organization of the legislative (representative) and executives authorities of the Russian Federation”. The law is summarizing the procedure of the establishment of the legislative and executive authorities. Worth noting is that, according to this law, federal authorities cannot dismiss representative authorities of the subject of the federation or to dismiss the head of the local administration.

⁶ Marat S. Salikov, “*Comparative Federalism of the USA and Russia*”, Ekaterinburg, 1998; Marat S. Salikov, “Constitutional Federalism in Russia: ten years of experience in *Federalism*”, n.3(31), 2003

⁷ Presidential Decree n.1666 On National Policy Strategy of the Russian Federation through to 2025 in Rossijskaya gazeta, 19th December 2012, www.pravo.gov.ru, Collection of the legislation of the Russian Federation, 24.12.2012, n.52, p.7477

⁸ Framework convention for the protection of national minorities of the Council of Europe was ratified by the Russian Federation in 1998. First time the Congress of the Federal Union of European Nationalities was organized in Russia on May 17th 2012.

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Ensuring safeguards of public protection offered to individual and civil rights and liberties, their observance and respect by government authorities, bodies of local self-government and public officials shall be entrusted under the law to the Human Rights Ombudsman.

Yet for the implementation of functions of public protection of human rights in a federative system of governance, in the Russian Federation there is a distinction between matters of exclusive jurisdiction of the Russian Federation and those of joint jurisdiction with the subjects (предметы исключительного ведения Российской Федерации и предметы совместного ведения с субъектами Российской Федерации) of the Russian Federation:

1) the competence of the Russian Federation, as provided by Article 71, paragraph (c) CRF, includes regulation and protection of the rights and freedoms of man and citizen; citizenship in the Russian Federation, regulation and protection of the rights of national minorities and their institutions of protection, including public protection by the Ombudsmen

The relevant powers, under Article 76, part 1 CRF, include: “on the issues under the jurisdiction of the Russian Federation, federal constitutional laws and federal laws shall be adopted and have direct action in the whole territory of the Russian Federation, including the one governing the Ombudsman”;

2) the joint competence of the Russian Federation and the subjects of the Russian Federation, as provided for by Article 72, part 1, paragraph (b), includes protection of the rights and freedoms of man and citizen; protection of the rights of national minorities; ensuring the rule of law, law and order, public security, border zone regime, in the meaning of joint efforts to exercise this protection. Relevant powers include adoption, under Article 76, part 2 CRF⁹ of any federal laws, which, according to specific legislation, are to stipulate rights, duties and responsibilities of government

⁹ “On the issues under the joint jurisdiction of the Russian Federation and subjects of the Russian Federation federal laws shall be issued and laws and other normative acts of the subjects of the Russian Federation shall be adopted according to them”.

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authorities in the Russian Federation¹⁰ (including human rights ombudsmen in the subjects of the Russian Federation); the procedures for and sources of funding for them to exercise their powers; similar authorities may not be granted to federal government authorities (including the Ombudsman) and bodies of local self-government at the same time.

The efficient implementation by the Ombudsmen of public protection offered to human rights is ensured with a set of measures, which allow him to exercise his independent supervisory functions over the way the government honours its duties to recognise and observe human rights, relying on the adequate powers granted to him vis-a-vis legislative, executive and judiciary powers as well as public officials (joint and sole decisions) and their actions (or inactions), aiming to assist the restitution of rights. The Ombudsman, exercising his mandate, relies on the following forms and methods of independent activity:

- overseeing the compliance with the international obligations and treaties of the Russian Federation, focusing on human rights, by federal government, government authorities in the subjects of the Russian Federation, bodies of local self-government and their officials;

- assisting in the collaboration between federal government authorities in their joint planning and implementation of the agreed human rights protection programmes;

- assisting in improving federal legislation on human rights aiming at ensuring its compliance with the Constitution and the universally recognised principles and rules of the international law, as well as the legislation of the subjects of the Russian Federation on the protection of human rights ensuring its compliance with the federal legislation;

- examining complaints against decisions or actions (or inaction) by federal executive authorities, including the command of the Armed Forces of the Russian Federation, other troops and armed units; administration in places of incarceration; executive authorities in the subjects of the Russian Federation, bodies of local self-

¹⁰ Pursuant Article 26.1 of Federal Law No 184-FZ, dated 06.10.99, “On General Principles for the Organization of Legislative (Representative) and Executive Bodies of Power in the Subjects of the Russian Federation”.

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government and their officials; offering assistance to victims in the restitution of their rights and bringing the guilty parties to responsibility;

- considering complaints against violations of human rights committed in the course of criminal and civil law proceedings or proceedings in administrative liability cases; offering applicants qualified, free legal aid in the representation of their legitimate interests in criminal and civil law cases and cases of administrative offences, for which rulings (verdicts, awards) have come into effect; in dismissed criminal cases and files for which criminal prosecution was refused; adopting the required procedural measures to redress damages and moral injury caused through the violation of human rights;

- raising public awareness of the law in the area of human rights, and forms and methods of their protection;

- pursuing international cooperation with parliamentary ombudsmen and ombudsmen of foreign nations, with international organisations and their officials, and multilateral human rights bodies in promoting universal principles and rules of international law, improving forms and methods of independent monitoring over the recognition and observance of human rights;

- collaborating with public associations, including non-governmental human rights organisations, and other institutions of civil society in human rights protection;

- ensuring uniformity of public protection of human rights across the entire territory of the Russian Federation and its implementation together with human rights ombudsmen in the subjects of the Russian Federation as well as with specialised ombudsmen.

Pursuant to Article 103, part 1, paragraph (e), CRF, appointing the Ombudsman to or dismissing him from his office lies within the exclusive jurisdiction of the State Duma, viz., one of the chambers of the Federal Assembly, the parliament of the Russian Federation. The constitutional status of the Ombudsman's office in the Russian Federation means that neither the President of the Russian Federation, nor the Government of the Russian Federation nor the Council of Federation can alter or substitute the adopted decision on granting the Ombudsman his offices of the public

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human rights champion. By having instituted the office of the Ombudsman, the Russian Federation has granted any person whose rights could have been violated an opportunity to address his complaint to an independent, fair and competent public official whose professional duty is to offer public protection to such people.

1.2. The role of international instruments for human rights protection

By performing one of the most vital functions of a democratic, rule-of-law abiding country in offering public protection to human rights and civil liberties, a person's honour and dignity, in safeguarding universal ideals of justice and humanity, the Ombudsman is there to ensure that each individual, during his or her entire lifetime and under any circumstances, should be treated by the society and the state as a human being.

Pursuant to Article 17, part 1 CRF, human rights and civil liberties shall be recognised and guaranteed in the Russian Federation in line with the universal principles and rules of the international law and in compliance with the fundamental law of the country. As inalienable rights, owned by each from his or her birth, under Article 18 of the Constitution they are deemed directly applicable and defining the meaning, content and enforcement of laws, and the operation of the legislative and executive powers as well as self-government.¹¹

Human rights are universal legal guarantees safeguarding individuals and their groups against any actions of the state that may limit basic freedoms or prejudice human dignity. What distinguishes them is that they are guaranteed at the international level; they enjoy legal protection; have focus on human dignity, presume obligations on part of the state, and are deemed universal, equitable and interdependent; they may not be repealed or cancelled.¹²

¹¹ N.Yu. Khamaneva, *"Human rights and freedom defence in the sector of executive authorities of the Russian Federation"*, Moscow, 1997

¹² "Office of the High Commissioner for the Human Rights. A collection of Training and Education Materials", No 5/Add.2 in *Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police*, United Nations, New York and Geneva, 2002, p.19-20

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The listing of fundamental human rights in the Constitution, Article 55, part 1, may not be construed as a negation or derogation of other universally accepted individual rights and liberties.

The Resolution number 73 of the Commission on Human Rights¹³ recognises the need for “further progressive development within the United Nations human rights machinery”, of “third generation rights” or “right to solidarity”, for them to “be able to respond to the increasing challenges of international cooperation in this field”.¹⁴

There are on-going efforts to draft universal and regional international documents on collective rights and rights of the peoples, for instance, their right to peace, international solidarity and international communications; right to receive humanitarian aid; and, with the ratification of relevant international treaties, these rights will become part of the inalienable human rights recognised and guaranteed by the Russian Federation.

Rights are given to all human beings, and they all have equal access to fundamental rights. Man enjoys these rights in the same way as he enjoys his physical being; he is born with both, and nobody may deprive him of what he owns by right exactly the same way as he owns his very life.¹⁵

The practical exercise by people of their natural rights, the list of which is non-exhaustive in principle, depends on their recognition by the state which is there not only legally to regulate them by giving them the legal effect of the law, but also to safeguard their recognition, observance and protection.

It is the recognition of human rights, respect for a person's dignity, safeguarding their protection and integrity that makes this or other states democratic and based on the rule of law.

The CSCE Copenhagen Document on Human Dimension of 26 June 1990 notes “that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice

¹³ UN Commission on Human Rights, Resolution No 2002/73 of 25.04.2002.

¹⁴ United Nations. Commission on Human Rights Report on the Fifty-Eighth Session (18 March - 26 April 2002). E/2002/23. E/CN.4/2002/200. 25.09.2002. P. 311.

¹⁵ P. Stirk, D. Weigall, “The Origin and Nature of Rights”, *Russian Human Rights Bulletin*, 8, 1996, p. 13. Proiskhozhdenie I priroda prav

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based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.”¹⁶

Human rights do not result from a charitable act of the state; they shall be independent of the state, and may not be abrogated by it. The refusal by the state to recognise, observe and protect human rights testifies not to the fact that they are not available to a human being but to the anti-democratic political regime in power.

As noted in the Resolution no. 64 of the Commission on Human Rights¹⁷, entitled “The role of good governance in the promotion of human rights”, “it is only transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people, that is the foundation on which good governance rests, and that such a foundation is a sine qua non for the promotion of human rights”.¹⁸

Human rights, being a natural possession by the right of birth, are indivisible, universal and inalienable.

The indivisibility of human rights implies their organic integrity and the impossibility of reinforcing some of them by prejudicing or ignoring others.

The indivisibility principle rests on the idea that improving the exercise of one of the human rights may not be achieved through the violation of any other of them. Enhancing the respect for the right to education may not be deemed as socially important or even acceptable, should the right to health or the freedom of expression be prejudiced at the same time. Broadly speaking, the exercise of economic, social or cultural rights may not be improved by trampling on civil and political rights.¹⁹

The universality of human rights is reflected in the fact that while being at the basis of an individual’s legal status, these rights belong to him irrespective of his location in the country of residence or in a foreign nation.

¹⁶ ODIHR (Office for Democratic Institutions and Human Rights), *OSCE Human Dimension Commitments. A Handbook*, OSCE, Warsaw, 2001, p. 238.

¹⁷ UN Commission on Human Rights, Resolution No 2000/64 of 26.04.2000

¹⁸ United Nations, *Commission on Human Rights Report on the Fifty-Sixth Session* (20 March - 28 April 2000). E/2000/23. E/CN.4/2000/167, August 2000, pp. 377-379.

¹⁹ United Nations Commission on Human Rights. Sub-Commission on the Promotion and Protection of Human Rights. Fifty-Fifth Session. *Economic, social and cultural rights. Implementation of existing human rights norms and standards in the context of the fight against extreme poverty*. E/CN.4/Sub.2/2003/17. 16.06.2003, paragraph 12.

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Universality implies that any individual possesses human rights solely by virtue of him being a human being. It means that human rights must be the same everywhere and for all; it ensures the respect, dignity and value of human life, and protection of a person against any infringements on his or her continued well-being.²⁰

1.3. The complimentary function of the Ombudsman to other mechanisms for the protection and promotion of human rights

The multinational people of the Russian Federation, having declared in its Constitution, that human rights and freedoms are the supreme value of the democratic, federative, rule-of-law state with a republican form of government, have charged the state, in Article 2, with the duties to recognise, observe and protect them.

The judicial protection of human rights as guaranteed to any person by Article 46, parts 1 and 2 of the CRF is carried out, inter alia, by having courts of general jurisdiction examining the complaints against decisions and actions (inaction) by public authorities and public officials that violate human rights, consistent with the procedures provided for by Chapters 24, 25 and 26 of the Code for Civil Procedure of the Russian Federation; or commercial courts consistent with the procedures established by Chapters 23 and 24 of the Code for Arbitration Procedure of the Russian Federation.

As part of the prosecutorial supervision over the compliance with human rights and civil liberties²¹ (as part of the supervision over compliance with the Constitution of the Russian Federation and application of laws effective in the Russian Federation), the prosecutorial authorities are to ensure exercise of human rights in the activities of federal ministries, government committees and other federal executive authorities, representative (legislative) and executive authorities of the subjects of the Russian

²⁰ United Nations Commission on Human Rights. Sub-Commission on the Promotion and Protection of Human Rights. Fifty-Fifth Session. *Economic and social rights. Implementation of existing human rights norms and standards in the context of the fight against extreme poverty*, op cit., paragraph 11.

²¹ Pursuant to Articles 1 and 26 of the Federal Law, No 168-FZ of 17.11.95, “On the Offices of Prosecution of the Russian Federation”.

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Federation, bodies of local self-government, military commands, their officials and governing bodies, as well as managers of commercial and non-profit organisations.

In line with his legislative mandate to offer public protection to human rights, the Ombudsman acts in parallel and alongside judiciary and prosecutorial authorities, but not in their place, not supplanting them, but complimenting with the legal remedies granted to him.

He has at his disposal his own set of official duties which significantly broaden the opportunities available not only in the legal, but also in the humanitarian, educational and legislative protection of human rights. He can also rely on the professional forms and methods that are made available only to him.

Contrary to the judiciary or prosecutorial authorities that are guided in their human rights performance by the effective legislation, the Ombudsman makes an assessment of decisions or actions (or inaction) of public authorities, bodies of local self-government or public officials, first and foremost, for their compliance with the universal principles and rules of the international law and international treaties of the Russian Federation.

The court or the prosecutor, attending to a complaint against the violation resulting from a search operation of the right to the inviolability of private life, personal and family secrets, as guaranteed to every persons under Article 23, part 1, of the Constitution of the Russian Federation, will be guided by Article 182 of the Criminal Procedures Code of the Russian Federation which provides that the investigator has a duty to take steps to exclude publication of the circumstances of the applicant's private life, his or her personal or family secrets, which became known during the search.

Addressing the same complaint, the Ombudsman, without interfering with the jurisdiction of the judiciary or the prosecution, will look, inter alia, into the compliance of the search operation at a home with the requirements of Article 17 of the International Covenant on Civil and Political Rights that rules out any arbitrary or unlawful interference with a person's privacy or family.

The Ombudsman will remember, in particular, that in line with the UN Human Rights Committee's General Comments, No 16 re Article 17 (32nd session, 1988), the search of the home must be limited only to the detection of the necessary evidence,

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without causing excessive discomfort to the residents, while “arbitrary interference” in the privacy and family may also mean any interference which is authorised by law but is not reasonable in the specific circumstances.

1.4. Legislation on Ombudsman in the subjects of the Russian Federation

The institution of the ombudsman’s offices in a subject of the Russian Federation, under Federal Constitutional Law On the Ombudsman for Human Rights in the Russian Federation, is the exclusive right of the foresaid subjects of the Russian Federation.

However, a single, democratic, federative and rule-of-law abiding State should ensure uniform public protection of human rights across its entire territory, without discriminating against its citizens by virtue of their place of residence.

Ensuring public protection to human rights, as guaranteed by Article 45, part 1 CRF, is the duty, pursuant to Article 2 of the Constitution, of all federal and regional public authorities. Allowing the subjects of the Russian Federation full discretion in establishing the ombudsman’s office is in violation of the equality to be enjoyed by citizens in accessing free qualified legal assistance when seeking public protection in those regions where such office has not been created.

The discrimination that this law allows against citizens by virtue of their place of residence is also in violation of Article 19, part 1 CRF, and Article 26 of the International Covenant on Civil and Political Rights whereby equitable and effective protection against discrimination irrespective of the ground for it should not only be guaranteed, but such discrimination should be prohibited by law.

The public protection of human rights offered by human rights ombudsmen in the subjects of the Russian Federation, pursuant to Article 72, part 1, paragraph (b), belongs to a joint competence of the Russian Federation and its subjects. In the absence of a federal law that prescribes organisational forms and conditions in which they act, or

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their powers in joint competence, the subjects of the Russian Federation are to regulate these official duties independently.²²

The lack of federal legal regulation over ombudsmen in the subjects of the Russian Federation impedes not only their joint efforts, cooperating together with the Ombudsman in human rights protection, but also the exercise by the latter of his duties in a single system as a head of a federal public authority appointed to ensure this system's coordinated functioning across the Russian Federation.

Given the independence of ombudsmen in the subjects of the Russian Federation and the absence of any vertical subordination to the Federal Ombudsman, the above functions could have been ensured with the creation and legislative regulation of a Council of ombudsmen. Such a body to advise the Ombudsman could be set up through representation of human rights ombudsmen from the subjects of the Russian Federation from each federal district subject to rotation. The Council's decisions could be formulated as instructions by the Federal Ombudsman to guide the work of human rights ombudsmen in the subjects of the Russian Federation.

The need for the relevant federal law also comes from the necessity to safeguard the independence of human rights ombudsmen in the subjects of the Russian Federation, ensuring their mandate to provide public protection of human rights violated not only by public authorities or local self-government, their officials, or public and municipal officers in the subjects of the Russian Federation, but also by the territorial divisions of federal executive authorities exercising their powers on matters of joint competence of the Russian Federation and its subjects.

In the absence of federal legal regulation, the subjects of the Russian Federation also tend to establish, quite independently, public offices of specialised ombudsmen, for example, children's rights ombudsmen. Like human rights ombudsmen in the subjects of the Russian Federation, those lack either the required legal safeguards to their professional independence or relevant powers to provide public protection to the rights of under-age children who do not have, as yet, full legal capacity. Independent regulation of specialised ombudsmen, quite apart from the human rights ombudsmen in

²² Pursuant to Article 3 of the Federal Law, No 184-FZ dated 06.10.99, "On General Principles of Organisation of Legislative (representative) and Executive Public Authorities in the Subjects of the Russian Federation".

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the subjects of the Russian Federation, is an obstacle to proper delineation of competence between them or to establishing their official interrelation; it also stands in the way of creating a single system of public protection of human rights.

The competence of independent human rights ombudsmen in the subjects of the Russian Federation, who offer public protection to human rights under this law and the laws of the subjects of the Russian Federation adopted pursuant to their own constitutions (statutes), is not identical to the competence of the human rights commissions established in accordance with the Presidential Decree No 864 of 13.06.96, “On Some Measures of Government Support to Human Rights Movement in the Russian Federation” to advise the top public officials in the subjects of the Russian Federation (heads of the supreme executive authorities in the subjects of the Russian Federation).

Functions of human rights commissions focus on assisting relevant officers in their efforts to improve mechanisms of human rights protection and to implement the fundamentals of the single public policies to ensure their compliance across the subjects of the Russian Federation. The work of the human rights commission is voluntary; and these commissions are not independent public authorities in the regions, empowered to pursue public protection to human rights.

The difference between these commissions and human rights ombudsmen can be paralleled with the differing competences of the UN Commission on Human Rights which is there to give their general assessment to the status of recognition and observance of human rights, and the UN Human Rights Committee or the Committee Against Torture, which are extrajudicial bodies to offer protection to human rights as guaranteed by relevant international treaties, by considering individual complaints from the victims.

The human rights commissions established to advise top public officials in the subjects of the Russian Federation (heads of the supreme public executive authorities in the subjects of the Russian Federation) do not supplant regions’ human rights ombudsmen whose offices are established with a law adopted pursuant to their constitutions (statutes); these commissions may perform their public functions only in cooperation with the ombudsmen, and not in their place.

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The funding of human rights ombudsmen in the subjects of the Russian Federation as well as their public offices that enjoy the status of legal entities in accordance with the laws of the subjects of the Russian Federation is provided from these regions' budgets that establish a separate item of annual appropriations.

The budget estimate of expenses to support human rights ombudsmen in the subjects of the Russian Federation and their subordinate offices should ensure that they perform all of their functions independently, and it may not be decreased compared to the previous financial year. The manner in which the budget is drafted and executed and the financial statements by the human rights ombudsmen in the subjects of the Russian Federation are established by the laws of the subjects of the Russian Federation.

The territorial form of government in a subject of the Russian Federation is not a matter of either the jurisdiction of the Russian Federation or the joint jurisdiction of the Russian Federation and its subjects. According to Article 73 of the Constitution of the Russian Federation, the territorial form of government is the exclusive competence of republics, territories, regions, federal cities, autonomous region and autonomous districts.

The legal literature has repeatedly pointed out that the subjects of the Russian Federation may establish the federative as well as unitary forms of government. However, the federative form of government was not accepted by the subjects of the Russian Federation. This may be, to a large extent, due to the historic tradition: autonomous Soviet socialist republics and autonomous districts which reconstituted themselves into republics were unitary states within Russia. The same is true of territories and regions.

In line with the principle of historic succession, all subjects of the Russian Federation chose the unitary form of government in their respective constitutions.

The unitary form of a subject of the Russian Federation has the following distinguishing features.

The subject of government across the territory of the subjects of the Russian Federation is its people (peoples) and/or the single nation state. The people (peoples) exercise their power through referendum and free election, and also via the bodies of government.

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The subject of government in a subject of the Russian Federation as a constituent part of Russia is also the Russian Federation and its multinational people. This provision is reflected in some of the constitutions of republics²³ and in many statutes of Russian provinces.

The subject of the Russian Federation shall exercise government power in its territory within the competence that has been established in the constitution. On matters that are not included in the competence of the Russian Federation or the joint competence of the Russian Federation and its subjects, the subject of the Russian Federation has the full power to exercise government authority (Article 73 of the Constitution of the Russian Federation).

The government power in the subject of the Russian Federation shall be exercised based on the principle of centralisation.

The territorial centralisation of government manifests itself in the fact that the key regulatory and the bulk of executive and administrative powers are exercised by the supreme bodies of the subject of the Russian Federation. This ensures territorial integrity and the integrity of government power throughout its territory in relation to the authority of the federal centre.

4. The centralised exercise of government functions is not absolute as it is limited by local public administration and local self-government. In some papers, this structuring of government power is treated as decentralisation, however, in the case of local public administration it is not a vertical division of power but an optimisation of administrative functions of a single government.

It is for this purpose that the subjects of the Russian Federation have territorial (local departmental or interdepartmental) bodies of executive power. For instance, Article 64, part 1, of the Constitution of the Republic of Ingushetia stipulates that the system of the republican government authorities include territorial bodies of the executive power; under Article 114, part 1, of the Constitution of the Republic of Tuva, for purposes of monitoring compliance by local self-government with certain government functions divested to them by the republic, territorial bodies of government may be instituted as structural units of the republican government.

²³ Those of Mordovia, Ingush Republic, Chuvash Republic, Buryat Republic, and North Ossetia – Alania.

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At the same time it is important to point out certain specific structuring of the regional executive government where the territorial (local) bodies of the regional executive government are subordinate to the supreme executive authorities of this subject of the Russian Federation.

In particular, republics of the Russian Federation define the status of territorial (local) government authorities in the republican legislation, and their managing officers are appointed “from above”. Also, acts promulgated by the territorial (local) government authorities may be repealed or suspended by the republican authorities. So, it appears then that even if there is any restriction of the vertical of power in this case, it is purely administrative, not functional.

Moreover, apart from the above feature in the vertical division of power, some republics employ the administrative and functional method for the separation of government powers. This method is typical of decentralisation.

5. For the purposes of decentralisation, some subjects of the Russian Federation establish not only executive but other territorial (local) government authorities. The Republic of Bashkortostan, for example, establishes local representatives and executive bodies of government. Local government authorities in the Republic of Bashkortostan are established in the administrative territorial units, and they are instituted either directly by the residents or through their representatives (Articles 100, 101 and 102 of the republican constitution).

Institution of local government authorities is also stipulated by the Constitution of the Republic of North Ossetia – Alania (Article 7), and by the Constitutional Law of the Republic of Sakha (Yakutia) “On the Structure of the Government of the Republic of Sakha (Yakutia)”, dated 05.02.2003, No Z-III.

Local government authorities act in accordance with their statutes that are approved by the supreme (central) government authorities of the republic. Within the limits stipulated by the law, local authorities exercise government functions independently.

Local self-government is one of the universal forms of limitation of government powers in the subjects of the Russian Federation, characterising their decentralisation. Pursuant to the federal legislation, the subjects of the Russian Federation invest bodies

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of local self-government with certain government powers of a subject of the Russian Federation. These powers are exercised by local authorities independently. However, government authorities of the subject of the Russian Federation may oversee the implementation of such powers, and, in cases stipulated by the legislation, may adopt relevant laws.

Decentralisation of the government power in the subjects of the Russian Federation is based on the administrative and territorial organisation and/or division of the territory among municipal entities.

The administrative and territorial organisation is stipulated by the constitutions or statutes, and it is only in the Buryat Republic that this issue has not been resolved at the constitutional level.

This type of a government system makes the subjects of the Russian Federation similar to a unitary state, with administrative and territorial and/or political autonomies as forms of decentralisation of government.

Thus, the national territorial system of government in the subjects of the Russian Federation is based on the administrative and territorial division, which ensures the centralised unity of government and the territorial integrity of the subject of the Russian Federation, on the one hand, and limits administrative functions vertically offering decentralisation via local bodies of self-government as well as via self-government in the ethnic administrative-territorial entities, on the other.²⁴

The relationships between the government and the individual require clear regulation and orderliness. The legal status of the individual is legally prescribed by the state in its constitution as well as other regulations and legal acts.

Recognising the individual as a subject of administrative law, the state uses the rules of that law to delineate the legal status of the individual.

²⁴ Principles of the territorial organization of local self-government are prescribed by the Federal Law. These principles belong in the scope of the municipal law, and are not considered in this work. See Federal Law “On General Principles for the Organisation of Local Self-Government in the Russian Federation”, dated 6 October 2003, No 131-FZ // Collection of Laws of the Russian Federation, 2003. No 50. Art. 4850.

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The administrative rights of individuals are effectively an authorisation, fixed in regulations and legal acts, to perform certain actions, behave within certain limits, and demand that other citizens, government authorities and their officials should not obstruct the exercise of these rights and should, instead, facilitate in the best way their implementation.

The administrative legal status of a citizen of the Russian Federation is prescribed first and foremost by the Constitution of the Russian Federation, acts promulgated by bodies of representative power and decrees of the Russian President. In the creation and, in particular, in the implementation of this status, the essential role is given to the executive authorities. In many cases, it is the acts of the bodies of executive power that detail more specifically many rights and duties which are formulated in general by the Constitution and certain legislative acts.

It is in the interaction with administrative entities that certain rights and freedoms are exercised, including: the right to participate in the administration; the right to association; the right to hold an assembly, meetings, demonstrations, marches and pickets; the right to the freedom of movement; the right to petition; the right to compensation from the government for damages; the right to defence, etc.

Rights and freedoms are subdivided into socio-economic, political and personal.

D.N. Bakhrakh²⁵ proposes a three-tier classification of individual rights: 1) the right to participate in the government or municipal administration, and right to social and political activism; 2) the right to government assistance, help and support by competent authorities; and 3) the right to defence.⁴

Administrative legal safeguards include judiciary and extra-judiciary safeguards.

The priority of court as a guarantor of individual rights and freedoms is defined by the Constitution of the Russian Federation whereby each and every one is guaranteed legal defence of his or her rights and freedoms. Legislation broadens the range of remedies to appeal against actions (inaction) which violate rights and freedoms of individuals. Additionally, certain actions may only be executed subject to a court ruling (e.g., entering somebody's home, etc.).

²⁵ D.N. Bakhrakh, *Administrative law*, Moscow, Bek, 1993, p.31-32

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Extra-judiciary safeguards include the duty of all executive authorities and local self-government to facilitate the exercise of individual rights, offer them protection, etc. For that purpose, they are vested with a set of powers. This type of safeguards also includes the work of the Human Rights Ombudsman, other human rights entities and public associations.

Hence, the administrative legal status of the individual is characterised by universal rights and duties of such individual in the area of public administration which are supported by a set of safeguards. As a result, this status may be regarded as a general administrative legal status which the individual is vested in as a subject of administrative law.

Closely related with the administrative legal status of the individual as a party to various administrative legal relationships are issues relating to the protection of individual rights and freedoms against various violations that occur in the area of executive power.

The comparison between the provisions of the Federal Constitutional Law and those legislative acts of foreign countries that regulate the status and actions of ombudsmen, gives reason to believe that the Russian ombudsman, as conceived by the Law, is fully compliant with the world standards established in the practices of human rights and civil liberties protection by this legal institution. The Russian human rights ombudsman supplements the existing system of safeguards to individual rights as well as acts as a new law enforcement body which opens to individuals yet another human rights avenue in cases of abuses or infringement of individual rights and freedoms.

Chapter 2.

The ombudsman institution: historical origins and development

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2.1. *Historical Origins of the Ombudsman*

Since the 1980s there has been an extraordinary worldwide growth of institutions named after or inspired by the “Ombudsman” of the Scandinavian tradition²⁶. The development of this kind of institution has come to be considered a standard part of the machinery of democratic government. Particularly, in its definition in the Swedish Constitution of 1809, the Ombudsman is conceived as a “trusted person” of the Parliament, a public servant appointed by the Parliament and specialized in the prosecution of maladministration practices committed by civil servants. It was thus intended as an office, which would improve and strengthen the Parliamentary regime, establishing itself as an obstacle for absolutism and supporting the principles of the rule of law and good administration.

In order to inquiry into the origins of this institution it is necessary to refer to two legal institutions that together shape its decent as well as to the relevant historical events that led to its establishment.

Although the institution of the Ombudsman is generally referred to the Swedish Constitution of 1809, there were already some precedents in the century before that.

²⁶ K. Hossain et al., eds., *Human Rights Commissions and Ombudsman Offices: National Experiences throughout the World* (The Hague: Kluwer Law International, 2001); L.C. Reif. "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection" (2000) 13 *Harvard H.R.J.* 1; V. Ayeni. L. Reif and H. Thomas, eds., *Strengthening Ombudsman and Human Rights Institutions in Commonwealth Small and Island States - The Caribbean Experience* (London: Commonwealth Secretariat, 2000); R. Gregory and P. Giddings, eds., *Righting Wrongs: The Ombudsman in Six Continents* (Amsterdam: IOS Press, 2000); L.C. Reif, ed., *The International Ombudsman Anthology: Selected Writings from The International Ombudsman Institute* (The Hague: Kluwer Law International, 1999); L.C. Reif, ed., *The Ombudsman Concept* (Ldmonton. International Ombudsman Institute, 1995); M.A. Marshall and L.C. Reif, "The Ombudsman: Maladministration and Alternative Dispute Resolution" (1995) 34 *Alberta Law Rev.* 215; L. Matscher, ed., *Ombudsman in Europe The Institution* (Kehl: N.P. Lngel, 1994); L. Reif, M. Marshall and C. ferns, eds., *The Ombudsman: Diversity and Development* (Ldmonton: International Ombudsman Institute, 1992); D.C. Rowat, *The Ombudsman Plan: The Worldwide Spread of an Idea*, 2d rev. ed. (Lanham, Md.: University Press of America, 1985); G.L. Caiden, ed., *International Handbook of the Ombudsman: Evolution and Present function and International Handbook of the Ombudsman: Country Surveys*, 2 vols. (Westport: Greenwood Press, 1983).

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Following a defeat against the Tsar Peter in 1709, King Charles XII of Sweden proceeded to Bender in today's Moldova and for five years became the sometimes welcome, sometimes undesired guest of the Sultan. In fact, Sweden was governed from this region until the fall of 1714, when King Charles finally decided to return to his kingdom. In October 1713, King Charles signed an ordinance by which he established the institution of the King's Highest Ombudsman. The task of this Ombudsman was to ensure that the judges, military officers and civil servants in Sweden were observing the laws of the country and the rules laid down for them. Having at that time been away from Sweden since he left thirteen years earlier on his campaign against Russia, the King obviously felt a need to have someone monitoring things in his home country on his behalf. In 1719, the Institution changed its name for Chancellor of Justice (*Justitiekansler*) keeping its functions intact.

This earlier figures of the Ombudsman institution is sometimes not mentioned precisely because of its tight connection with the executive power, differently from the 1809 figure that – more in consonance with contemporary ideas of independency – saw it as a Parliament designated officer.

With the Constitution of 1720, Sweden started the so-called “Frihetstiden” (Age of Freedom), which was characterised by the establishment of a modern parliamentary system in replacement of the absolutism²⁷ with a written constitution, the Parliament (Riksdag) composed by representatives of the Estates, human rights and freedom of the press. The Riksdag appointed the “Chancellor of Justice”, transforming the figure created by King Charles as his representative into a Parliamentary feature. This concept was drawn upon in 1809, when the Swedish constitution was revised and enacted according to the principle of separation of powers between legislative and executive: the institution of the *Justitieombudsman*, appointed to monitor the execution of the laws – gave a central political role to the Parliament.²⁸

²⁷ *Kirchheiner*, The Ideological Foundation of the Ombudsman Institution, in Caiden (ed.), International Handbook of the Ombudsman (1983) 23 ff; cf also *Hansen*, Die Institution des Ombudsman (1972), 2.

²⁸ *Eklundh*, in Hossain et al (Eds.), Human Rights Commissions and Ombudsman Offices (2000), 423; *Reif*, The Ombudsman, 5; *Hansen*, Die Institution des Ombudsman, 2; *Haller*, Der schwedische Justitieombudsman (1965) 82.

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2.2. *Contemporary development*

Although the ombudsman in its contemporary form dates back to the Swedish ombudsman of 1809, the institution only began to spread outside the Nordic countries after the 1960s. The first Ombudsman institution outside Sweden was the one in Finland. Outside the Nordic countries the first Ombudsman was established in New Zealand in 1962. Today there are Ombudsman institutions in more than 125 countries all over the world. Notwithstanding its interesting and debated origins, it will be during the 20th century when this institution would acquire international fame and importance.

The spectacular development of this institution can be seen in the light of the tensions in the idea of justice that will witness that century²⁹: 1) Barbaric events in a context that was (self-) considered modern and progressive: oppression and extermination of groups of individuals belonging to races, religions, and vulnerable categories, tyrannical regimes, gross violations of the natural rights of man; 2) two *world* wars; and 3) economic and technological changes that would transform all aspects of social life, leading to mass civilization, with all its potential of alienation for individuals and groups.

It is in the search of solutions to these problems, in the development of the idea that establishment and maintenance of the law must be the main function of the State and that the State limits must be rigorously defined by the law, that the institution of the Ombudsman has thrived. Over the course of the past century, government administration has expanded greatly and complaints about bureaucratic conduct have grown in parallel.

With the development of the administrative apparatus of the Welfare State, the need for control mechanisms has grown. The Public Administration is necessary for carrying out all the functions that contemporary States are called to fulfil but this very

²⁹ Cappelletti, Mauro, “Appunti per una fenomenologia della giustizia nel XX secolo”, *Rivista trimestrale di diritto e procedura civile*, 4, 1978, pp. 1381-1433.

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apparatus produces a constraint in the freedoms of those governed, increasingly subjected to administrative procedures³⁰.

In the perceived need to protect the citizens against this form of power from the State, that was growing speedily after the Second World War, the implementation of the institution of the Ombudsman was seen as a means to make civil servants accountable not only regarding the State but also regarding the individual citizens³¹. In many countries, the citizens were given the right of a judicial review of administrative acts. Nevertheless, for many, access to the courts was rendered difficult as a consequence of social, financial and psychological barriers. Real lack of legal protection was criticised in areas where the state used instruments of private law in order to fulfil its obligations³².

Therefore, unconventional remedies were sought in order to adapt the public administration to the needs of the citizens. As an appropriate instrument for supplying these needs, politicians considered the concept of the Swedish Ombudsman – an institution of control with respected public figures, independent and democratically elected, to which the citizens could apply without barriers, which was not confined to the control of legal acts like courts, but could propose creative and preventive solutions to problems. This model was able to meet such concerns as the extended complexity of the administration and the need to better protect citizens. The competencies of the ombudsman were extended to the control of any kind of “maladministration”, but his powers were reduced compared to the Swedish role model: He only could investigate, make “recommendations” and report to the Parliament.³³ The judiciary was also withdrawn from the scope of the ombudsman’s control³⁴. The ombudsman was seen as

³⁰ Hansen, *Die Institution des Ombudsman*, 41; Haller, *Justitieombudsman*, 2.; Gregory/Giddings, in Gregory/Giddings (eds), *Righting Wrongs*, 7; Rowat, *The Ombudsman Plan* (1985), 49; Gregory/Hutchesson, *The Parliamentary Ombudsman* (1975), 57.

³¹ Haller, *Justitieombudsman*, 7 f; Hansen, *Die Institution des Ombudsman*, 43 f.

³² Haller, *Justitieombudsman*, 9.

³³ According to the 1974 definition by the International Bar Association these are the three characterising powers of an ombudsman-institution. Cf Kucsko-Stadlmayer, in Kucsko-Stadlmayer (ed.), *European Ombudsman-Institutions*, 39.

³⁴ The majority of the ombudsman-institutions today are not authorised to control the judiciary, cf Kucsko-Stadlmayer, in Kucsko-Stadlmayer (ed.), *European Ombudsman-Institutions*, 25.

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a new remedy of democratic control, rather than an institution of legal protection³⁵. This version of an ombudsman was first realized in Denmark³⁶ (1954) and soon spread vigorously. It was adopted in Norway (1962) and then immediately in the countries of Anglo-American law – New Zealand (1962) and the U.K. (1967).³⁷ Soon, similar institutions were established in Israel (1971), France (1973), Austria (1977), the Netherlands (1982), Ireland (1984), Iceland (1988), Cyprus (1991), and Malta (1995).

The rapid dispersion of this institution in the last third of the twentieth century (it was present in 21 countries in 1983, 87 in 1997, and 122 by the summer of 2004)³⁸ and the appearance of municipal, regional, and national Ombudsmen, as well as specialised Ombudsmen – primarily Ombudsmen for the rights of children (the number of Ombudsman offices of all levels and types exceeded 400) – is, in itself, a phenomenon that has triggered an important amount of scholarship.³⁹

³⁵ Rowat calls this an “important new addition to the armoury of democratic government” (The Ombudsman plan, 65).

³⁶ cf *Gellhorn*, Ombudsmen and Others, 5 ff; *Lane*, The Ombudsman in Denmark and Norway, in Gregory/Giddings (eds.), Righting Wrongs, 144 ff; *Jent-Sorensen*, Der dänische Ombudsmann (1985).

³⁷ Cfr. Kucsko-Stadlmayer (Ed), European Ombudsman-Institutions, 245 ff.; Linda C.Reif. Introduction. – In The International Ombudsman Anthology. Selected Writing from the International Ombudsman Institute./ Ed. by Linda C. Reif - The Hague e.a.: Kluwer Law International, 1999, p xxii-xxxviii.

³⁸ Data was taken from website of the International Ombudsman Institute – <http://www.law.ualberta.ca/centres/ioi/>

³⁹ Many publications study the development experience of the Ombudsman institution abroad; among the authors are researchers such as Stanley V. Anderson, Gerald E. Caiden, Walter Gellhorn, Roy Gregory, Philip Giddings, and Donald Cameron Rowat. See, for example: Gellhorn, Walter. Ombudsman and others citizen's protectors in nine countries. - Cambridge: Harvard Univ. Press, 1966. - 448 p.; The ombudsman; citizen's defender. Rowat, Donald Cameron, ed. - London: Allen & Unwin, 1968. - 284 p.; Anderson, Stanley V. Ombudsman papers: American experience and proposals, with a comparative analysis of ombudsman offices, by Kent. M. Weeks. - Berkeley, Institute of Governmental Studies, University of California, 1969. 407 p; Gerald E. Caiden (ed). International handbook of the Ombudsman. Evolution and Present Function. – Westport e.a.: Greenwood Press, 1983; Ombudsman in Europe – The Institution, F.Matscher, Ed – Kehl: N.P.Engel, 1994; Righting Wrongs. The Ombudsman in Six Continents. Edited by Roy Gregory and Philip Giddings. – Amsterdam e.a.: IOS Press, 2000. – 500 p.

A main forum for research and publication remains the International Ombudsman Institute in Canada, which publishes special Annual Yearbooks edited by Professor Linda Reif. See for example, The International Ombudsman Anthology. Selected Writing from the International Ombudsman Institute./ Ed. by Linda C.Reif - The Hague e.a.: Kluwer Law International, 1999, 745 p.; The International Ombudsman Yearbook, Vol 4, 2000, Edited by International

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Besides all the advantages of the institution, growing “Ombudsmania” can be attributed both to political legitimacy in international circles as an indicator of democracy and good government, as well as to proselytistic activities by Ombudsman offices themselves, networks and scholars of this institution.⁴⁰ The works of two outstanding Ombudsmen are worthy of special mention: those of Alvaro Gil-Robles,⁴¹ Defender of the People of Spain, who later became the first Human Rights Commissioner of the Council of Europe; and those of the first Human Rights Commissioner of Poland, Eva Lentovska.⁴²

2.3. *The Ombudsman institutions in post-authoritarian countries*

This particular development of the Ombudsman institution consolidated its momentum and claims for potential world-wide spread. The first cases occurred with the collapse of dictatorships in Portugal (1974) and Spain (1975). Both States joined the Council of Europe and ratified the European Convention on Human Rights and in order to strengthening the protection of the rights contained in the Convention new institutions of legal protection of individual rights were established, among others, strong ombudsman institutions⁴³, with broad jurisdictions, including an appeal to the

Ombudsman Institute and Linda C.Reif. - The Hague/London/Boston: Kluwer Law International, 2001, 175 p.; Anderson, Stanley V. Ombudsman readings. - [Edmonton, Alta.] : International Ombudsman Institute, [1980] 296 p. ; The Ombudsman Concept / L.C.Reif, ed. – Edmonton: International Ombudsman Institution, 1995; The Ombudsman: diversity and development, L.Reif, M.A.Marshall and C.Ferris, Eds – Edmonton: International Ombudsman Institute, 1996.

⁴⁰ Particular mention should be made of the the early information activities of the first Danish Ombudsman, Professor Stephan Hurwitz, who took office as *Folketingets Ombudsman* in the year of 1955.

⁴¹ Gil-Robles, Alvaro. Parliamentary control over administration (Ombudsman Institution). - M.: Ad Marginem, 1997. - 335 pp.

⁴² Lentovska Eva. How the work of Commissioner on Civil Rights started. Volume 1 - M., 1997. - 312 pp.;. Volume 2 - M., 1998. - 310 pp.

⁴³ Concerning the development of the Portuguese Ombudsman cf *Amaral*, in Caiden (Ed), International Handbook of the Ombudsman. Country Surveys, 346. Concerning the Spanish Ombudsman cf *Bueso*, Spain's Parliamentary Ombudsman Scheme, in Gregory/Giddings, Righting Wrongs, 323; *Castells*, The Ombudsman and the Parliamentary Committees on Human Rights in Spain, in Hossain et al (Eds), Human Rights Commissions and Ombudsman Offices, 393 ff; *Pitarch*, in Caiden (Ed), International Handbook of the Ombudsman. Country Surveys, 349 ff.

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newly created Constitutional Courts. The Ombudsman would also have the competencies of a “counsel”. This idea was also expressed by the names of these institutions: *Provedor de Justiça* (Portugal: 1976) and *El Defensor del Pueblo* (Spain: 1978).⁴⁴ These developments paved the way for the concept of an ombudsman as a “guardian of human rights”.⁴⁵ Similar developments occurred later in Greece (1995)⁴⁹ and in the new democracies in Central and Eastern Europe after the breakdown of the Eastern block, the Soviet Union and Yugoslavia.

The purpose pursued by ombudsman institutions in this field was always the same – a rapid establishment of democratic structures and the rule of law, the fight against corruption and nepotism, and the creation of a civic society.⁴⁶ Over 25 such states adopted ombudsman institutions: Poland (1987), Croatia (1994), all the Baltic States (Lithuania in 1995; Latvia 1995, Estonia 1999), Hungary (1995), Slovenia (1995), Bosnia-Herzegovina (1996), Romania (1997), Macedonia (1997), Ukraine (1997), Russia (1998), Moldova (1998), Czech Republic (2000), Albania (2000), Slovakia (2002), Montenegro (2003), Bulgaria (2005), Serbia (2007); even as far as the Caucasus (Georgia 1998; Azerbaijan 2002; Armenia 2004) and Central Asia (Uzbekistan 1995; Kazakhstan and Kirgistan 2002).⁴⁷

2.4. *Typologies of Ombudsman institutions*

The Ombudsman is a Nordic institution already mentioned in the Swedish Constitution of 1809. The idea was literally to create a “trusted person” of the

⁴⁴ The names of the different ombudsman-institutions are analysed by *Reif*, *The Ombudsman*, 12.

⁴⁵ Gabriele Kucsko-Stadlmayer, *The Spread of the Ombudsman Idea in Europe*

⁴⁶ *Gregory/Giddings*, in *Gregory/Giddings* (eds), *Righting Wrongs*, 2.

⁴⁷ Several of these institutions are also accredited as a National Human Rights Institutions, according to the Paris Principles, the adoption of which the General Assembly of the United Nations recommends. “Principles Relating to the Status of National Institutions”, adopted by the UN General Assembly on 20 December 1993, Res. 48/134 of 1993. They provide “National institutions for the promotion and protection of human rights”, their competence, responsibilities and composition. Concerning the history and constitutional background of the different Ombudsmen, cf the country surveys in *Kucsko-Stadlmayer* (ed.), *European Ombudsman-Institutions*, 69 ff.

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Parliament, i.e. a sort of Prosecutor nominated by the Parliament and specialized in following the cases of misconduct of public officers. It was meant to be a role useful for the improvement of parliamentary democracy, being a bulwark against absolutism and an important support for the *rule of law* and virtuous administration. Such first notion of the Ombudsman was meant to offer to the Parliament a possibility to monitor the administrative mechanisms, in particular in the matters of the legality and of the separation of powers.

In present times the Ombudsman almost everywhere fulfils the functions of the Prosecutor and has gained a certain degree of independence from the respective Parliaments. It perpetuates itself as an independent and accessible mechanism, a mediator between citizens and public administration, the guardian of civil rights and freedoms. Thus in the transition from the State of Law to modern constitutional regimes, this institution has acquired wider competencies.

A. Powers and functions.

Normally the Ombudsman receives complaints, promotes reforms, addressed recommendations and reports, the most important of which is the annual report to the Parliament. Considering the peculiarity of his role, he acts also in absence of factual violation of the law against a more general *maladministration*, deficit of equity or lack of transparency in public institutions. Thus he acts usually as an ally of the citizen, who constantly comes in touch with public institutions to satisfy the necessities of life, but quite often facing abuses, bureaucratic red tape, obscurity of norms and procedures.

Usually the Ombudsman acts informally utilising non formal tools of persuasion rather than recurring to the use of coercive powers. But provided with authority and power, the Ombudsman can also use some formal tools of decisive importance, among which is his capacity to exact cooperation from administrations and to access necessary documentation, particularly that of a confidential nature. He also can inspect public offices and summon public officials in possession of the facts useful for the enquiry (such powers are excluded for Irish Ombudsman, while in Great Britain it requires a procedure of a proof production similar to that of the High Court). Thus he contributes to a gradual reduction of a sphere of classified official acts. The refusal to cooperate usually ensues disciplinary sanctions for noncomplying public officers, which is the

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case of Spain, Portugal and Nordic countries, while in Austria such refusal has to be motivated.

As from the previous considerations, Ombudsman's office is autonomous and independent. It is autonomous because the person in charge accomplishes administrative functions which are distinct and non-subordinate to those of the State bodies, and it is independent for not being subordinate to the powers of the political nature of the executive and for not being dependant on the warrant of the Parliament.

Thus, such autonomy provides the possibility for the Ombudsman to organise his activities. Certainly the efficacy of his actions largely depends on adequate means in his reach (staff, financing and structures), and above all on the readiness of the public institutions to take his observations into account. For the national Ombudsman the existence of other defenders - generally not subordinate to him, but provided with territorial and sectorial precise competences - constitutes a limitation of his role only at a first glance. In reality to the contrary, the devolution of his role renders his actions even more incisive. This type of necessity was pointed out by Commissary Mironov in his report of 1998, where he proposed to nominate a Special Representative for the Rights of Soldiers similarly to the figure of a Military Ombudsman in Sweden (officialised by 1915 Constitution) and in Germany. So, the existence of a proper national system of civil rights defence can contribute to the factual autonomy of the national Ombudsman.

Such independence implies the fact that the Ombudsman is subject to numerous forms of incompatibility, generally referred to the interdiction to the elective office and to the practice of law. Sometimes some forms of immunity are provided. For example, in Finland the possibility of criminal procedure against the clerk of the court, his deputy and the Ombudsman of the Parliament requires the same procedures as for the ministers, i.e. the parliamentary vote after the positive opinion of the Constitutional Committee.

Such institution has gained more power in whole Europe, not only in relation to the accrued powers of the National civil defendant, but also for what concerns the proliferation of the defenders with specialisation in various subjects (for example, in vulnerable populations such as children, prisoners, handicapped and soldiers) or

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regions. Although in some countries the Ombudsman is still missing as a public figure, the general success of this experience tends to promote such a system of civil defence to all the levels of administration: on the national level (with the exception of Italy, Germany, Greece and Luxemburg), sub-national level (municipalities, provinces and regions) and supra-national level by the institution of the European Ombudsman provided for in Maastricht Treaty of 1992. Italy has the system of a widespread civil defence on municipal, provincial and regional levels, while Germany has a Commission for Petitions, Parliamentary Commissary of the German Armed Forces (existing from 1959) and civil rights defendants of various Länder.

B. Legal Sources

In most European states the existence of the Ombudsman is based on the constitutional norms in order to reinforce his importance in the general framework of democratic institutions. The Ombudsman is mentioned in the Finnish Constitution of 1919, Danish Constitution of 1953, Portuguese Constitution of 1975, Spanish Constitution of 1978, Austrian Constitution of 1981, as well as in the Bosnian Constitution based on Dayton Agreements.

Great Britain is naturally an exception because it has no written constitution (Act of 1967), the same applies to France (Act of 1973), Ireland (Ombudsman Act of 1980) and Belgium (Act of 1995) and some other countries. As far as Italy is concerned, there is no national Ombudsman, but only sub-national ones provided for by the Act No. 142 of 1990. Outside EU, in Norway - one of those countries, where Ombudsman figure appeared first and commands major authority - the institutional source is the Act of 1962.

Lately various public figures similar to Ombudsman started to be based not only on the Ordinary Law and on Constitution, but also on International Norms of civil rights of the “first generation” (civil and political rights) and of the “second generation” (economic, social and cultural rights), as well as of the “third generation” (ecological rights). This is, in particular, the case of the Russian Commissary and of the Spanish *Defensor del Pueblo*.

Eventually some constitutions of European countries contain a special reference to the European Convention of Human Rights of 1950 (as for example happens in

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Austria and France), or otherwise make generic reference to existing international norms on human rights (as in Italy). Besides, the principle of human rights defence and the capacity to address the European Ombudsman is included in the recent Charter of Fundamental Rights of the European Union proclaimed in Nice. Growing adherence of the European legal systems on the principles of human rights protection legitimise the capacity of the Ombudsman to interfere in the matters not necessarily covered by the internal law, and to outstep the defence of the interests of the citizens alone, comprising also the rights of immigrants. In this respect the Report of the Finnish Counsellor of Justice of 1999 is very indicative. On the other hand, Denmark and Norway constitute a strange exception in this respect, Ombudsman being accessible exclusively to the citizens of these states.

C. Nomination and dismissal

Ombudsman is generally a one-person office. In rare occasions if it is not the case, the principle of the division of competencies is followed (in Belgium there are two Ombudsmen, one for Walloons and other for the Flemish, forming a collegial body beginning from 1995; in Austria exists an *Volksanwaltschaft* of three Ombudsmen with different functions), or exists a situation of uneven collegiality (Switzerland has one main and three Assistant Ombudsmen, as well as various specialised defenders; Slovenia nominates Human Rights Ombudsman with three deputies, Spain and Portugal has Ombudsman with many *Adjuntos*). In France *Médiateur de la République* is assisted by different delegates with territorial competencies.

It is worth mentioning that Finland provides for the division of competencies between the Counsellor of Justice (assisted by Deputy Counsellor), appointed by the President of the Republic, and the Ombudsman, nominated by the Parliament. The first figure until 1997 was in reality the Prosecutor-General of the Republic, entitled to monitor the governmental and administrative acts in general, as well as the professional activities of the lawyers; while the Ombudsman of the Parliament existing from 1920 monitors eventual violations of human rights in prisons, army and other institutions limiting personal freedom of citizens.

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Great Britain distinguishes between the Parliamentary Ombudsman and Health Service Ombudsman and has other particular civil rights defenders for Wales, Scotland and Northern Ireland.

Generally speaking, the civil rights defendants are nominated by the Parliament with few but important exceptions such as France and Great Britain, where they are appointed by the Government (in Great Britain after a consultation with the opposition). Another exception is Ireland, where the right of nomination pertains to the President of the Republic upon the recommendation of the Chambers, while Finland is a case of its own.

Elsewhere the preference is given to the practices that tend to reinforce his authority and to create support that should be completely independent from volatile political majorities. It is particularly the case of the countries, where the figure of the Ombudsman is still new and controversial, thus creating the necessity to underpin his independence. In Russian Federation in particular, Commissary is elected via a complex procedure of the presentation of candidates and voting in order to emphasise the authority of such body (Articles 7-14 of the Federal Constitutional Law of 12/02/1997).

The Nordic countries require simple majority vote at one of the first meetings of every newly elected Parliament (both in Finland and in Sweden positive opinion of the Committee for the Ombudsman is required, while in Denmark - the opinion of the Legal Committee). In some countries a vote of the Lower Chamber is sufficient, among which is Ireland, Belgium, Holland (with the participation of the Supreme Court and State Audit Court) and in Austria (upon the approval of three major political parties). While in Southern Europe the situation tends to diverge: Portugal requires the majority of two thirds and in Spain the majority of three fifths for both Chambers is obligatory. In Slovenia majority of two thirds in the Parliament is required.

As for the European Ombudsman, he is appointed by the European Parliament (Article 138 E of the Treaty), while his dismissal is in the remit of the Court of Justice, always upon the request of the Parliament.

The independence of the Ombudsman generally makes him irremovable apart from the cases of incompatibility and acquired psychophysical incapacity. This is the case of France, Portugal, Finland and Austria. Most often the dismissal of the

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Ombudsman is essentially the prerogative of the Parliament, and it can be exercised only in cases of intentional wrongdoing and gross negligence, in which also a judge could be eventually dismissed (see in particular the case of Holland).

Only in some jurisdictions (Sweden, Denmark, Great Britain and Norway) the motivation of the dismissal could be a generic loss of confidence on behalf of the Parliament which at least in theory can have a political component.

D. Appeals

As it was already shown, the Ombudsman verifies the efficacy of the equity in administrative functions and acts as mediator expected not to exacerbate the conflict, but rather to find a less complex solution in alternative to ordinary judicial and administrative procedures. Thus his characteristic function is to receive appeals against rulings, actions or omissions of the governmental or other public officials, who due to error, negligence or abuse of power violate the rights of citizens.

As for the Russian Federation the Commissary has a specific power of *ex-officio* proceedings in some particular cases such as mass violations of human rights (Article 21 of the Federal Constitutional Law of 1997). On the other hand the *Médiateur de la République* of France and the Parliamentary Commissioner of Great Britain are unable to originate *ex-officio* procedures. In any case the appeals can be presented everywhere with remarkable informality by individuals as well as by associations and other entities (the case of Spain, Portugal and France). Usually the filtering body of the claims does not exist- except for France and Great Britain - and it is Ombudsman himself, who makes a preliminary screening of the solidity of the appeal.

The Ombudsman generally has extensive powers of enquiry, during which he is obliged to inform the parties involved and to observe the adversary principle. This allows the public administration to present its own counterarguments and the citizen to substantiate his reasons of discontent without necessarily opening a judicial procedure. As a rule the Ombudsman cannot appear in court apart from Nordic countries and Russia. In this sense the Russian Commissary has decisively more than average powers, being capable to advance the case to the court, to participate in the judicial hearings personally and via representatives, to invoke disciplinary and administrative rulings, to require from the court and from the prosecutor office the verification of certain rulings,

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to address the Constitutional Court (Article 29 of the Organic Law). The procedure sometimes terminates with the publication of the report, eventually with the notification of the judicial authorities, or simply with the relaying, informally also, of the recommendations to involved public institutions and officials. Ombudsman can never repeal administrative or judiciary acts following the principle, expressed in Russian legislation, that his activity is complementary and not substitutive to the competencies of the other institutions.

E. Ambiguity of the role

In all European legislations (as well as in Canada and in USA), the social utility of Ombudsman is closely related to the contradictory nature of his role. In a certain sense he is an “insider” of the machine of State, exercising upon it an “external” pressure, interpreting the critique of the malfunction of the public authorities. He expresses the obvious interest of the public administration to improve its organisational efficiency by the intervention of the external evaluating mechanism. The civil rights defender is one of the means by which the public administration offers to the citizens a trade-off: self-limitation of powers in exchange of major legitimacy.

The ambiguity of the role of the Ombudsman becomes evident considering the following:

a) he is not the representative of the people, because the role of political representation pertains to other official bodies, but he is still appointed by the democratically elected assembly and can advance proposals for the revision of the administrative mechanisms of the law;

b) he does not belong to opposition, which is typically the role assigned to political forces and parliamentary minorities, but he still enjoys the position of independence from the appointing body, and in Russia’s case also possesses a certain number of powers and immunities that render his action particularly incisive (Articles 2, 12, 15 and following);

c) he is not a judge and thus is unable to pardon sanctions or nullify the decisions of other authorities, but he still can advance solutions inspired by the respect of law and considerations of justice and of socially diffused common sense;

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d) he is also not a lawyer, but rather a “referent” of the citizen, urged to choose alternative strategies on the road of vindication and negotiation;

e) he is not an independent controlling “authority” being unable to issue decision obligatory to other authorities, but still he maintains an autonomous and independent position in relation to the executive power and to body that appointed him, exercising in any case a public function of guarantor and controller being in any case a public official, even while not always recognised as an institution of the State (which is instead a clear role of the Commissary of the Russian Federation; see article 40 of the Constitutional Law).

This contradictory nature of the Ombudsman is to be considered rather a resource than a problem, because it contributes to the evolution of the administrative law firmly based on negotiation and cooperation with the citizen, who is the final recipient of any public measure. The fact itself that the Ombudsman is, in a broad sense, a body of the Public Administration and not of the civil society allows him to present himself to the public as an important official channel for transmitting the claims of the citizens to the political and administrative decision makers.

Thus we can consider Ombudsman and similar figures as a manifestation of the general phenomenon of the *rapprochement* between the institutions and the civil society. But in order to make this ambiguous “magistrate of persuasion” play an important role for both parties involved -i.e. civil society and the State - it is necessary that Ombudsman should be a universally trusted institution due to its *visible* impartiality and *visible* efficiency.

According to the extensive research of Gabriele Kucsko-Stadlmayer, in the course of the development of the institutions, a strong typological differentiation was notable. The differences lie in legal aspects – the organisation, the scope and the procedure of the institution. Ombudsman institutions can, thus, be categorised as one of the following three different “types”⁴⁸: a) “Basic or classical” model, b) “rule of law” model, and c) “human rights” model.

⁴⁸ Kucsko-Stadlmayer, in Kucsko-Stadlmayer (ed.), European Ombudsman-Institutions, 61 ff.

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The “basic model” or “classical model” of the ombudsman⁴⁹ comprises those powers assigned to almost all such institutions: Extensive powers of investigation, recommendations and activity reports to the public, but no powers of coercion. Often this restriction of the ombudsman’s powers in this model is seen as the institution’s main characteristic. Its effectiveness is achieved through investigations, the special authority of the incumbent and “soft pressure” aiming at consensual solutions. This is a widespread and very successful model that we find prominently realized in Denmark, Norway, the United Kingdom and the European Ombudsman⁵⁰.

The “rule of law” model⁵¹ of Ombudsman has additional measures of control in addition to the traditional “soft” powers. They serve to compensate deficiencies of legal protection and have the scope to protect the legality of administration more efficiently. The powers that are assigned to this type of ombudsman in order to strengthen their authority are diverse – they may include the right to appeal to ordinary or administrative courts, the right to contest laws and regulations before the constitutional court or the right to start criminal and disciplinary prosecutions of civil servants⁵². In some jurisdictions – mainly in newly created democracies – ombudsmen do have partial power also to control the judiciary, sometimes including even the substance of the jurisprudence, to an extent. Some of the best-known examples are Portugal, Spain and Bosnia-Herzegovina. The Ombudsmen of Sweden, Finland and Poland are entitled to extensively control the jurisdiction – even of the substance of jurisprudence. In other words, in these countries, the judiciary is subject to Ombudsman control to the same extent as the administrative branch.

Finally, a third model can be defined – one in which the measures of control also exceed the soft powers of the basic model, but specifically serve the observance of human rights and fundamental freedoms. This is the “human rights model”⁵³. In this model, the ombudsman does not only have the power to contest before constitutional

⁴⁹ Concerning the Basic Model cf *Kucsko-Stadlmayer*, in Kucsko-Stadlmayer (ed.), *European Ombudsman-Institutions*, 61 f

⁵⁰ Cf *Kucsko-Stadlmayer*, in Kucsko-Stadlmayer (ed.), *European Ombudsman-Institutions*, 62.

⁵¹ Concerning the Rule of Law Model cf *Kucsko-Stadlmayer*, in Kucsko-Stadlmayer (ed.), *European Ombudsman-Institutions*, 62 ff.

⁵² Cf *Kucsko-Stadlmayer*, in Kucsko-Stadlmayer (ed.), *European Ombudsman-Institutions*, 63.

⁵³ cf *Kucsko-Stadlmayer*, in Kucsko-Stadlmayer (ed.), *European Ombudsman-Institutions*, 64 f.

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courts, but is also vested with preventive powers, which give him the ability to influence the political process and public awareness by advising state organs on the implementation of human rights, reporting on the general situation in the field of human rights, tasks of education, information and research in the field of human rights, cooperation with NGOs and international organisations. The activities of these ombudsmen are focused on the protection of human rights; sometimes exclusively. This model is popular in the relatively young democracies of Central and Eastern Europe, for example, in our case study here, the Russian Federation, but also in Ukraine, Georgia, and in Central Asia.

Many times Ombudsman Institutions combine elements of different types. Every ombudsman has his own political background and his own history. The establishment of every ombudsman institution was influenced by already existing institutions, while new solutions corresponding to each country's particular legal order were always sought. The models vary in scope and focus even within the outlined categories.

2.5. Relations with other mechanism for the protection and promotion of fundamental rights

The principal method as laid down in the law is an investigation to establish the facts regarding the actions of the administrative authorities and their staff. As a rule, this results in a report. The other method is based on early intervention (brief mediation between an authority and the complainant) by the ombudsman. These are frequently cases in which a complainant has been waiting for some time for a response from the involved authority, or cases that are obvious and the authority can promptly change its attitude and admit its improper behaviour.

When an investigation is opened, ombudsman staff often first try to reach a friendly solution. This method, called the 'intervention method', is quite successful as most of the inquiries started (between 55% and 88%) are closed in this way. The intervention method is the informal approach; ombudsman staff function as mediators, by arranging some contact between the complainant and the office complained of. Often, a meeting with or an explanation and/or excuse by a public servant will suffice.

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In these cases, no report is drawn up. In principle a report follows when an attempt at intervention is not successful and when a re-examination of the case is not possible. This means that the development of the demands of proper governance is based on complaints where the public authority and the complainant were unable to reach an agreement.

Evidently, local ombudsmen and the National Ombudsman expend a great deal of their efforts on interventions and not on writing reports. Although reports can be expected to be most interesting from a normative perspective, problem-solving methods are of interest from the perspective of having mistakes rectified, and hence for the realisation of the principles of proper governance in practice.

There is a wide variety of actions, representing many of the occasions of contact between government and citizens, which can be subject to complaints: administrative legal acts as far as no administrative court is admissible, civil legal acts, correspondence, personal contacts by telephone or at a counter, or in another concrete social context. So the main task of the ombudsmen is to provide recourse against individual conduct by persons in government service and against the side-effects of bureaucracy. In this respect also the observations by Bovens and Zouridis in NJB14 are interesting. They posit that over the last decade government bureaucracy has changed from a street-level bureaucracy with old-fashioned methods to an ICT-system level of bureaucracy with information websites and computer decisions. The confrontation of the moderate citizen with this new model of bureaucracy causes a great deal of specific communication problems, which can only be solved by human contact, preferably with the help of impartial institutions such as the ombudsmen. Specialists in administrative law are nowadays discovering the phenomenon of the so-called “circumstantial administrative law”. Administrative acts are surrounded by acts of procedure such as respecting the term of decision-making, acts of preparation and many non-legal acts, and the conduct of politicians and civil servants. Because of the nature of administrative law, with its focus on the legal consequences of acts, this side of administrative behaviour is often not the object of review by the administrative courts. Here it is only the ombudsman who can protect. But the ombudsman is not a judge and he may not act as a judge. Nevertheless, he has a supplementary function with regard to recourse against the administration. This function is fourfold:

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1. Administrative acts, against which one cannot appeal to an administrative court, can be the object of a complaint to the ombudsman. Obviously this is not a “genuine” supplementary function, as the ombudsman cannot pronounce any binding judgments. Nonetheless, in almost 90% of cases the administrative authorities do follow the decision of the ombudsman. The conclusion is that, although the ombudsman is not a judge, his decisions have an important effect as far as the complainant is concerned.

2. The supplementary function is especially manifest with regard to complaints for which – if they would have been of a greater material value -a civil law action would have been appropriate. But civil procedure is difficult and expensive and with regard to social behaviour by government officials in direct personal interaction with citizens it is questionable if the civil courts would be able to handle these small claims adequately. In all these cases the path to a judicial procedure is not accessible in practice, and an ombudsman is the only institution which can offer effective protection.

3. It often occurs that the ombudsman is able to make an important contribution to the proper functioning of the system of administrative recourse. Therefore the ombudsman often intervenes in the objection procedure in order to obtain a more expeditious decision. The objection procedure precedes the procedure before the administrative court. In the same way the ombudsman intervenes in those situations in which the authorities do not promptly or adequately follow up the decisions of the judicial courts.

4. The judiciary has developed criteria for legality and unwritten rules for proper administration over many years. These criteria are partly codified in the General Administrative Law Act. At the beginning of the existence of his office, the Ombudsman relied on these same standards, when they had not yet been elaborated in legal regulations. In 1987 the second National Ombudsman, Mr. Oosting, developed a list of propriety requirements. These criteria fall into two groups. The first group embodies the notion of the rule of law, the requirement that the government should act in accordance with both legislation and unwritten legal principles. The second group of criteria for assessment is proper in every other respect, especially concerning the procedure in administrative conduct in relation to the citizens. In the context of an ombudsman investigation and an ombudsman report and conclusion, these standards of proper administration are in a class of their own. As stated above, the task of

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ombudsmen is to determine whether or not the administrative authority has acted properly in the matter under investigation. When is an action proper or improper? It is essential for the authority and for transparency that the ombudsmen should provide the reasons underpinning their decisions. These reasons have to be accessible and understandable. The best way to do that is to develop a system of standards for the assessment of administrative conduct in a variety of contexts.

Observing the British situation, Gavin Drewry states: “most individual ombudsman cases have limited significance, but ombudsmen are a deterrent to misadministration and cumulatively their decisions help to propagate principles of good administrative practice.”⁵⁴ The same can be said about the Dutch situation. But there is more than just that.

Ombudsmen, together with the administrative courts, contribute to the pillars of wisdom of good administration. Their judgements and reports are a source of ethics for public administration. That is why the work of ombudsmen is important for the development of concrete, ethical codes of conduct. A clear example is the code of good administrative behaviour of the European ombudsman. The European ombudsman belongs, together with the major ombudsmen in many European countries, to an extended family, which are developing codes of conduct for good administration, visualising the concept of a European human right, as laid down in the proposed European constitution. The operation of this ethical concept of good administration as a human right is not only based on administrative legal rules, but is also based on complaints concerning a great variety of interaction between government authorities and citizens.

⁵⁴Parochial stopgap or global panacea, in administrative law facing the future, old constraints& new horizons, Peter Leyland and Terry Woods, London, Blackstone Press 1997, p.83.

Chapter 3.

**The Establishment of the Ombudsman in
the Russian Federation**

The Establishment of the Ombudsman in the Russian Federation

3.1. *The first phase of the establishment: from Peter the Great until the adoption of the Federal Constitutional Law (1997)*

In order to inquire into the establishment of the Ombudsman Institution in Russia it is necessary to refer to the historical events which led to such innovations. Following a defeat against the Tsar Peter in 1709, King Charles XII of Sweden signed the ordinance establishing the institution of the King's Highest Ombudsman. Ironically, a few years later, Peter the Great by *ukaz* (decree) of 12 January 1722 created the post of Procurator-General⁵⁵ "as an official independent of local influence to act as "the eye of the Tsar" in supervising the conformity to law of all government departments, officials and courts."⁵⁶

After the 1917 Revolution, Lenin argued for the continuation of the centralised Procuracy.⁵⁷ In a letter of 1922 to Stalin, he wrote that "...the law must be uniform, and

⁵⁵ Z. L. Zile, *Ideas and Forces in soviet Legal History*, Oxford, Oxford University Press, 1992, p.14; and G. T. Reid, "The Ombudsman's Cousin: the Procuracy in Socialist States", *Public Law*, vol.2, 1986, pp. 311-326, in particular p. 312 ff. Zile follows the renown historian Vasily VaKlyuchevsky in considering that, although it was contrary to his usual practice of leaving the elaboration of the new laws to his Senate, Peter worked on this innovation himself, studying many drafts and foreign precedents.

⁵⁶ Peter I Highest Decree ordered to the Governing Senate: "It is of need to have a Prosecutor General and a Chief Public Prosecutor, and also one Public Prosecutor in every Board to the Senate who should report to Prosecutor General". During the establishment of the Prosecution Service by Peter I, it was tasked "to destroy or weaken the evil arising from disorders in actions, injustice, bribery and lawlessness".

On January 18, Emperor Peter I appointed Count Pavel Ivanovich Yaguzhinsky as the first Prosecutor General of the Senate. When representing the Prosecutor General to the senators Peter I said: "Here is my eye with which I shall see everything". This idea was reflected in the Decree of April 27, 1722 On the position of Prosecutor General: "And since then this position shall be like our eye and attorney in the state affairs". This Decree set the main duties and powers of the Prosecutor General in supervising over the Senate and managing subordinated prosecution authorities.

In different periods of the Russian history the Prosecutor General acted not only as the guardian of the law, but also as the Minister of Finance, Minister of Internal Affairs. It was especially evident during the reign of Catherine II and Paul I. Since 1802, the Prosecutor General simultaneously became the Minister of Justice. The judicial reform of 1864 established the Fundamental principles of judicial transformations which, in terms of judicial organization, defined that "special public prosecutors should have colleagues due to the great number of complicated matters they deal with" and that "prosecution authority should be separated from the judicial one". Cfr. Zile, op.cit.

⁵⁷ On November 24, 1917, the public supreme authority — the Council of People's Commissars accepted Decree 1 On Courts abolishing courts, existed up to the October Revolution, institutes

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the root evil of our social life, and of our lack of culture, is our pandering to the ancient Russian view and semi-savage habit of mind, which wishes to preserve Kaluga law as distinct from Kazan law...The procurator has no administrative powers...his rights and duties are reduced to one function; to see that law is truly uniformly interpreted throughout the Republic, notwithstanding differences in local conditions, and in spite of all local influences...”.⁵⁸

Finally establishment of the Ombudsman Institute in the Russian Federation took place only two centuries after Sweden. Unlike Poland and particularly the countries of Western Europe and America, the concept of the institution of the Ombudsman in the Russian Federation did not originate within the academic community, publications of law professors, or public policy. Although individual articles did appear in scientific periodicals during the Soviet period,⁵⁹ they did not become the subject of public discussions (which, with rare exceptions, were not held in the USSR)⁶⁰ and did not involve concrete initiatives, particularly as in the USSR there already existed an institution of the Public Prosecutor's Office,⁶¹ performing the function of general surveillance as well as receiving complaints and applications from citizens, which foreign researchers regarded as analogous to the Ombudsman

of examining magistrates, prosecutorial supervision, and jury and private lawyers. Their duties were taken on by newly created people's courts and revolutionary tribunals. Special investigative commissions were set up to conduct preliminary investigation.

⁵⁸ V.I. Lenin “Dual Subordination and Legality”(Letter to Stalin in 1922), in V.I. Lenin *Collected Works* (4th ed.) Vol. 32, Jurisprudence, Moscow, 1966, p. 365; and see G. B. Smith, *The Soviet Procuracy and the Supervision of Administration*, Kluwer, Alphen an der Rijn, 1978, p.6

⁵⁹ Yu.Shemshuchenko, G.Murashin, “Ombudsman institution in modern bourgeois law”, *Soviet state and law*, 1, 1971, p. 139-156

⁶⁰ Such an exception was, for example, the discussion concerning the turn of northern rivers resulting in the victory of opponents of the project approved by resolution of the CPSU Congress.

⁶¹ Article 129 of the Constitution of the Russian Federation defines that the Prosecution Service of the Russian Federation shall constitute a uniform centralized system of subordination of the low-level public prosecutors to the higher ones and to the Prosecutor General of the Russian Federation. Moreover, the Constitution of the Russian Federation establishes a special procedure of appointment and dismissal of the Prosecutor General of the Russian Federation – by the legislative authority (the Council of Federation) upon representation of the President of the Russian Federation.

The Federal Law On the Public Prosecution Service of the Russian Federation (as amended by the Federal Law of February 10, 1999) of November 17, 1995, that was further on changed and amended, became a big step toward stabilization of the system, formation of its state and legal status.

The Establishment of the Ombudsman in the Russian Federation institution.⁶² Moreover, in the Soviet Union there also existed a wide-ranging system of dealing with the “letters and applications” of citizens, which, along with the control function over citizens themselves, partly performed a feedback function, though to a rather limited extent.⁶³

A discussion about the concept of the Parliamentary Ombudsman (or Human Rights Commissioner) as an institution which could, in essence, be set up locally, did not take place within academic circles, but rather among Soviet dissidents. According to the well-known human rights activist and first Russian Ombudsman S.A. Kovalyov, at dissidents’ meetings during the 1960s and 1970s, besides discussions about the concrete situation in the country, plans for the publication of the “Chronicle of Current Events” and the arrests of fellow participants, the “basic principles of law and the reasonable and free organization of public life” were also considered. In doing so, however, the majority of the participating in these debates never presumed that such ideas could be realised within their lifetime, and with their direct involvement. However, this was exactly what happened.

In the spring of 1990, S.A. Kovalyov was elected the People’s Deputy of the Russian Soviet Federative Socialist Republic (RSFSR), and soon became the head of the Human Rights Committee in the Supreme Council of the RSFSR. This committee drew up drafts of the new Constitution of Russia pertaining to human rights and the Declaration of Rights and Freedoms of Man and of the Citizen of the Russian Federation. Under the rapid development of democratic reforms, the ideas discussed within dissident circles (which had formerly seemed to have little chance of being put into practice (especially with their direct participation)) also appeared to be in demand.

⁶² On June 20, 1933, the Prosecution Service of the USSR was formed. It was entrusted with the following duties: - to supervise over conformity of resolutions and orders of separate institutions of the USSR and the Union Republics and local authorities to the Constitutions and Resolutions of the USSR Government; - to - supervise over proper and uniform law enforcement by judicial institutions of the Union Republics with the right to demand and obtain case files at any stage of proceedings, to appeal against sentences and judicial decisions to higher courts and to suspend their execution; - to initiate prosecution and appear for the prosecution in all juridical instances of the USSR; - to supervise, upon special regulations, over legality and accuracy of actions of the Unified State Political Department (OGPU), militia, criminal investigation department, activities of the corrective labor institutions; - to perform overall management of the prosecution authorities and the Union Republics.

⁶³ A. Yu. Sungurov, *Functions of political system: from stagnation to post-Perestroika*, ED, Saint Petersburg, 1998

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Deputies Sergey Sirotkin and Boris Zolotukhin were also actively involved in this process.

The first reference to the Ombudsman institution in Russian legal documents goes back to the autumn of 1990: the institution was presented as a separate article in the first wording of the new draft constitution of the RSFSR, drawn up by the Working Group of the Constitutional Commission of the Congress of People's Deputies of Russia. This article was also preserved in later wordings of the draft constitution, and thus the idea of the Ombudsman institution became a deeply rooted legal notion. In the initial versions of the draft, the Ombudsman was named the State Commissioner of the Supreme Council of the Russian Federation for Human Rights; in subsequent versions, the Parliamentary Human Rights Commissioner and the Human Rights Commissioner of the Supreme Council of the RSFSR.⁶⁴

The concept of the Russian Ombudsman received its first official statutory recognition with the adoption of the Declaration of the Rights and Freedoms of Man and of the Citizen of the Russian Federation (1991) by the Supreme Council on 22 November 1991. The final, fortieth Article of the Declaration stated that parliamentary control over the observance of the rights and freedoms of man and of the citizen in the Russian Federation was imposed on the Parliamentary Human Rights Commissioner. It was presumed that the Parliamentary Commissioner would be nominated by the Supreme Council for a period of five years. He would be accountable to the Supreme Council and have immunity similar to that of a deputy. The authority of the new official, as well as the procedure of its implementation, would be regulated by a special law.

However, the law "On Ombudsman of the Russian Federation" was passed four years after the adoption of the new Russian Federation Constitution of 1993. The process of its passage through the Supreme Council and then through the State Duma reflected all of the ups and downs of the political struggle of the time. The first version of the draft law "On the Parliamentary Commissioner for the Rights of Man and of the Citizen of the Russian Federation" was developed by V.V. Boitsova and was submitted to the Human Rights Committee of the Supreme Council of the Russian Federation in

⁶⁴ N.A. Tsymbalova, "Establishment history of the Ombudsman institution in Russia", in *Commissions and Human Rights Commissioners: experience of the Russian regions*, Norma, Saint Petersburg, 2002, pp. 105-114

The Establishment of the Ombudsman in the Russian Federation 1992. The draft law contained features similar to the classical model of the Parliamentary Ombudsman.

According to the draft law, “the Commissioner is established for the purposes of:

- controlling the observance of laws in the sphere of the rights of man and of the citizen,
- supplementing the instruments of the legal protection of the person,
- improving the system of state power and administration,
- strengthening trust,
- creating harmony between citizen and state,
- ensuring high standards of competence, justice, and efficiency in applying laws.”

Under this draft law, the Commissioner is nominated and removed by the State Duma; however, he fulfils his duties independently, acts at his own discretion, and is not bound by any imperative mandate. The Ombudsman receives complaints through deputies: a Special Committee of the State Duma on the Affairs of Parliamentary Commissioner should be set up in order to render him assistance and control his activities.⁶⁵

However, the draft law finalised at the Committee was never submitted for consideration, due to the fear that a protégé of the national Communist majority of Khasbulatov’s Supreme Council could be nominated for Ombudsman, thus discrediting the idea.⁶⁶

In the summer of 1993, when work was being carried out on the new draft Constitution within the framework of the constitutional meeting under the aegis of the President of the Russian Federation, there were no provisions for the Human Rights Commissioner in one of its versions. This was possibly due to the definition of “parliamentary,” which provoked a negative response during the period of confrontation between the President and the Parliament. S. Kovalyov showed his persistence in this situation and was vigorously supported by B. Zolotukhin and S. Filatov. As a result, the provision for the Ombudsman was restored, although in a briefer and more indefinite

⁶⁵ A.A. Liverovsky et al., “On the legal status of the Human Rights Commissioner” *Proceedings of the Saint Petersburg Institute of Law*, 2, 1999, p. 76.

⁶⁶ S. Sirotkin. “As a foreword”, in E. Lentovska, *How the work of the Civil Rights Commissioner started*, 1998, pp. 7-12.

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form than that of earlier drafts. As a result of the referendum held in 1993, the new Constitution was adopted recording the existence of Human Rights Commissioner.⁶⁷

Meanwhile, certain steps were taken to set up the Ombudsman institution even prior to the adoption of this law. The first state human rights organisation at the federal level was the above-mentioned Parliamentary Human Rights Committee, which was terminated as a result of the dissolution of the Supreme Council following the famous decree of the Russian Federation President No. 1400 dated 21 September 1993, “On incremental constitutional reform in the Russian Federation.”

The second historical predecessor of the Russian Ombudsman was the Human Rights Commission under the President of the Russian Federation, established by a decree of B.N. Yeltsin at the end of September 1993. The Commission comprised many well-known human rights activists, public figures, lawyers, journalists, and writers. According to provisions on the Commission approved by the same decree, it was an advisory and consultative body under the President of the Russian Federation, promoting the implementation of the constitutional authority of the head of the state as guarantor of rights and freedoms of man and of the citizen⁶⁸. Sergey Adamovich Kovalyov, previously the Head of the Human Rights Committee in the Supreme Council, became Chairman of the Commission.

Although there was no law “On the Commissioner,” on 17 January 1994, the State Duma, during its first convocation and at the very beginning of its work, nominated the first Ombudsman in the Russian Federation within the framework of the “package agreement” on divided positions between factions, having used the provisions on the direct effect of the constitutional norms. This was Sergey Kovalyov (of the Russia’s Choice faction), who, at the same time, continued to act as the head of the Human Rights Commission under the President of the Russian Federation (from September 1993 to January 1996). Soon, the presidential decree “On Measures Ensuring

⁶⁷ Article 103. The following shall be within the jurisdiction of the state duma: e) appointment and dismissal of the commissioner for human Rights, who shall act according to Federal Constitutional Law; Constitution of the Russian Federation. – Moscow: Legal Literature, 1993. – 98 p

⁶⁸ Art. 80.2. Constitution of the Russian Federation. The President of the Russian Federation shall be guarantor of the constitution of the Russian Federation, of the rights and freedoms of man and citizen. According to the rules fixed by the Constitution of the Russian Federation, he shall adopt measures to protect the sovereignty of the Russian Federation, its independence and state integrity, ensure coordinated functioning and interaction of all the bodies of state power.

The Establishment of the Ombudsman in the Russian Federation the Constitutional Functions of the Human Rights Commissioner (1994)” was issued.⁶⁹ By the same decree, Sergey Kovalyov was charged with preparing the establishment of a fully-fledged Ombudsman institution after the passing of the corresponding law, and was even accorded a small staff to make this preparation.

This is how S. Kovalyov himself described this activity: “What kind of work was it? First, we organised an international conference. The money for this was not provided by the State Duma, but by the United Nations Development Programme. The conference was held in Moscow and was attended by many European Ombudsmen. The philosophy of this service was discussed to a certain extent, but it mainly focused on important technical details – on how it should be organised. Secondly, using the funds specially allocated to the Commission by Yeltsin specifically for the preparation of the Ombudsman institution, we found three persons, and the chief one among them was recommended by Egor Timurovich Gaidar. These were experienced progressive officials well versed in computer programmes. They developed many models of organising the work. It was very clear that this institution would receive a huge number of complaints. There were questions regarding how it should be structured, how to organise the document flow, what should reach the first person and how, and how should the procedure be organised? It should be pointed out that these guys really did a great job.”

⁶⁹ Decree of President of the Russian Federation "On measures ensuring constitutional functions of the Human Rights Commissioner" dated 04.08.94, n. 1587, Rossijskaya Gazeta, n. 150, of 09.08.94. It read:

“1.This document determined that prior to the adoption of the corresponding federal constitutional law, the implementation of the constitutional functions of the Ombudsman would be ensured by his exercising the authority granted to the Chairman of the Human Rights Commission under President of the Russian Federation. 2.It was determined that Public and local authorities and their officials had a two-week period: -to present information necessary for the Ombudsman to exercise his authority according to his request, -answer his addresses relating to the infringement of the concrete rights of people, -and send him all of the acts adopted by them and containing standards related to the rights and freedoms of man and of the citizen. 3The provision of the activities of ombudsman had to be organized within 2 weeks period by the relevant structural departments of the President Administration office of the Russian Federation. 4. Head of the President Administration office of the Russian Federation was appointed to be responsible for this work. 5. Federal Agency of the Mass Media and information under the President of the Russian Federation has to organize and develop all necessary information technologies, providing the activities of the Ombudsman.6. The law is coming into force from the date of its publishing and valid until the approval of the federal constitutional law on ombudsman”.

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In parallel, the State Duma also considered the draft of the corresponding federal constitutional law, which was almost unanimously adopted in the first reading on 21 July 1994, although its further promotion was deferred. It was put to a vote several times before the end of the year, but never received the necessary constitutional majority of votes. The adoption of the law was blocked by State Duma factions who disagreed with S. Kovalyov's candidature for the post (CPRF, LDPR, and some others), although the draft itself did not provoke any objections. According to this Law the new Ombudsman had the official title (although he was known in Russian also as the ombudsman, most probably due to the mistake in translation by the international experts, participation to the first steps of the establishment of the institute) of "Plenipotentiary for Human Rights", with a much wider remit than is usual in Western Europe, investigating human rights abuses as well administrative mal-administration. But, to this day, there remains a serious problem. If the Ombudsman is to "act in accordance with federal law, then there must be such a law. Sergei Kovalyov, with a team of experts, himself prepared a draft, which was approved on a second reading by two-thirds of the state Duma, and then by a three-quarters of Federal Council.

A copy of the draft Law was based, according to the Explanatory Note set out in the same publication, included:

- the separation of powers;
- independence of the ombudsman in considering and adjudicating on concrete cases;
- the non-political character of the ombudsman's activities, and the incompatibility of the post of ombudsman with the status of deputy or active participation in political life;
- openness in the work of the ombudsman and co-operation with non-governmental human rights organisations.

According to Article 1 of the draft law, the goals of the ombudsman were to be "the strengthening of the guarantees for defence by the state of the rights and freedoms of the human being, by means of the recognition of and respect for such rights in the activities of state organs and responsible persons. With the means decreed by this Law, the ombudsman helps to bring about the vindication of rights, which have been violated, the improvement of the legislation of the Russian Federation on human rights and

The Establishment of the Ombudsman in the Russian Federation bringing into conformity with international standards...” By Article 8, he was to hold office for a single term of 5 years.

Article 9 was directly relevant to Kovalyov himself, although he effectively disregarded it: the ombudsman was not to be a deputy of the Council of the Federation or any other organ of representative power. He was not to take part in public political activity, or to be a member of any political party or movement, and must cease any such activity within 14 days of appointment. By the Article 11 he could only be removed by a two-thirds vote of the State Duma, on specified grounds.

At the end of 1994, after the beginning of the First Chechen War, S.A. Kovalyov held a clearly anti-war position which caused discontent among certain pro-presidential fractions in the Duma.

However, his opponents were not able to gather the number of votes necessary to dismiss S. Kovalyov from the office for a long time, until March 1995, when, on the initiative of S. Baburin, the Duma adopted a resolution stating that “as long as there is no law on the Ombudsman, his position should be regarded as vacant.”⁷⁰

Therefore, the human rights activist and first Ombudsman of Russia, S. Kovalyov, lost his position without finishing work on the organisational and technical preparation of the institution.

However, the struggle around the law continued. Now liberal factions were opposing its adoption: they were against the election of a CPRF representative. In order to block this situation, Professor V.L. Sheinis, a deputy from Yabloko, proposed an original provision found in no other law around the world which stated that for inclusion into the list for the secret ballot two thirds⁷¹ of the votes were required, while for the election only half was needed.

⁷¹ The Federal Constitutional Law On the commissioner on human rights in the Russian Federation. Article 8. 1.The Commissioner shall be appointed to the post and dismissed from the post by the State Duma by a majority vote of the total number of the deputies of the State Duma by secret ballot. 2.The State Duma issues a decree on the appointment to the post of the Commissioner within 30 days after the expiry of the term of office of the previous Commissioner. Every candidacy submitted to secret ballot during the appointment of the Commissioner and nominated in accordance with Article 7 of the present Federal Constitutional

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As a result, the law was adopted by the Duma in March 1996; however, it was blocked by the Federation Council, which objected to the possibility of the creation of regional representative offices in constituent entities of the Russian Federation by the Ombudsman. Following all of the approvals, the final version of the law was adopted by the Duma in December 1996 and signed by the President of the Russian Federation on 26 February 1997. This law ensured the Federal Ombudsman's substantial independence and capabilities when considering the complaints and addresses of residents of the country. Among the disadvantages of the law is the fact that the Ombudsman has no right of legislative initiative or right of access to the Constitutional Court.

3.2. Second phase of the establishment of the Ombudsman in the Russian Federation (1997-2004)

However, even after Federal Constitutional Law No. 1 came into effect, the Ombudsman's post remained vacant for over a year. Two attempted elections, in April and September 1997, produced no results: none of the candidates polled the constitutional majority of votes required under the law to be entered into the list for the secret ballot. The following people were recommended for the Ombudsman's post: O.O. Mironov (CPRF), V.B. Isakov (Agrarian Group), E.B. Mizulina (Yabloko), S.A. Kovalyov, and others. Oleg Mironov received the greatest number of votes in both elections.

The Ombudsman was elected only as a result of the conclusion of a new coalition agreement between factions when, in the spring of 1998, the Chairman of the Defence Committee General, Lev Rokhlin, switched over from the opposition to the government. The Communists agreed to his reelection, and the pro-government faction Our Home – Russia agreed to support a candidate from the CPRF for the position of Human Rights Commissioner. As a result, on 20 May 1998, Oleg Orestovich Mironov received 340 votes (based on rating voting results), and on 22 May was nominated for the Ombudsman's position by a secret ballot and took the oath.

Law, shall be included in the list for the secret ballot by two-thirds of the total number of the deputies of the State Duma.

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The post of Ombudsman has generally been a highly political position, and many believe that it is of strictly symbolic value.

O.O. Mironov, together with his office, did a great deal for the establishment of the new institution in the Russian Federation. They started their work virtually from scratch, since all of the results received under the guidance of S.A. Kovalyov remained unused. One of the outcomes of this activity, along with the protection of the rights of many thousands of people,⁷² was the appearance of numerous publications generalising the working experience of both federal and regional Russian Ombudsmen.⁷³ Majority of the international agreements were signed during the Term of Mironov's activities, for example in December 1999 he concluded the Cooperation Agreement with the Moscow Helsinki Group and after with the main national human rights organisations.

On his initiative, a Department for Criminal Justice was created, which deals with individual torture complaints. Mironov reported to Human Rights Watch that about 28 percent of the received complaints were concerning violations in the criminal justice system.⁷⁴

Using his right under the law to raise his concerns with government officials, Mironov sent a letter to the then Minister of Internal Affairs, Sergei Stepashin in December 1998, in which he expressed concern about the widespread nature of torture and asked Stepashin to take the necessary steps to end it.

In the past, Russian citizenry has traditionally displayed a generalised characteristic to accept the decision of the state without question. The main goal of the Ombudsman office in these years was to defend the basic human rights. Second important component of the work of the Ombudsman's office was to inform the people

⁷² Ombudsman of the Russian Federation 2003 Report. More then 155.000 claims and complaints were reviewed by the Ombudsman in the period from 22.05.1998 until 02.2004. average increase comparing to the previous year was around 10%.

⁷³ O.O. Mironov, Protection of human rights, *Collection of documents. 1998-2000*, Legal literature, Moscow 2001

O.O. Mironov, *Restoration of violated rights of citizens. Examples of Ombudsman's advocacy in 2001*, Jurisprudence, Moscow, 2002

O.O. Mironov, Ombudsman institution in the Russian Federation (establishment, formation, activity). Bibliographic reference book, Jurisprudence, Moscow, 2003

⁷⁴ "The most serious violations of human rights happen at the moment of detention, when physical methods of coercion are used, when detainees are beaten up and tortured", Diederik Lohman, *"Confessions at any cost: Police torture in Russia"*, Human rights Watch, New York, Washington, London, Brussels, 1999

The Establishment of the Ombudsman in the Russian Federation about their rights as citizens and to communicate the means that are available to make lawful challenges against discriminatory actions by state bodies.

Bringing public access to public information and disseminating information were and are amongst the Ombudsman's critical activities. But the operational objectives of the Federal Commissioner's office suffered from a major problem – big challenge to extend its operations across all of the territory of the Russian Federation.⁷⁵

The first regional Ombudsman was elected in the Republic of Bashkortostan (Ch.B. Vagizov, elected in 1996, reelected in December 2000 for the second term); another Ombudsman for Sverdlovskaya Oblast (V.V. Mashkov, later after the death of Mashkov, in May 2001 new Ombudsman T.B. Merzlyakova) was elected in 1997. One more region in December 1998 – Smolenskaya Oblast (V.N. Osin) and then starts rapid diffusion of this institution on the territory of the Russian Federation – Saratovskaya and Astrakhanskaya Oblasts in 1999, Volgogradskaya Oblast and the Republic of Tatarstan in 2000. 9 subjects of the Russian Federation in 2001 (Republic of Kalmykia, Amurskaya Oblast, Krasnoyarski krai, Kaliningradskaya Oblast, Permskaya Oblast, Moscow Oblast, Kemerovskaya Oblast, Samarskaya Oblast, Lipetskaya Oblast). 4 subjects of the Russian Federation in 2002 (Republic Komi, Krasnodar Krai, Arkhangelsk Oblast, Stavropolski Krai). 3 subjects of the Russian Federation in 2003 (Altaysky Krai, Republic Sakha, Republic of Ingushetiya).

The complaints received by the regional Ombudsmen in those years were related to (decreasing order):

1. Rights on housing;
2. rights for social provision;
3. right on timely and impartial judicial protection;
4. non enforcement of the court's decisions;
5. labour rights;

⁷⁵ All except 9 branches of the network operation on the beginning of 2004 were located west of the Urals. This had an implication on the geographical balance of services offered to citizens across the country. It is actually a breach of Russian's citizens constitutional rights, which has to be still resolved.

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6. rights of the man in the penitentiary institutions;
7. rights of immigrants and people who was forced to change their residence;
8. women and children rights;
9. right on the choice of place of residence;
10. right on the access to information on the public institutions;
11. rights of members of the armed forces;
12. rights for free elections;
13. international rights.

Its worth to mention that thanks to the programmes of the international cooperation (UNICEF and Ministry of Labour and Social Protection) the office of Ombudsman for children rights was opened in more then 10 subjects of the Russian Federation. (St Petersburg, Moscow, Volgogradskaya, Samarskaya, Ivanovskaya, Kaluzhskaya, Kemerovskaya, Novgorodskaya Oblasti, Republic of North Osetiya, Sakha, Chechen Republic, Krasnoyarsk Krai.)

The initiative of the establishment of the Ombudsman for children rights was coming out also on the federal level. Draft law “On Ombudsman for Children rights in the Russian Federation” was submitted to the State Duma in March 2001, and again in May 2002.

In the latest version of the draft law, the Ombudsman has to be appointed and dismissed from its position by the State Duma (which does not correspond to the Constitution of the Russian Federation). The competence of the Ombudsman for children mainly duplicated the competence of the Federal Ombudsman of the Russian Federation, and the position and the level in the system of the state bodies were not clearly defined.

Initiatives on establishment of other specialised ombudsman were discussed, for example on the rights of members of the armed force, on the rights of prisoners, etc. Draft Law “On civic control and management of the military organisations in the Russian Federation” was introduced to the State Duma in 1997. This draft Law foresaw the introduction of the position of the Ombudsman on affairs of the members of the

The Establishment of the Ombudsman in the Russian Federation armed forces within the structure of the Federal Ombudsman of the Russian Federation. He was to be appointed by the state Duma, to be proposed by the Federal Ombudsman and its main objective to be “the protection of rights and freedoms of the members of the armed forces, members dismissed from the military service and members of their families”.

The initiative on the establishment of the Ombudsman for the rights of prisoners was discussed in 2001 in Moscow during the civic Forum, within the panel on “Provision of the human rights in the activities of judicial system”. The position of the Ombudsman for the prisoners rights was established in 2001 in Saratov Oblast in all penitentiary institutions, the Candidates for this positions are to be appointed by the Oblast Ombudsman.

In practice, specialised ombudsmen remain single cases, except for the rapidly increasing number of regional ombudsman for children rights.

In addition to the Federal and regional ombudsman (specialised and of general profile), there were initiatives for establishing such institution at municipal level. Such project was elaborated in Arkhangelsk. In Krasnoyarsk Krai the public advisors to the regional ombudsman were appointed. Nowadays the municipal ombudsman in Krasnoyarsk Krai are appointed by recommendation from the regional public authorities. As practice shows, these are not fully independent ombudsmen, but advisors to the regional ombudsman in that subject of the Federation.

Such opportunity was fixed by the legislation in Smolensk, Amurskaya Oblast's, Altai krai, Republic of Kalmykia and Republic of Bashkortostan.

The position of the ombudsman for children rights was also introduced in some of the municipalities (for example Arzamass raion, Nizhegorodskaya oblast), on human rights defense (Ekaterinburg). These positions, were mainly a part of the local public authorities and were appointed by the head of the municipality. Unique experience of the town Volzhsky in Volgograd oblast where the position of the ombudsman for children rights is public for the deputy chairperson of the Town Duma.

An other interesting experience of specific ombudsman is the “university ombudsman”. Such ombudsman was created in Moscow State University on international relationships (MGIMO), Volgograd department of International

The Establishment of the Ombudsman in the Russian Federation management institute, Bashkortostan State Pedagogical university. The Ombudsman of Saratov oblast from 2002 has introduced the positions for the ombudsman for the rights of participants of the educational process in every school (facultative position). The Ombudsman of the Perm oblast was also planning to introduce the similar position.

3.3. Third phase of the establishment of the Ombudsman in the Russian Federation (2004-today)

Mironov remained in this position for over five years until February 2004, when he was replaced by V.P. Lukin, one of the leaders of Yabloko, at the suggestion of the Russian Federation President V.V. Putin. Thus, V.P. Lukin became the third Ombudsman in the Russian Federation.⁷⁶

V.P. Lukin's election to this post was preceded by a rather tough competitive struggle. On 22 May 2003, the term of Oleg Mironov in the Ombudsman's office expired and, according to the law, the State Duma had to elect an Ombudsman for the next term within one month. Eight candidates were proposed for this position: Oleg Mironov; Vladimir Zhirinovskiy, Vice Speaker of the State Duma (LDPR faction); Pavel Krasheninnikov, Head of the State Duma Committee on Legislation (URF faction); Valery Grebennikov, Head of the State Construction Committee (FOR faction); Sergey Kovalyov, human rights activist (URF faction); writer Maria Arbatova; Vladimir Osipov, Chairperson of Christian Revival Union; and Vladislav Vinogradov, Ombudsman for the Astrakhan Region. According to the results for inclusion in the secret ballot, none of the eight candidates were able to exceed the coveted mark of 300 votes. Pavel Krasheninnikov received the greatest number of votes (283), while much fewer votes were given to Oleg Mironov (167), Valery Grebennikov (128), Vladislav Vinogradov (74), etc. Thus, the elections were not held according to the statutory procedure, and Oleg Mironov continued to fulfil his duties until February 2004, when V.V. Lukin was elected to this post at the suggestion of the President of the Russian Federation, V.V. Putin. The candidature of V.V. Lukin was supported by the 335 votes.

⁷⁶ V. Vyzhutovich, "Playing in defence", *Moscow News*, 6, 2004, p. 7.

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On 17th of February 2004 the chairperson of the State дума of the Federal assembly introduced Vladimir Lukin to the staff of the Ombudsman apparatus.

In contrast to the Ombudsman O.O. Mironov who was holding anti-governmental positions and did not establish deep coordination relationships with Moscow Academic and political circles, Ombudsman V.P. Lukin was originally belonging to this circles and had a very good relationship with the government as he was suggested to this position by the President himself.

On 19th of February 2009, V.P. Lukin was appointed Ombudsman of the Russian Federation for the second term for next 5 years.⁷⁷ The candidature of V.P. Lukin was again suggested by the then President of the Russian Federation D.A. Medvedev to the State Duma.

The main characteristics of the establishment of the Ombudsman Institute during the year of the V.P. Lukin management were:

- central institutionalisation;
- regional institutionalisation (nowadays 71 from 83 subjects of the Russian Federation have established the Ombudsman office);
- reinforced horizontal collaboration;
- the main position of the Ombudsman changed from anti-governmental to depoliticised;
- the lower the political importance the higher is administrative efficiency.

The institute was rapidly spreading over the territory of the Russian Federation, in 2004 were opened 5 more ombudsman offices; in 2005 another 4, 8 more in 2006, 4 new offices in 2007, another 4 in 2008 and again 4 in 2009. 7 more subjects of the Russian Federation have opened Ombudsman offices during the 2010 (Zabaikalsky Krai, Kirovskaya, Leningradskaya, Pskovskaya, Tomskaya, Chelyabinskaya oblast, Khanty-Mansiyskiy Apsavtonomnyy Okrug). Another 7 in 2011 and 5 in 2012. Nowadays 71 of 83 subjects of the federation have their regional ombudsman offices.

⁷⁷ The State Duma decision N1729-5, from 18.02.2009.

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Table 1.

The presence of the Ombudsman offices in the regions of the Russian Federation.

Year	2005	2006	2007	2008	2009	2010	2011	2012
Regional Ombudsman	32	40	44	48	52	60	66	71

One of the major problems of this period is very big moment of vertical of the leadership, leading to the infringement of political rights, rights for the free elections, right for the free expression of the personal opinion. This situation might lead to the decrease of independent opinion of the Ombudsmen and possibility of anticipated dismissal of the Ombudsman from its position, especially at regional level.

The Ombudsman V.P. Lukin had very active position and role in the period of the growing civic activity during the winter 2011/2012. The Ombudsman was participating to interviews with mass media, giving his assessments of rallies and demonstrations, personally followed their implementation, participated in communications with the representatives of the police, had several meetings with the President of the Russian Federation. The Special Report of the Federal Ombudsman⁷⁸ on the unlawful actions of the representatives of the Ministry of Internal Affairs and of the police during the demonstration for the support of the right to free assembly and association on 31st of May 2010 in Triumphal square in Moscow, was highly criticised by the Vertical of the leadership.

Federal Ombudsman V.P. Lukin was supported by the Chairwoman of the Council for Civil society and Human Rights under the President of the Russian Federation Ms. Ella Pamfilova and by majority of the ombudsmen of the subjects of the

⁷⁸ Russian Human Rights Ombudsman Vladimir Lukin, who joined Muzykantsky-Moscow human rights Ombudsman at Monday's rally as an observer (and who police attempted to arrest), called the detentions "illegal" and said that the idea of a "sanctioned action" does not actually exist in Russian legislation. Instead, according to the constitution, organisers are only required to notify the local government if they plan to hold a large demonstration, he said. Michael Webb, the deputy in charge of the EU delegation, said that "on the whole, the European Union supports Russia so that it fulfills the obligations that it undertook as part of the Council of Europe. And also so that it realises civil rights as secured by the constitution. In particular, the right to free assembly and free speech." The Other Russia, <http://www.theotherussia.org>

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Russian Federation. Ella Pamfilova, members of the Council, the head of Moscow Helsinki Group, Lyudmila Alekseeva, the director of the Institute of human rights, Valentin Geftter, and others stated that “We support the citizen’s position of Mr. Lukin on his post of the Federal Ombudsman of the Russian Federation, based on the thorough examination of the activities/reports of the Federal Ombudsman.

Ella Pamfillova noted that reports of the Ombudman objectively reflect Russian realities with an accent on infringements of personal and socio economical rights of the citizens of the Russian Federation. The most actual part of the Special Report of Ombudsman is related to political rights and freedoms in Russian Federation, despite the fact that there are little number of addresses and complaints on this topic to the Ombudsman. Here we underline the notable infringements and limitation of freedom for peaceful associations, increasing number of infringement of civic and personal rights of citizens during some public actions.

The membership of V.P. Lukin to the Moscow academic and political circles, helped him to establish constructive relationships with human rights activists, public authorities and civic organizations.

Under initiative of Ombudsman Federal Law from 10th of June 2008, N76FZ “On public control on provision of the rights of the man in the penitentiary institutions” came to force.

One of the main characteristics of the Ombudsman is the degree of public awareness of his position. One of the indicators of this characteristic could be the frequency of the publication with his name and the institute in the internet.

**Duration of the assignment and representation of the Ombudsmen in
Internet, 17th of august 2012.**

N.	The search wording	Duration of the assignment	Number of quotes
1.	Уполномоченный в РФ С.А. Ковалев	1 year	28600
2.	Уполномоченный в РФ О.О.Миронов	5 years 7 m	70300
3.	Уполномоченный в РФ В.П.Лукин	8 years 7m	449000

3.4. *The establishment of the Ombudsman in the subjects of the Russian Federation*

Let us now briefly consider the development of this process at the regional level. Similar to that of the Federation on the whole, the predecessors of the institution of the Ombudsman in constituent entities of the Russian Federation were represented by parliamentary human rights commissions and human rights commissions under the heads of regional administrations.

Deputy Human Rights Commissions appeared in the summer of 1990 after the first democratic elections. The first commission of this kind was created within the Leningrad City Council (the Chairperson was human rights activist Yu. Rybakov) and then within the Moscow Council (with human rights activist V. Borshchev as Chairperson). Similar commissions appeared later in other regional and city councils. Like those operating at the national level, these were the first government institutions aimed at ensuring the observance of human rights. They clearly demonstrated a direct association with the human rights movement, as the majority of the members of such commissions were human rights activists.⁷⁹ Most of these commissions ceased to exist

⁷⁹ A. Sungurov "Human rights organisations and bodies in Russia: status and development

The Establishment of the Ombudsman in the Russian Federation in 1994, after the dissolution of councils and the election of new representative authorities. This reflected changes in the membership of regional parliaments, where much fewer people regarded human rights as a priority. Certainly, the theme of human rights was not entirely discarded by legislators, but this trend ceased to have an independent significance and was assigned to the competence of commissions on social policy or commissions on legality and the legal order of the representative authorities of constituent entities of the Federation (in certain cases, the words “on human rights” remained in the names of commissions, but most often this was not the case).

The second public human rights organizations, both in the regions and in the Federation, were commissions under the administrative heads of the constituent entities of the Russian Federation. These appeared after a Presidential Decree issued in June 1996, which recommended that public authorities of the constituent entities of the Russian Federation create such commissions⁸⁰. As early as the end of 1996, Human Rights Commissions had been set up under chief executive authorities in almost half of

prospects”, in *Participation of authorities in human rights protection: commissions and Ombudsmen*, Norma, St. Petersburg, 2001, p. 11.

⁸⁰ President of the Russian Federation. Decree. 13th of June 1996, n. 864. “On measures for the state support of human rights defense in the Russian Federation”. The main goal of the Decree is support to establishment and effective functioning of the civil society, development of constructive cooperation between public and state institutes, provision of the effective control on rights and freedoms of man and citizen. The Decree states: 1. Approve decision of the Coordination meeting of the human rights institutions, organised on 20th anniversary of Moscow Helsinki group, to create: - interregional human rights center, providing support to the human rights organisations in the subjects of the Russian Federation. – Educational center on human rights. -publishing center for the human rights literature. Presidential Administration of the Russian Federation and the Government of the Russian Federation must provide assistance to the human rights organisations in realisation of this decree. 2. Commission on human rights under the President of the Russian Federation and Main cabinet of the President of the Russian Federation for the constitutional guarantees of citizen’s rights must: - establish coordination with Moscow Helsinki Group and other coordinating units of the human rights institutions. To review in 2 weeks period the issue on creation of the Expert Council of the Commission on Human rights under the President of the Russian Federation, member s of which would be well-known Russian human rights activists. 3. To recommend to the State bodies of the subject of the Russian Federation: - to create commissions on human rights in the subjects of the Russian Federation, with functions similar to Commission of human rights under the President of the Russian Federation. – to offer working stations to such organisations under favourable conditions; support activities of human rights organisations. 4. Plenipotentiary representatives of the President of the Russian Federation in the subjects of the Russian Federation: - to establish relationships with such organisations; - inform the President on the implementations of the recommendations under the point 3 of current decree. 5. The decree comes to force from the date of its publication.

The Establishment of the Ombudsman in the Russian Federation the regions. They currently operate in approximately all entities of the Russian Federation, but there are examples where such commissions have been liquidated.

Most often, these commissions exist mainly for the sake of appearance, for demonstrating the implementation of the Presidential Decree. They are comprised of officials, deputies, representatives of law enforcement bodies and of the church, and lawyers, but no human rights activists. However, there are more successful examples where the commissions also are made up of human rights activists and rare cases where human rights activists are leading these commissions (for example, in Nizhny Novgorod and Irkutsk).

Naturally, taking into account the status of these commissions “under” administrative heads, it is difficult to consider them as independent bodies. Like the Federal Commission, they do not operate under the law, but in compliance with provisions approved by the chief executive authority of the constituent entity, which also nominates members of these commissions. The overwhelming majority of members work on a voluntary basis with one full-time official (the Chairperson, his Deputy, or the Executive Secretary; in other cases, the Technical Secretary).⁸¹

Obviously, the functions of these commissions appear to be assigned to the head of the region, since their role is to assist administrative heads to ensure the observance of human rights within a corresponding territory. Since most human rights violations proceed from executive authorities, the status of such commissions appears to be ambiguous.

The defective status of such commissions called for an acceleration of the transition to the new Ombudsman institution at the regional level. The main feature that distinguishes the Ombudsman from the commissions, with their “auxiliary” role, is independence, with all that this implies.

The development of the regional regulatory framework of the Ombudsman institution started even before the federal constitutional law “On the Human Rights Commissioner in the Russian Federation” came into force, one of the articles of which

⁸¹ A. Sungurov, “Human rights commissions under heads of administrations: experience of five regions”, in *Participation of authorities in human rights protection: commissions and Ombudsmen*, Norma, St. Petersburg, 2001a, pp. 57-76.

The Establishment of the Ombudsman in the Russian Federation (Article 5)⁸² grants the regions the right to establish similar institutions. Therefore, corresponding laws were adopted in the Republic of Bashkortostan and Sverdlovsk Region earlier than at the federal level, and the first Ombudsmen were also elected in these regions.

Chingiz Boreevich Gazizov became the First Ombudsman of a constituent entity of the Russian Federation; he was elected to this post by the State Council of Bashkortostan in December 1996. Prior to this, he had been the Deputy Prosecutor of the Republic. Ch.B. Gazizov successfully worked for two terms of four years each, as determined by the law, and retired at the beginning of 2005. At the same time, the Ombudsman institution in this Republic was created as a parliamentary institution: the Ombudsman has no office of his own and is serviced by City Council staff. Therefore, under the conditions of accountability of the City Council to the President of Bashkortostan, Murtaza Rakhimov, there are no formal grounds for considering the independence and freedom of the Ombudsman in Bashkortostan. In the Sverdlovsk Region, the situation is different, and shows the work of the Ombudsman in this constituent entity of the Russian Federation in much greater detail.

The law “On the Human Rights Commissioner of Sverdlovsk Region” was adopted on 14 June 1996, the second (after Bashkortostan Republic) from a region of the Russian Federation. This law details the capacities of the Ombudsman and imposes heavy demands on the candidacy for this high post: either work experience in a legal field for a period of at least ten years (with this stipulation as a rule) or an academic degree in law. At the same time, only the Governor of the Region, in conjunction with the Chairman of the Regional Court, has the right to propose an Ombudsman candidate according to Sverdlovsk law. Neither human rights organizations of the city nor deputies themselves have such a right.

As is well known, the Sverdlovsk Region has an advanced system of democratic institutions. In the 1990s, the regional party system was well-developed, and from the very beginning half of the deputies of the Legislative Assembly of the Region were

⁸² In accordance to the constitution (statute) and the legislation of the subject of the Russian Federation, the post of the Commissioner on human rights can be established in a subject of the Russian Federation. In the subject of the Russian Federation, the activities of the Commissioner and his staff shall be financed out of the budget of that subject. Cfr. The Federal Constitutional Law on the Commissioner on human rights in the Russian Federation, 12.02.1997

The Establishment of the Ombudsman in the Russian Federation elected on the basis of party lists. The Sverdlovsk Region also offers the only case where a dismissed regional Governor (E.E. Rossel) was able to return to the position of Governor by democratic means. To begin with, Rossel's movement, *Transformation of the Urals*, won a majority of seats in the regional Parliament, due to which he was able to assume the position of the Speaker, while in later elections he gained a victory over Governor Strakhov, who had been supported by Moscow. There are also around ten TV channels in the region, as well as a strong scientific legal school.

The first attempt at regulatory approval of the possibility of a regional Ombudsman was made as far back as 1994, when the proposed position was entered into the Articles of the Region by the Legislative Assembly. However, this initiative was not supported by Moscow, and it was subsequently necessary to remove the position of Ombudsman from the Articles.⁸³

Nonpolitical, noncommercial organisations are also well-developed in the region: it is one of the centres of the Russian human rights movement. For example, the Third Regional Conference of Human Rights Organisations in the Sverdlovsk Region, on 4 April 1998, was attended by representatives of around fifty organizations from Ekaterinburg and the Sverdlovsk Region.⁸⁴ Therefore, the idea of creating an Ombudsman in the region received serious support. At the same time, the character of the discussion of the law, as well as the procedure of nominating candidates for the Ombudsman position, were criticized by many human rights activists.

Possible candidates for the post of Ombudsman were discussed among human rights organizations, and even concrete participants of human rights movements were proposed. However, these proposals were not supported by the authorities of the region. As a result, the Governor of the Region, E. Rossel, proposed Vitaly Vladimirovich Mashkov, Candidate of Technical Sciences and Class II Active State Advisor of the Russian Federation, to the Legislative Assembly as a candidate. V.V. Mashkov had been working as a representative of the President of the Russian Federation in the Sverdlovsk Region for several years, but retired after Rossel's victory in the

⁸³ T.G. Merzlyakova, "Presentation", in A.Yu. Sungurov (ed.), *The Sixth Round Table of Ombudsmen in constituent entities of the Russian Federation «Protection of social rights of citizens, improvement of legislation»*, Norma, St. Petersburg, 2003, p. 6

⁸⁴ Materials of the III Regional Conference of the Union of Human Rights Organisations of Sverdlovsk Region, 4 April 1998, Ekaterinburg, 1998

The Establishment of the Ombudsman in the Russian Federation gubernatorial elections. Although a certain image of V. Mashkov as “Rossel’s man” had formed in public opinion, in reality during the election campaign he had tried to support then-Governor Strakhov, who was officially supported by the Centre. A unanimous vote on his candidature by the Legislative Assembly on 1 November 1997 was, in V. Mashkov’s opinion, due to the fact that he was not regarded as “Rossel’s man” and, therefore, both the Governor’s supporters and his opposition voted for him.⁸⁵

Thus, the Sverdlovsk Ombudsman began to work. In one of his first interviews after election, V. Mashkov replied to the question “Have you already selected candidates for your team?” with the response: “The Governor has posed the task of setting up a body of officials which would be efficient and accessible to the people, would correspond to the current development of Russia, and would be operational in the future”⁸⁶ In an interview with another newspaper, he characterized his concept of the Ombudsman’s activity as follows: “We could not copy the Western experience. For 99 per cent, the officials responsible for human rights in developed countries are working with concrete complaints. Since we have no democratic fundamentals of society or human rights traditions, the tasks are much more complicated. Analyzing the complaints submitted, we should generalize the experience of resolving them, thus filling the ‘gaps’ which are still recorded in legislation. We have to develop new principles of partner relationships between the public and officials, which should replace the old rule ‘I am a boss – you are a fool’”⁸⁷.

Immediately after the election, V. Mashkov was faced with the task of determining the working strategy of the new institution, for which there were practically no precedents. As he himself notes in one of the interviews, he proceeded from two conceptual models. The first was that of an officially nominated Ombudsman plus one or two people: a “complaints office” producing no results. The second was a giant mechanism of city committees, regional committees, and party committees, in which people were searching for defence of their rights, a mechanism “accessible to everyone”

⁸⁶ A. Yalovets “How do matters stand with rights? There will be rights”, *Regional newspaper* (Ekaterinburg), 10 December 1997

⁸⁷ N. Privalov, “Authorized to protect our rights (a talk with V.V. Mashkov)”, in *Ekaterinburgskaya Nedelya*, 11.12.1997

The Establishment of the Ombudsman in the Russian Federation but “extremely expensive”. According to Mashkov: “We had to choose the optimum ratio between these two versions”.⁸⁸

It was decided, without discarding the consideration of concrete complaints and citizens’ applications, to focus on effective analytical work and the resolution of typical problems. Along with the central staff, a system of Ombudsman representatives was set up in other towns of the region. The necessary documents, instructions, and schemes were drawn up, which are, doubtless, useful both for the Sverdlovsk Ombudsman as well as for Ombudsmen in other regions of Russia. These documents were published as a special collection.⁸⁹ In the introduction to this collection V. Mashkov writes: “The ideology of the creation of the Ombudsman’s office is based on the systematic principle of the approach to resolving matters concerning basic human rights provided for consideration; the study and search for typical solutions for the entire range of problems outlined by the Declaration of Human Rights in the framework of single, large, well-formulated subsystems: legal, labour, residential, ecological, freedom of speech, confession, etc. The main focus of the activity of the Ombudsman’s office should be the search for solutions in the framework of improving certain links in the subsystems in respect to the creation of an operational environment and socioeconomic and economic conditions of the functioning of a specific community, which will allow for the optimization of financial expenses and human resources.”⁹⁰

It may be stated that the work of the Ombudsman and his office indeed proceeded according to the focus outlined by V.V. Mashkov. Citizens of the Region were received, causes of human rights violations were analyzed, and presentations and reports were prepared. Due to his severe illness and premature death at the beginning of 2001, Mashkov did not achieve everything that he had planned. At the same time, he succeeded in his main task: to lay the foundations for the work of a new institution in the region⁹¹ and to set up an efficient team of employees in his office headed by Chief

⁸⁸ A. Yalovets, “How do matters stand with rights? There will be rights”, *Regional newspaper (Ekaterinburg)*, 10 December 1997

⁸⁹ *Collection of regulatory documents and reference materials on the Ombudsman’s activity in the Sverdlovsk Region*, Ekaterinburg, 1998

⁹⁰ V.V. Mashkov “Ombudsman’s office in the Sverdlovsk Region. Concept”, in *Collection of regulatory documents and reference materials on the Ombudsman’s activity in Sverdlovsk Region*, Ekaterinburg, 1998, pp. 6-7

⁹¹ *Collection of regulatory documents and reference materials on the Ombudsman’s activity in the Sverdlovsk Region*, Ekaterinburg, 1998, p. 76

The Establishment of the Ombudsman in the Russian Federation of Staff V.E. Gogolev,⁹² who successfully fulfilled the duties of the Ombudsman during the final stage of V.V. Mashkov's illness. This activity was later continued successfully by T.G. Merzlyakova, who was elected to the position of Ombudsman in the Sverdlovsk Region in May 2001.⁹³

Several years later, the first Statutory Court in Russia appeared in the Sverdlovsk Region. Therefore, this region became not only the first Russian region in which the institution of the Ombudsman institution appeared, but also the first constituent entity of the Russian Federation, other than the republics, in which the constitutional judicial system was developed. It is possible that E.E. Rossel's plans for the creation of the Uralian Republic, which led to his dismissal in the early 1990s, played a certain role in the emergence of these democratic legal state institutions so new to Russia. On the other hand, these plans could not have arisen from scratch: they reflected the readiness of the regional political elite to develop democratic institutions of state authority.

Despite the fact that Regional Ombudsman is to be financed from the regional budget, it is spreading through the territory of the Russian Federation actively.

⁹² V.E., Gogolev, "On the working procedure of the Ombudsman's office in the Sverdlovsk Region with citizens' applications", in A. Yu. Sungurov (ed.), *Ombudsman institution in constituent entity of the Russian Federation: Training manual*, Norma, St. Petersburg, 2003, pp. 171-183

⁹³ See, for example, *Report on the Ombudsman's activity in the Sverdlovsk Region in 2003*, Ekaterinburg, 2004

Chapter 4.

The process of institutionalization of the Ombudsman in the Russian Federation

The process of institutionalization of the Ombudsman in the Russian Federation

4.1. Legislation on the Ombudsman of the Russian Federation

The institution of the Commissioner for Human Rights in the Russian Federation operates in accordance with the Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (**the Paris Principles**) endorsed by the UN General Assembly in its Resolution A/RES/48/134 of December 20, 1993⁹⁴.

⁹⁴ Principles relating to the status of national institutions

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

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(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

The process of institutionalization of the Ombudsman in the Russian Federation

In accordance with that fundamental document, an ombudsman (the internationally accepted term for human rights commissioner) is a trustworthy independent individual authorized by the parliament to protect the rights of individuals by exercising extensive supervision over all government offices without the authority to overrule the decisions they make. The Ombudsman handles individual complaints against the administration⁹⁵, including complaints that have passed through the courts⁹⁶ but remain unresolved.

The Constitutional Law determines the procedure of the nomination to the post and dismissal from the post of the Ombudsman on Human Rights in the Russian Federation, his jurisdiction, organizational forms and the conditions of his activity.

The post of the Ombudsman on human rights in the Russian Federation (hereafter referred to as «the Ombudsman is established in accordance with the provisions of the

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas. Additional principles concerning the status of commissions with quasi-jurisdictional competence A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

⁹⁵ In principal, the federal ombudsman deals with complaints lodged against acts or omissions by federal authorities. However he also examines complaints originating from citizens of regions where there is no ombudsman and he can also examine complaints which have been previously dealt with by a regional ombudsman.

⁹⁶ On July 2004, the constitutional Court ruled that the federal ombudsman could not be prevented from attending and observing trial proceedings.

The process of institutionalization of the Ombudsman in the Russian Federation

The Constitution of the Russian Federation aims at providing the guarantees of the protection by the state of civil rights and freedoms, their observance and respect by state bodies, institutions of local self-government and officials.

The Ombudsman shall be nominated to his post and shall be dismissed from his post by the State Duma of the Federal Assembly of the Russian Federation.

Utilizing the means specified in the Federal Constitutional Law, the Ombudsman contributes to the restoration of the violated rights, to the improvement of the legislation of the Russian Federation on human rights and bringing it into line with the universally recognized principles and norms of the international law, to the development of the international cooperation in the sphere of human rights, to the legal education in the matters of human rights and freedoms, forms and methods of their protection.

The Ombudsman in discharging his duties is independent and is not accountable to any state bodies or officials.

In his activity the Ombudsman is guided by the Constitution of the Russian Federation, the Federal Constitutional Law, the legislation of the Russian Federation, as well as by the universally recognized principles and norms of international law and international agreements of the Russian Federation.

The activity of the Ombudsman supplements the existing means of protection of human rights and freedoms, does not revoke and does not entail the revision of the competence of state bodies that provide the protection and restoration of violated rights and freedoms.

The imposition of a state of emergency or of martial law over all the territory of the Russian Federation or a part of it does not cancel or interrupt the activities of the Ombudsman and does not entail the restriction of his competence.

In accordance to the constitution (statute) and the legislation of the subject of the Russian Federation, the post of the Ombudsman on human rights can be established in a subject of the Russian Federation.

In the subject of the Russian Federation, the activities of the Ombudsman and his staff shall be financed out of the budget of that subject.

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The post of the Ombudsman shall be occupied by a citizen of the Russian Federation, not younger than 35 years, with expertise in the sphere of human rights and freedoms, as well as experience in their protection. The candidates to the post of the Ombudsman can be nominated for consideration by the State Duma by the President of the Russian Federation, by the Federal Council of the Federal Assembly of the Russian Federation, by the deputies of the State Duma and by the associations of the deputies in the State Duma. The candidates to the post of the Ombudsman are nominated for the consideration by the State Duma one month before the expiry of the term of office of the previous Ombudsman. The Ombudsman shall be nominated to the post and dismissed from the post by the State Duma by a majority vote of the total number of the deputies of the State Duma by secret ballot. The State Duma issues a decree on the nomination to the post of the Ombudsman within 30 days after the expiry of the term of office of the previous Ombudsman. Every candidacy submitted to secret ballot during the nomination of the Ombudsman and nominated in accordance with Article 7 of the Federal Constitutional Law, shall be included in the list for the secret ballot by two-thirds of the total number of the deputies of the State Duma. Upon assuming the office the Ombudsman takes the following oath: «I swear to protect human rights, to fulfill my duties honestly, following the Constitution of the Russian Federation, the legislation of the Russian Federation, justice and the voice of conscience». The oath shall be taken at the session of the State Duma immediately after the nomination of the Ombudsman to his post. The Ombudsman is considered as having assumed his office from the taking of the oath. The Ombudsman shall be appointed to the post for 5 years, counting from the moment of taking the oath. His term of office expires from the moment of the taking the oath by a new Ombudsman. The expiry of the term of office of the State Duma, as well as its dissolution, does not entail the cessation of the authority of the Ombudsman. The same person shall not be appointed to the post of the Ombudsman for more than two terms in succession. The Ombudsman cannot simultaneously hold the post of a deputy of the State Duma, a member of the Federation Council or a deputy of a legislative (representative) body of a subject of the Russian Federation, cannot be involved in public service, be engaged in any other paid or unpaid activity, with the exclusion of creative or lecturing activity.

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The Ombudsman does not have the right to engage in political activity, to be a member of a political party or other public association that pursues political goals. The Ombudsman must cease the activity that is incompatible with his status within 14 days from the taking of his post. If during this period the Ombudsman does not fulfill the prescribed requirements, his duties shall be terminated, and the State Duma shall appoint a new Ombudsman.

The Ombudsman possesses immunity during all of his term of office. Without the approval of the State Duma he cannot be made answerable before the courts in criminal or administrative cases, detained, arrested, subjected to a search (excluding the cases of being detained in the act of committing a crime), as well as be subjected to personal inspection, excluding the cases provided for by federal law for ensuring the security of other individuals. The Ombudsman's immunity applies to his living and office premises, private and service transport, correspondence, communication facilities, and also to the documents belonging to him.

In case of the detention of the Ombudsman in the act of committing a crime the official responsible for the detention shall immediately inform the State Duma that must make the decision about the approval for the continuation of this measure. In the case of non-reception of the approval of the State Duma of the detention within 24 hours, the Ombudsman shall be released immediately.

The Ombudsman shall be relieved of his post before the expiration of his term of office in the following cases: 1. violation of the requirements of Article 11 of the Federal Constitutional Law; 2. Coming into force of a court sentence indicting the Ombudsman.

The Ombudsman's term of office may be terminated by the State Duma in the case of his inability to carry out his duties for a long period of time for health or other reasons (not less than four months in succession). The Ombudsman can be dismissed from his post in the case he presents a request for retirement of his own accord. The dismissal of the Ombudsman from his post before the end of the specified term of office shall be executed by the decree of the State Duma of the Russian Federation. In the case of the dismissal of the Ombudsman before the specified term of office runs out, a new Ombudsman shall be appointed by the State Duma within two months from the day of

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the retirement of the previous Ombudsman in accordance with the procedure established by Articles 6-10 of the Federal Constitutional Law.

The Ombudsman investigates the complaints of the citizens of the Russian Federation, as well as of aliens and stateless persons residing on the territory of the Russian Federation.

The Ombudsman investigates the complaints about the decisions or actions (inaction) of the state bodies, institutions of local self-government, officials, state employees, if a complainant appealed against these decisions or actions (inaction) according to court or administrative procedures, but does not agree with the decisions reached on his complaint.

The Ombudsman does not examine the complaints about the decisions of the chambers of the Federal Assembly of the Russian Federation and the legislative (representative) bodies of the subjects of the Russian Federation.

A complaint submitted to an Ombudsman on human rights in a subject of the Russian Federation is not a reason to refuse acceptance of the same complaint for the investigation by the Federal Ombudsman.

The complaint shall be addressed to the Ombudsman within a year counted from the day the rights and freedoms of the complainant had been violated, or from the day the complainant became aware of the violation.

The complaint must contain the surname, name, patronymic and address of the complainant, the description of the essence of the decisions or actions (inaction), which violated or continue to violate, in the opinion of the complainant, his rights and freedoms, and must be accompanied by the copies of the decisions on his complaint reached according to court or administrative procedures.

The complaint addressed to the Ombudsman does not require the payment of state duty. The complaints addressed to the Ombudsman by persons held in penitentiary, shall not be subjected to the examination by the administration of the penitentiary and shall be sent to the Ombudsman within 24 hours. After receiving a complaint, the Ombudsman has the right to:

- 1) Accept the complaint for investigation;
- 2) Explain to the complainant the available means that can be used for the protection of his rights and freedoms;

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3) Pass over the complaint to an institution of local self-government or an official who is competent to resolve a complaint on its merits;

4) Refuse to accept the complaint for investigation.

The Ombudsman should within ten days inform the complainant about the decision taken. If the complaint is accepted for investigation, the Ombudsman informs the state body, the institution of local self-government or the official whose actions (inaction) are appealed against.

The refusal to accept a complaint for investigation should be motivated. The refusal to accept a complaint is not the subject for appeal.

The Ombudsman has the right to take the appropriate measures within the framework of his jurisdiction acting on available information about mass and gross violations of human rights and freedoms, or if a case has either a special public meaning or is connected with the necessity to protect the interests of people unable to use legal means of protection without assistance.

Having started the investigation of a complaint, the Ombudsman has the right to address the competent state bodies or officials and request their assistance in carrying out the investigation of circumstances that need to be clarified. The state body, institution of local self-government or the official whose actions (inaction) are appealed against shall not be charged with such an investigation.

The Ombudsman investigating a complaint has the right to:

1) Conduct unimpeded on-site inspections of any state bodies, institutions of local self-government, take part in any meetings of their collective bodies; visit without impediment enterprises, offices and organizations regardless of property form, military units and public associations;

2) Request and receive from the state bodies, institutions of local self-government and officials information, documents and materials essential for the investigation;

3) Receive explanations from officials and public servants (excluding judges) on issues due to be investigated;

4) Conduct an investigation of his own or with the assistance of competent authorities, officials and public servants, of the activities of state bodies, institutions of local self-government and officials;

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5) Entrust the competent state organizations with making expert inquiries and preparing of conclusions on issues due to be investigated;

6) Familiarize himself with criminal, civil and administrative offense cases where the imposed sentences have come into force, and with the materials of dismissed cases.

On issues coming under his jurisdiction the Ombudsman has the right to meet, promptly and without impediment, with the heads and other officials of the state bodies situated on the territory of the Russian Federation, the institutions of local self-government, enterprises and offices regardless of their form of property, with the leaders of public organizations, high-ranking army officers and officers belonging to paramilitary structures and units, with the administration of public penitentiary facilities.

The provision to the Ombudsman of information considered being a state, commercial or other form of a secret is regulated by the legislation of the Russian Federation.

The Ombudsman has the right to refuse to be a witness in a criminal or civil court and testify about the circumstances revealed during the carrying out of his duties.

When investigating a complaint the Ombudsman must provide the state body, the institution of local self-government or the official whose actions (inaction) have been appealed against with the opportunity to give explanations on any issue due to be investigated, as well as to motivate their general position.

The Ombudsman must inform the applicant about the results of the investigation of his complaint.

If the investigation reveals that the rights of the applicant have been indeed violated, the Ombudsman must take measures in the framework of his jurisdiction as determined by the Federal Constitutional Law. The Ombudsman must send to the state body, the institution of local self-government or the official whose actions (inaction) are regarded as infringing civil rights and freedoms, his conclusion with the recommendations concerning possible and necessary measures to restore those rights and freedoms. The information revealed while a complaint is investigated shall not be disclosed before the final decision is made. The Ombudsman cannot disclose information that comes to his knowledge about the private life of the applicant and other persons without their written agreement.

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Based on the results of the investigation of a complaint the Ombudsman has the right to:

1) Bring a case to a court of law in defense of rights and freedoms infringed by actions (or inaction) of a state body, an institution of local self-government, an official, as well as to participate in the court proceedings personally or through a personal representative in a form determined by law;

2) Address the competent state authorities with the request to instigate disciplinary or administrative proceedings or a criminal case against the official whose decisions or actions (inaction) could be considered as violating human rights and freedoms;

3) Address the courts or the procurator's office with the request to verify a court decision, a court sentence or a decision by a judge;

4) Outline his arguments to an official who has the powers of remonstrance and be present during the overseeing of a case in the court;

5) Address the Constitutional Court of the Russian Federation with the complaint against the violation of the constitutional rights and freedoms of citizens by the law used or due to be used concerning a specific case.

The appeal or the complaint sent by the Ombudsman pursuant to sub-item 3 of item 1 of the article does not require the payment of state duty. The Ombudsman may publish his conclusions. The periodicals with the financial share of the state, a municipality, an institution of local self-government, a state-owned enterprise or organization or fully (partly) financed from the federal budget or the budget of subject of the Russian Federation may not refuse to publish the Ombudsman's conclusions or other documents.

The Ombudsman, based upon the scrutiny and analysis of the information about the violation of the rights and freedoms of citizens, and the generalization of the investigation of complaints, has the right to:

1) Deliver his remarks and proposals of a general character dealing with the safeguarding of the rights and freedoms of citizens and the perfection of administrative procedures to state bodies, institutions of local self-government and officials;

2) Address the subjects of legislative initiative with proposals about amendment and supplementing the federal legislation, legislation of the subjects of the Russian Federation or with proposals to fill in the blanks in the federal legislation and in the

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legislation of the subjects of the Russian Federation, if in the opinion of the Ombudsman actions (inaction) of state bodies, institutions of local self-government or officials that violate the rights and freedoms of citizens, are based either on federal legislation and legislation of the subjects of the Russian Federation or on blanks in the federal legislation and the legislation of subjects of the Russian Federation, or if the legislation contradicts the universally recognized principles and norms of international law and international agreements of the Russian Federation.

In the case of gross and mass violations of human rights and freedoms the Ombudsman may make a report to a session of the State Duma.

The Ombudsman may address the State Duma with a proposal to set up a parliamentary commission charged with investigation of facts of violation of human rights and freedoms and to hold parliamentary hearings, and either personally or through a personal representative to participate in the work of the commission and in the hearings.

At the end of a calendar year the Ombudsman sends a report about his activities to the President of the Russian Federation, the Federation Council of the Federal Assembly, the State Duma of the Federal Assembly, the Government of the Russian Federation, the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation and the Procurator General of the Russian Federation.

The Ombudsman may send special reports to the State Duma of the Federal Assembly on specific issues of human rights and freedoms safeguarding.

Annual reports of the Ombudsman shall be published officially in the «Rossiyskaya Gazeta» newspaper; the Ombudsman may decide to publish his special reports on specific issues in the «Rossiyskaya Gazeta» newspaper or other periodicals.

When the Ombudsman executes his duties, the authorities shall provide reports, materials, documents and other information without impediment and free of charge. The requested materials, documents and other information shall be sent to the Ombudsman within 15 days from the date the request had been received if there is no other deadline in the request. The state body, the institution of local self-government or the official that receive the Ombudsman's conclusion with his recommendations, must consider them within a month and to inform the Ombudsman in writing about the measures taken.

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Interference in the activities of the Ombudsman with the aim to influence his decision; non-execution by officials of their duties prescribed by the law; obstruction of the Ombudsman's activity in other forms - carry the responsibility defined by the legislation of the Russian Federation.

The Ombudsman establishes the office to support his activities.

The Office staff provides legal, organizational, analytical, informational and other support to the activities of the Ombudsman. The Ombudsman and his Office represent a state body, having the rights of a legal person, a pay account and other accounts, its own seal and official letterheads with the image of the State Arms of the Russian Federation. The activities of the Ombudsman and his Office shall be financed out of the federal budget. A special clause in the federal budget shall be prescribed annually to finance the activities of the Ombudsman and his Office. The Ombudsman independently composes and executes the estimate of his expenditures. The Ombudsman provides financial accounting according to the procedures established by the legislation of the Russian Federation.

The assets required by the Ombudsman and his Office to carry out their activities are in their operating control and are state property. The Ombudsman is provided by the documents adopted by the Chambers of the Federal Assembly, the documents and other information materials officially distributed by the Administration of the President of the Russian Federation, the Government of the Russian Federation, the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation, the Procurator General of the Russian Federation, by other state bodies, public associations, as well as other information and reference materials. The Ombudsman defines the structure of his Office, approves its statute and the regulations concerning the status of its elements and directly oversees its work. Within the limits of the estimate, the Ombudsman defines the number of the staff and the personnel arrangements. The Ombudsman issues orders on issues connected with the guidance of his Office. Guarantees of the financial independence of the Ombudsman, concerning payment, medical care, social welfare, are defined accordingly to the guarantees provided by the law and other legal norms and documents of the

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Russian Federation for the officials occupying public posts in the Russian Federation. The rights, duties and responsibility of the staff of the Office of the Ombudsman, as well as the conditions of their service, are defined by the federal laws and other legal norms and documents about the federal public service and by the labor legislation of the Russian Federation. A Council of Experts, consisting of specialists in the field of human and civil rights and freedoms, may be established under the auspices of the Ombudsman in order to provide consultative support.

The Ombudsman's office is based in the city of Moscow.

The State Duma passes a decree about the nomination to the post of the Ombudsman in the order prescribed by Chapter 2 of the Federal Constitutional Law within 30 days of its coming into force.

It is also universally accepted practice for a human rights commissioner, in as much as he acts within his terms of reference, to be independent from the government authorities and not accountable to the government authorities.

The human rights commissioner is not supposed to engage in any political activities, or to be a member of any political party or any other social group pursuing political goals. All international ombudsman organizations, including the International Ombudsman Institute and the European Ombudsman Institute, consider the political neutrality of official human rights institutions to be an important prerequisite for the independence of their work.

Therefore, an official human rights institution is by definition outside of politics. Irrespective of his own political views or convictions and with no regard for political or any other extraneous circumstances, the human rights commissioner advocates the rights and freedoms of an individual as they are defined in the constitution and laws of the state as well as in the international obligations of the state.

Acting within his terms of reference defined in the federal law, the Ombudsman for Human Rights in the Russian Federation seeks to fully adhere to these universally accepted principles; he does not take part in any public political actions, nor does he show a preference for any political views or slogans. This notwithstanding, the

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Ombudsman deems it possible and necessary to denounce political views and slogans whose advocacy he believes to be fraught with violation of human rights and freedoms.

The fact that under the law the **Ombudsman's activities are strictly supplementary to the existing safeguards of the rights and freedoms of individuals**, and consequently do not eliminate the jurisdiction of the government bodies that provide such safeguards, or entail any revision of their authority, is not always appreciated.

In its turn, the government represented by its individual officials and bodies often views the Ombudsman as a mere petitioner whose recommendations can be easily shrugged off since he does not have the authority to issue orders and instructions.

In fact, however, the experience of many advanced democracies clearly shows that an official human rights institution can be very effective, provided it functions properly. The key prerequisite for that is the willingness of society and its individual members to lend support to the Ombudsman by demanding that the government authorities implement his recommendations. **In other words, the effectiveness of the Ombudsman directly depends on how mature and active civil society is.**

The main areas of activity of the Ombudsman for Human Rights in the Russian Federation are as follows:

- reviewing complaints of abuse of human and civil rights and freedoms and taking action to have them restored;

- analyzing the laws of the Russian Federation pertaining to human rights and freedoms, preparing recommendations and suggestions seeking to improve the legislation;

- developing international cooperation in the sphere of human rights protection;

- providing legal education with regard to human rights and freedoms, and forms and methods of protecting them;

- preparing an annual report on his activities and special reports on topical issues of protecting human rights and freedoms to be submitted to the President of the Russian Federation and other supreme bodies of government;

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making presentations at sessions of the State Duma in cases of gross or massive violation of civil rights and freedoms;

making suggestions to the State Duma regarding the establishment of parliamentary commissions to investigate violations of human rights and freedoms and the holding of parliamentary hearings; taking part in the work of such commissions and hearings;

appealing to courts of general jurisdiction and the Constitutional Court of the Russian Federation to protect the rights and freedoms of individuals;

taking at his own initiative and within his terms of reference appropriate action on reported instances of massive or gross violation of civil rights and freedoms, or in connection with cases which have particular social significance or involve the violation of the rights and freedoms of individuals who are incapable of pursuing legal remedies on their own;

analyzing enforcement practices in the area of human rights and freedoms; preparing proposals to improve such practices;

informing bodies of government and the public about the human rights situation in the Russian Federation;

addressing suggestions and comments of general nature to government authorities, bodies of local self-government and officials regarding protection of human rights and freedoms and seeking to improve administrative procedures.

The institution of Human Rights Ombudsman evolves against the background of complex developments in the country. The implementation of the political and civil rights of individuals declared in the Constitution also presents a challenge. Legal nihilism and lack of confidence in the judiciary and the executive are still common in society. All of this makes the job of the official human rights institution especially challenging. The effectiveness of the Ombudsman's efforts is hampered by the fact that he has no right under the Russian Constitution to initiate legislation with a view to

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improving federal human rights law, and no opportunity to ask the Constitutional Court for rulings on whether laws on human rights are consistent with the Constitution.

4.2. Relations of the Ombudsman of the Russian Federation with other mechanism for the protection and promotion of fundamental rights.

According to the Russian Constitution, the President is a guarantor of rights and freedoms of people and citizens⁹⁷. To help him co-operate with the government, federal courts, the prosecutor's office, law-enforcement bodies, and public organizations, a number of advisory bodies to the President were set up. Formerly, there were 10 commissions under the Russian President, including the human rights commission, and 8 councils⁹⁸.

It should be noted that until 2004, there existed another body under the President of Russia which partly duplicated the activity of the Ombudsman (which is by law independent of public authorities): **the Human Rights Commission**, an "advisory and consultative body under the President of the Russian Federation, promoting the implementation the constitutional authority of the head of state as a guarantor of the rights and freedoms of man and of the citizen."⁹⁹

⁹⁷ Man, his rights and freedoms shall be supreme in value. The recognition, observance and protection of human and civil rights and freedoms shall be an obligation of the State, *Constitution of the Russian Federation*, Legal Literature, Moscow 1993

⁹⁸ Councils for the fight against corruption, culture and art, improvement of justice, codification and improvement of civil legislation, science, technologies and education, co-operation with religious associations, physical culture and sports and the heraldic council.

⁹⁹ Decree of President of the Russian Federation dated 18 October 1996 N 1457 "On approval of Provisions on the Human Rights Commission under President of the Russian Federation." In *Collection of Legislative Acts of the Russian Federation*, 1996, N 43, Art. 4886; Decree of President of the Russian Federation dated 10 September 2001 N 1120 "On making amendments and supplements to Provisions on the Human Rights Commission under President of the Russian Federation approved by Decree of President of the Russian Federation dated 18 October 1996 No. 1457, and on the approval of the Commission membership." in *Rossiyskaya Gazeta*, 15 September 2001, No. 180 (2792).

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The Presidential human rights commission comprises 30 members, coming from the main NGO's who act on a voluntary basis. Complementing the ombudsman, this advisory body, which has direct access to President Putin and presidential administration, can certainly play an important role in promoting and protecting human rights and in developing and enhancing public awareness of those rights.

To begin with, after the departure of S.A. Kovalyov in May 1996, the Commission was set up with a new membership and was headed by Vladimir Kartashkin, a professor and Doctor of Law specializing in international law. In 2002, the membership of the Commission changed again, and Ella Pamfilova was appointed as its Chairperson. She was one of organizers of the Civil Forum in Moscow in 2001 and was leader of the movement For Civil Dignity. The Commission was made up of 30 people. These were well-known human rights activists, leaders of non-governmental organizations (Ludmila Alekseeva, Valery Abramkin, Aleksey Simonov, Aleksandr Auzan, Svetlana Gannushkina, etc.), public figures (writer Boris Vasiliev, actor Georgy Zhzhenov), journalists, scientists, and lawyers. The Commission operated until autumn 2004, when the Council for Civil Society Institutions and Human Rights was created on its foundations under the President of the Russian Federation (and under the chairmanship of E.A. Pamfilova). On 30th of July 2010 the President Dmitry Medvedev accepted Ella Pamfilova's resignation from her post as chairwoman of the Council for Civil Society Institutions and Human Rights.

The president thanked Ms. Pamfillova for the many years of work she has put into the development of civil society, protecting human rights, and actively promoting the ideals of civil society, and for the great personal contribution she has made to his work.

The next chairperson of the Council was Mr. Mikhail Fedotov, ex Russian Federation's Permanent Representative at the United Nations Educational, Scientific and Cultural Organisation (UNESCO), Ambassador Extraordinary and Plenipotentiary. Mr. Fedotov was awarded the UNESCO medal commemorating the 50th anniversary of the Universal Declaration of Human Rights for his contribution to promoting the values of justice, equality, freedom, and solidarity.

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On October 12, 2010 The President Dmitry Medvedev signed Executive Order appointing an Adviser to the President of the Russian Federation. The Executive order appoints Mikhail Fedorov presidential advisor. A separate Executive Order was signed by the President on October 12, 2010 on appointing the Chairman of the Presidential Council for Civil Society Institutions Development and Human rights.

The Executive order appointed Mikhail Fedotov Chairman of the Presidential Council for Civil Society Institutions Development and Human rights, and on May 26, 2012 Mikhail Fedotov was confirmed for his position by the President Vladimir Putin.

The annual reports of the Federal Ombudsman starting from June 2006 (the special report on the problems of disabled children issued) alerted the government to the poor situation of disabled children.

Following these reports, and by the Decree of 1 September 2009 the new position of the President's Ombudsman for Children's Rights was established¹⁰⁰ In

¹⁰⁰ As stated in the text of the decree, it was done "in order to ensure effective protection of the rights and interests of the child in the Russian Federation."

The Commissioner has the right to request and receive in due course the necessary information, documents and materials from the federal bodies of state power, bodies of state power of Russian Federation subjects, local authorities, organizations and officials; free access to federal authorities, state authorities of the Russian Federation, and local government organizations; hold their own or jointly with the authorized state bodies and officials to check the activities of federal executive bodies, bodies of state power of subjects of the Russian Federation, as well as officials receive from them an explanation, addressed to the federal bodies of executive power, bodies of state power of Russian Federation subjects, local governments and officials, the decisions or actions (inaction) of whom he sees a violation of the rights and interests of the child, his conclusion containing recommendations on the possible and the necessary recovery measures such rights and interests, to attract for expert scientific and analytical work relating to the protection of children, scientific and other organizations, as well as scholars and specialists, including on a contractual basis.

The Institution of Presidential Commissioner for Children's Rights fulfills a vital societal function and acts as a forming body for the system that ensures the maintenance of high quality children's rights protection and assistance in restoration of the infringed rights;

Coordinates and ensures cooperation between all the bodies of child protection system, including work with adolescent delinquents

Advises to and directs of the federal enforcement authorities, public authorities of federative subjects of the Russian Federation, local governments and of officials, when infringements of the children's rights occur.

Exercises independent control over the activity of the state organizations, institutions and officials at federal, regional and local levels.

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parallel the state started elaborating the needed reforms. In particular in drafting the Law on Public Inspectorate of Children's Institutions and on creating the Federal Interdepartmental Coordinating Body responsible for State politics in childhood and family. In May 2010 the special Commission in Administration of President was created.

The first incumbent of the President's Ombudsman for Children Rights was Alexei Golovan, former Ombudsman for Children's Rights for Moscow City. According to a new law adopted in August, the City Ombudsman also holds the position of Deputy Ombudsman for Human Rights in the city of Moscow. On 26 December Mr Golovan was relieved of this position by Mr Medvedev's decree.

On 30 December 2009 the Russian President signed Decree No. 1518 appointing **Federal Ombudsman for Children**. Pavel Astakhov graduated from the law faculty of the Higher KGB School in 1991 and obtained a Masters at the Law Faculty of Pittsburgh University, USA, in 2002.

At present Mr. Astakhov is Chairman of the Chamber of Advocates, and leads several radio and TV programmes on legal affairs. He is a member of the Social Chamber, a professor at the Moscow Ministry of Internal Affairs University and the Russian State Humanitarian University, and has published a number of books on law. His special fields are defence of honour, dignity and business reputation, international commercial disputes, international and constitutional law.

As soon as he assumed his new position, Mr Astakhov made three statements – on the defence of children's rights as “the most important aspect of state governance”; “the uncontrolled use of pyrotechnic devices”, which he thinks should be treated as a criminal offence in the future and prosecuted as such, and on disputes between spouses from different countries, and the role played in resolving them of family law in states that recognize the UN Convention on the Rights of the Child, disputes involving civil, family, parental and children's rights and freedoms, and bilateral treaties and international conventions.

It is worth noting that Child Rights Ombudspersons in Russia are UNICEF's long-standing partners. In 2005, the Association of Child Rights Ombudspersons was

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set up, with UNICEF's support through joint UNICEF/government department pilot projects, in 24 Russian regions (at regional and municipal levels).

The ombudspersons work in cooperation with local and federal authorities, carry out independent assessment and monitoring of child rights and represent children's interests in court. They contribute to the development and advancement of appropriate policy and legislation.

The Russian Association of Child Rights Ombudspersons is recommended internationally by UNICEF as a good example. The establishment of the federal post of the Ombudsperson for Children's Rights was recommended by the Russian Association of Child Ombudspersons.

According to the Universal Declaration of Human Rights, children have the right of special care and assistance. The Russian Constitution guarantees a state support for families, mothers and children.

By signing the Convention of the Rights of a Child and other international documents in the sphere of children's rights, the Russian Federation expressed its willingness to participate in a worldwide effort to build an environment that is comfortable and welcoming for children. In the Russian Federation, National Plan of Action on the behalf of Children was adopted in 1995 and targeted for 2000. Another part of the next stage of socio-economic development is the National Children's Action Strategy for 2012 — 2017 (hereinafter - the National Strategy). The main objective of the National Strategy is to identify the main trends and public policies for children and the key mechanisms for their implementation, based on the universally recognized principles and norms of international law.

The national strategy has been developed for the period until 2017 and aims at achieving the existing international standards of child rights, the formation of a unified approach by the government of the Russian Federation, local authorities, civil society and citizens to determine the goals, objectives, activities and priorities for action address the most urgent problems pertaining to the protection of child rights. The national strategy designed to meet the Council of Europe Strategy for the Protection of Child Rights in the period 2012 - 2015 and includes the following main objectives: to contribute to the emergence of child-friendly services and systems, to eliminate all

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forms of violence against children, to guarantee preservation of rights of children in situations where children are particularly vulnerable.

Participation in the implementation of the strategy of the Council of Europe, relevant international treaties in the sphere of welfare and child protection and improvement of Russian legislation according to the generally recognized principles and norms of international law will harmonize the activities of Russia to protect the rights and interests of children with the activities of the international community, will promote positive experience of European countries within the Russian Federation, further innovative practices of Russia on the world stage will help to protect the rights and interests of Russian children anywhere in the world.

The implementation of the National Strategy will be conducted within the following main areas: accessibility of the quality of education and training, cultural development and informational security of children, healthcare, child-friendly and healthy way of life, equal opportunities for the children in need of special care of the state, creation of protection and safety of rights and interests of children and child-friendly justice system; children – are the members of the National Strategy.

Another important moment in the functioning of the human rights defence system in the Russian Federation is the establishment of the **Ombudsman for Entrepreneurs Rights**. On 22nd of June 2012 Vladimir Putin signed an Executive Order on the Presidential Ombudsman for Entrepreneurs' Rights. And this Executive Order appoints Boris Titov Presidential Ombudsman for Entrepreneurs' Rights.

This position has been created of an ombudsman who will protect the legitimate rights and interests of the business community. The suggestion for the creation of this position came from the business community. The Russian Federation has an official responsibility for overseeing human rights in general, but until recently did not have an office in charge of this special area related to the protection of entrepreneurs' rights and interests.

The reasons for that are obvious. There is a lack of clarity in the current legislation and a shortage of regulations. There are many issues in this area, the leaders

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of business associations, the heads of law enforcement agencies, because it is always a subject of discussion in society: either entrepreneurs are accused of bribing officials, or law enforcement agencies are denounced for various excesses and even corporate raiding, and so on.

A number of decisions have been adopted, for example giving businesses the right to file class action lawsuits. Many resolutions have been adopted recently that, should improve the situation in this area, in this vitally important sphere of activities.

Introduction of an ombudsman who will be charged with protecting entrepreneurs' legitimate rights and interests opens a new dimension in this field, creates a **big economic impact** on the development of the investments sector and development of the medium business and gives to entrepreneurs opportunity to deal directly with the people who are authorised by the state to resolve these issues.

State agencies' effective work must benefit of the overall business environment in the Russian Federation, which is the fundamental condition for attracting investments, both domestic and foreign.

By paying a lot of attention to these issues, by addressing them, the state authorities of the Russian Federation hope to successfully develop the economy or achieve the most important indicator – the economic growth rate.

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4.3 Analysis of the current status of the Ombudsman for human rights in the Russian Federation and evaluation of economic impact of its activities

According to the extensive research of Gabriele Kucsko-Stadlmayer, in the course of the development of the institutions, a strong typological differentiation was notable. The differences lie in legal aspects – the organization, the scope and the procedure of the institution. Ombudsman institutions of the first years of the institutionalization can, thus, be categorized as “types c) “human rights” model.

This is the model in which the measures of control also exceed the soft powers of the basic model, but specifically serve the observance of human rights and fundamental freedoms.

In this model, the ombudsman does not only have the power to contest before constitutional courts, but is also vested with preventive powers, which give him the ability to influence the political process and public awareness by advising state organs on the implementation of human rights, reporting on the general situation in the field of human rights, tasks of education, information and research in the field of human rights, cooperation with NGOs and international organizations. The activities of these ombudsmen are focused on the protection of human rights; sometimes exclusively.

Many times Ombudsman Institutions combine elements of different types. Every Ombudsman has his political background and his own history. The institutionalization of the Ombudsman is influenced by other human rights institutions existing in the country.

The UN High Commission for Human Rights has provided the following “effectiveness factors” which are generally applicable to all national human rights institutions, including classical, hybrid and single-sector ombudsmen: independence, defined jurisdiction and adequate powers, accessibility, cooperation, operational efficiency, and accountability. There are additional indicators which are also relevant. Altogether, the following should be addressed:

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- democratic governance in the state;
- the independence of the institution from government;
- the jurisdiction of the institution;
- the extent and adequacy of the powers given to the institution;
- the accessibility of the office to members of the public;
- the level of cooperation of the institution with other bodies;
- operational efficiency (level of financial and human resources);
- the accountability and transparency of the institution;

Since weaknesses in these areas can develop in institutions in both established democracies and democratizing states, both the ombudsman and the government should review the operation of the institution periodically to ensure that it is operating as effectively as possible in light of these factors. Weaknesses need to be remedied in order to strengthen the institution or enable it to continue operating effectively. Also, the international organizations (e.g. UN High Commissioner for Human Rights, UNDP, Council of Europe, OSCE) and donor states which support the establishment and strengthening of national human rights institutions through technical and other assistance should not only keep these indicators in mind when helping a state to establish an institution but also should review the operation of newer institutions to monitor their compliance with these indicators¹⁰¹.

Regional institutions do differ from that of the Federal Ombudsman . They are originally based on municipal or provincial regulations. They do not have a very large staff, and they are much closer to complaining citizens and to the local offices, agencies and departments over which they have jurisdiction. Nevertheless, the Federal Ombudsman is the most interesting from a normative perspective because of his longer experience and his greater expertise.

¹⁰¹ E.g. Human Rights Watch has criticized the conduct of the international community in neglecting to monitor the operation of human rights commissions in Africa they have helped to establish, *Protectors or Pretenders?*

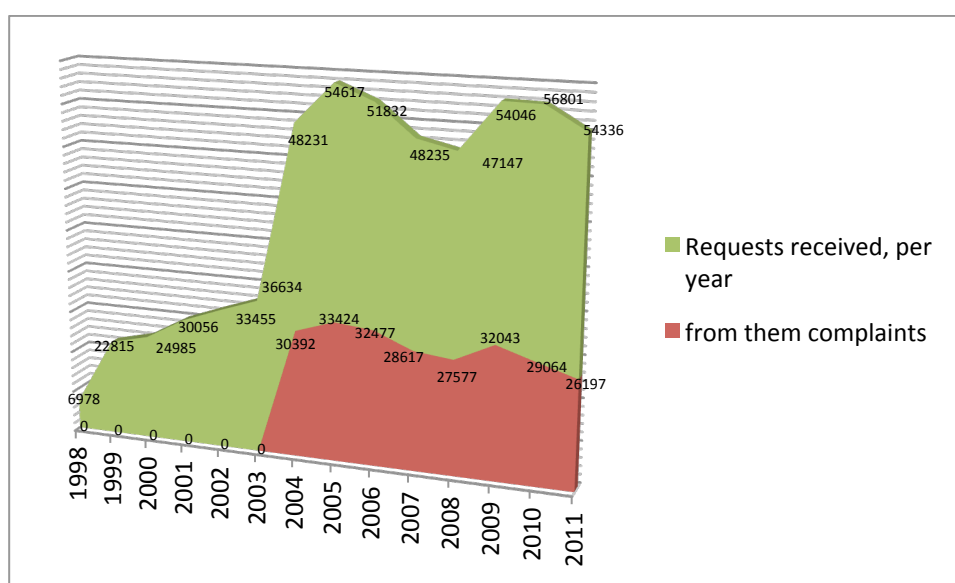
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The requests.

During the first years of the activities the biggest part of requests were presented to the Ombudsman via letter. The requests can be presented in any form (oral, telephone, telemetric). In the last years the tendency of the making application online on the website of the Ombudsman of the Russian Federation is becoming bigger and bigger. In 2004 when the new Ombudsman was appointed, web site of the Ombudsman was created, which allows to present request filing in module on-line. On-line questioner through the series of standard questions allows the person to describe complain in details autonomously, with secrecy and as preventive measure allows to forward eventually the request from the Ombudsman to an other competent Institution.

Table 3

Requests received per year (1998-2011)



Number of requests received by the Ombudsman has a tendency to grow up. The number of the complaints in 2007-2008 was lower due to the easier access to justice in that period and a tendency to appeal to the European Court on Human Rights. In 2009 it grew up for 10% comparing to the 2008. In 2010 it grew up to 5% comparing to 2009,

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and in 2011 fell down up to 5% due to the establishment and active functioning of the regional ombudsmen and specialised ombudsman for children.

Table 4

Statistics violation judgement by State European Court for Human Rights (1959-2011).

Country	%
Russia	8,15
Italy	14,58
Poland	6,36
Turkey	18,49
France	5,70
other states	46,72

Since it was established in 1959, the Court delivered more than 15,000 judgements. Near the half of the judgements concerned four member States: Turkey (2,747), Italy (2,166), Russia (1,212), Poland (945). Of the total number of judgements it has been delivered since 1959, in over 83% cases the Court has found at least one violation of the convention by the respondent State

Requisites of the acceptability of the requests.

All the request which are coming to the Ombudsman's office passing additional verification to define possibility to be investigated by the Ombudsman's office.

As per the Federal Constitutional Law of the Russian Federation:

The Ombudsman investigates the complaints of the citizens of the Russian Federation, as well as of aliens and stateless persons residing on the territory of the Russian Federation.

The Ombudsman investigates the complaints about the decisions or actions (inaction) of the state bodies, institutions of local self-government, officials, state employees, if a complainant appealed against these decisions or actions (inaction) according to court or administrative procedures, but does not agree with the decisions reached on his complaint.

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The Ombudsman does not examine the complaints about the decisions of the chambers of the Federal Assembly of the Russian Federation and the legislative (representative) bodies of the subjects of the Russian Federation.

A complaint submitted to a Ombudsman on human rights in a subject of the Russian Federation is not a reason to refuse acceptance of the same complaint for the investigation by the Federal Ombudsman.

The complaint shall be addressed to the Ombudsman within a year counted from the day the rights and freedoms of the complainant had been violated, or from the day the complainant became aware of the violation.

The complaint must contain the surname, name, patronymic and address of the complainant, the description of the essence of the decisions or actions (inaction), which violated or continue to violate, in the opinion of the complainant, his rights and freedoms, and must be accompanied by the copies of the decisions on his complaint reached according to court or administrative procedures

In average the Ombudsman has to **reject 9.3%** of the complaints received because they did not meet the relevance criteria defined in the law. A rejection notice was sent to the filers of those complaints stating the reason for the rejection.

Following the review of **60.8%** of the complaints, the complainants who had not exhausted the legal remedies for protecting their rights were sent **clarifications and recommendations** regarding the forms and methods of their further actions.

During the year, the Ombudsman, acting in cooperation with the competent authorities, **took measures to restore the rights of 29.9%** of the complainants who had contacted him. He sent statements upholding their rights and freedoms to courts; personally or through a representative took part in court hearings; appealed to supervisory courts with requests to review the court rulings, sentences, determinations and resolutions that had taken legal effect; attended court hearings in his supervisory capacity; filed complaints with the Constitutional Court of the Russian Federation about instances where constitutional rights and freedoms were violated by a legal provision that had been applied or was to be applied in a specific case. As a result of those efforts, **the rights of 12.9% of the complainants were restored.** Work on some of the complaints was still in progress and closely monitored by the Ombudsman at the end of

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the year. However, there is one thing that is arguably as important as the statistics of cases won by the Ombudsman. *The Ombudsman tends to believe that even in the cases where he eventually failed to prevail his efforts had not been wasted, because they prodded the competent authorities to reappraise and explain their actions and decisions that had been contested by citizens.* Hopefully it means that whenever they have to deal with a similar situation in the future, they will be taking greater care to respect the rights, freedoms and legitimate interests of their employers – the citizens of the Russian Federation¹⁰².

Geographic origin of the complaints.

The data overlooking the origin of the complaints covering the period of 2003-2009. It should be also mentioned that the origin refers to the place of residence of the individual and not to his nationality. It is reflected in the fact that the most important institutions of the Russian Federation are situated in the Central Federal Okrug. The Districts from where the major part of complaints is coming are Central (34,3%), Privolzhsky (17,8%), South (16,3%). Here we are also speaking about the most populated districts, which altogether make 63% of all population of the Russian Federation. (Tab. 3)

Table 5

Geographic origin of the complaints (2003-2011)

Federal Okrug	Complaints, in %
Central FO	34,1
Privolzhsky FO	18,0
South FO	15,3
North-East FO	10,3
Siberian FO	9,9
Ural FO	6,7
Far East	4,0
North-Caucas	5,2
Total	100%

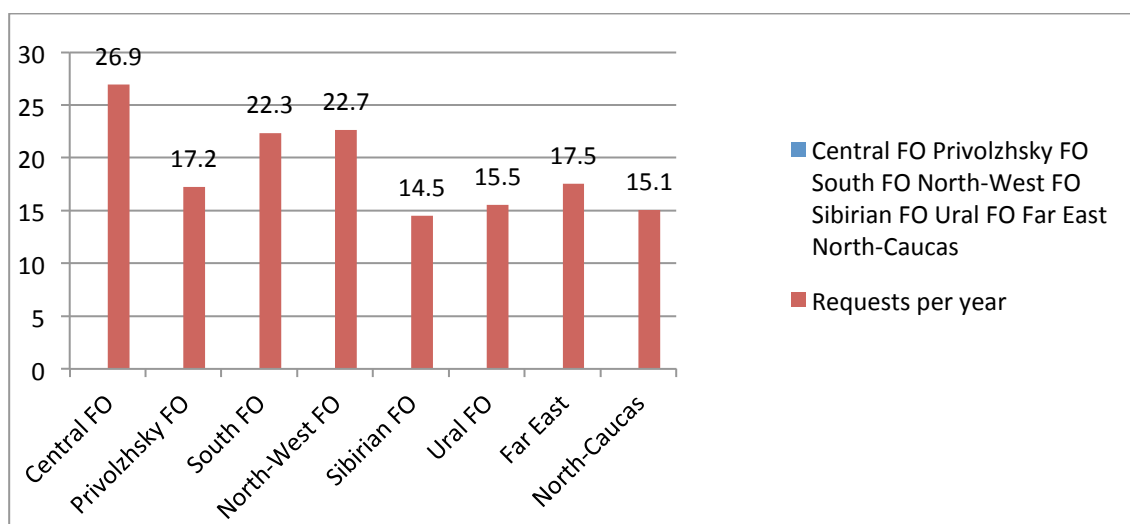
¹⁰² Annual Report of the Commissioner of the Russian Federation for 2009, p.63

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The highest average annual number of complaints per thousand hundred residents in the Russian Federation (Central Federal Okrug – 27,9complaints) is still lower than the average annual number of complaints to the European Ombudsman (48 complaints)¹⁰³. (Fig.2)

Table 6

Request per year per Federal okrug (2004-20011) (*)



(*) Number of the complaints per year, per hundred thousand of the residents.

How we already noticed for the Central Federal Okrug the explanation of the higher number of complaints is the presence of the high number of the public institutions and the Ombudsman's office itself. For the North-West Federal Okrug it could be explained the closeness to the European countries, especially Finland, where the number of the complaints the one of the highest per number of the residents among member states.

Sectors of the investigations.

¹⁰³ COMMINELLI Luigi, *Il Mediatore Europeo, Ombudsman dell'Unione* Dott. A. Giuffrè Editore, Milano, 2005

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It would be very interesting to try discover in which fields intervention of the Ombudsman is requested more frequently.

It would be necessary to make preliminary note: analysis are overlooking cases which passed first selection according to the criteria's of the Federal constitutional Law and for which the Ombudsman decided to activate investigation. Almost every second complaint (55,3%) referred to human and civil rights violations, within this category the biggest number refers to the violations of the right to judicial protection and impartiality of justice. There is always high share of complaints about human rights abuse in the course of criminal proceedings, inquiries and preliminary investigations (11,2%) from the total number of abuses of the human and civil rights. The share of violations of freedom rights is about 13,7% and violation of human dignity is 14,2%.

The second group of the biggest number of complaints is in the sector of social rights (25,3%). Here the share of the rights to housing is 38,1% (mainly veterans of the Word Wars and residents of the old buildings), and violations of the rights to social provisions 31,5%.

The third group of violations are in the economic sphere – 15,3%. After the economic crisis the number of complaints to the violations of the right to work increased up to 55,9%.

The share of the complaints against violations of the political rights is always low about 1,6% from the total number of complaints.

The share of the rights to culture is 0,6%, which mainly related to the right to education (88,1%) and participation to the cultural life (11,9%).

At the same time, within the last years the total number of complaints relating to protection of children's rights, particularly adoptions, guardianship and provision of housing for orphaned children, was growing rapidly.

The special reports of the Ombudsman were devoted to the following problematic: on violations of the rights of individuals suffering from mental disorders; breaches of the regulations on relations between members of the armed force personnel in the absence of superior/subordinate relations between them; violations of citizens' rights to freedom of movement and free choice of place of residence within the

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Russian Federation; violations of civil rights by Ministry of Internal Affairs staff or within the Ministry of Justice's penal correction system; and violations of the rights of invalids in the Russian Federation.

Starting from the second half of last year, the number of complaints began to increase, and has risen by approximately 10 percent. The complaints are above all about labour relations and housing problems, and are related to the economic crisis, of course, though it is also possible that people are also becoming more aware of the institution of human rights ombudsman.

The Council of Europe requirement states that “we consider it absolutely essential that the human and financial resources of the institution be significantly increased in the very near future because of credibility of the ombudsman will be affected: a total number of 200 staff members (including technical staff) are not enough to service the population of such a big country as Russia¹⁰⁴.

The number of applications to European Court on Human Rights against Russia allocated to a decision body in 2012 is 10.755, judgements in 2012: 134 of which 122 violations and 12 non-violations.

Table 7

European Court on Human Rights (1959-2011) Statistics violation judgement by sectors by Russian Federation.

Russia 1959-2011	
Total number of judgements	1212
Judgements finding at least one violation	1140
Judgements finding no violation	49
Friendly settlements / striking out judgements	13
other judgements	10

¹⁰⁴ In Poland for example (population 39 million), the ombudsman's office employs over 400 people, from the Documents: Working Papers, 2005 Ordinary Session (third part), 20-24 June 2005

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right to life - deprivation of life	202
lack of effective investigation	217
Prohibition of torture	31
Inhuman or degrading treatment	357
Lack of effective investigation	82
Prohibition of slavery/forced labour	1
Right to liberty and security	422
Right to fair trial	570
Length of proceedings	154
Non enforcement	38
No punishment without law	0
Right to respect for private and family life	94
Freedom of thought, conscience and	5
Freedom of expression	23
Freedom of assembly and association	10
Right to marry	0
Right to effective remedy	291
Prohibition of discrimination	5
Protection of property	456
Right to education	1
Right to free elections	2
Right to be tried or punished twice	2
Other Articles of Convention	78

4.4. The most important initiatives of the Federal Ombudsman for Human Rights and the Government of the Russian Federation in the sphere of Human Rights

During last years under the initiatives of the Ombudsman were made various constitutional amendments, as well as legislative, administrative and practical measures taken to improve the promotion and protection of human rights in particular:

(a) The judicial reform in the context of the 2007-2011 Federal Special-Purpose Programme for the Development of the Judicial System in the Russian Federation, the establishment of the National Working Group on Judicial Reform and the adoption in 2009 of the Law "On the securing of access to information on the activities of the courts of the Russian Federation", adoption in 2011 of the Federal law "On alternative dispute resolution procedure with the participation of a mediator (mediation procedure)" and the Federal Law "On Free Legal Aid in the Russian Federation";

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(b) Military Reform (as per numerous alerts of the UN on violation of the human rights by the staff of the internal affairs institutions)¹⁰⁵;

(c) The adoption in 2008 of the National Plan on Countering Corruption and the enactment of the Federal Law on Counteraction of Corruption;

(d) The upgrade of the **accreditation status of the Federal Ombudsman for Human Rights ("Ombudsman") following its review by the International Coordinating Committee of National Institutions (ICC) in January 2009**;

(e) The establishment of the Office of the Ombudsman for Children, in September 2009 and the ratification, in 2008, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(f) The adoption and entry into force of two administrative regulations relating to the granting of political asylum and refugee status in the Russian Federation.

(g) The establishment of the Office of the Ombudsman for entrepreneurs rights defense in July 2012.

(h) Reform of the notaries.

A significant event in the development of the Russian legal system has been the inclusion in labour law of provisions prohibiting discrimination at work. In particular, article 3 of the Labour Code (Federal Act No. 197 of 30 December 2006) provides that a person's labour rights and freedoms may not be restricted on grounds of race, colour, nationality, language, origin, place of residence, attitude to religion or political beliefs. The article not only sets out equal opportunities for the enjoyment of labour rights but also provides for the possibility of compensation for moral damages for persons subjected to discrimination on aforementioned grounds.

¹⁰⁵ Both the previous national ombudsman Oleg Mironov and current Vladimir Lukin have made one of their priorities highlighting human rights deficiencies in law enforcement agencies for gross violations of human rights and pressing these agencies to punish violators in their midst. At the same time, there are also efforts to engage the Ministry of Internal Affairs in more positive cooperative efforts to change the behavior of its personnel. For example, the Ministry of Internal Affairs and the ombudsman's office cosponsored a conference in November 2004 on "Human Rights and Civil Society", and they also concluded a memorandum of cooperation that included provisions for joint inspections of regional police departments, as well as civil society cooperation with the Ministry of Internal Affairs. Lukin stressed the need for ombudsman monitoring of the police, and joint efforts to change the culture of the police.

Chapter 5.

The Role of International cooperation for Institution building in the institutionalization the Ombudsman office in the Russian Federation

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5.1. *International cooperation and international relations after World War II*

After World War II international relations saw the growing role of assistance and support policies in bilateral and multilateral relations between states. Given a fairly long period of time that elapsed after the war, this political trend may now be accepted as well-established.

Traditionally, relations between nations and the associated ideas of sovereignty were based on the 19th century “war and trade” concept (O. Hintze) rooted in the doctrine of national interest. The newly acquired dimension today is assistance between states. It has become a new tool in political relations and commitments at the international level.¹⁰⁶

International cooperation policies today are among the key functions of any nation in its relations with other states both at a bilateral and multilateral level. They have been increasingly of interest for the diplomacy as well as those who study their dynamics.¹⁰⁷

Government expenditure on assistance and support, and the funding of the associated administrative structures have been continuously on the rise over the past sixty years; not once have they been reduced, and the role they are playing now could hardly have been imagined before. This expenditure also appears likely to continue to grow in the future.¹⁰⁸

All key international actors that give priority to assistance and international cooperation policies focus largely on recipient nations in transition, aiming to impact their political and institutional development. Now all these actors have been defined and

¹⁰⁶ Hintze O., “*Staat und Verfassung*”, Gottingen, 1962, Carr E.H., “The twenty years crisis”, 1939

¹⁰⁷ Trachtenberg, M. “*The Craft of International History. A guide to Method*”, Princeton, 2006; Renouvin P., Duroselle J.B., “*Introduction a l’histoire des relations internationals*”, Paris, 1991

¹⁰⁸ Meneguzzi Rostagni C., “*L’Organizzazione Internazionale fra politica di Potenza e cooperazione*”, Padova, 2000

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their policies established. The dynamics of their relationships follows scenarios which could be attributed now to this or other descriptive model. In essence, being at the front of assistance in zones of geopolitical interests has become a matter of political honour among donors as well as recipients. Forecasts are increasingly targeted at defining and segmenting this complex system of interests, which are mostly political interests, connecting these two groups at the time when they decide to pursue cooperation.

In the past two decades, this persistent trend in the international cooperation policies have received yet another impetus with the end of the Soviet period and the disintegration of Yugoslavia, which led to a series of conflicts in the West Balkans.

The new scenery in statehood which emerged as a result of these two developments shows a great many new entrants on the international arena, as well as the disappearance of rigid bipolarity that used to underpin the inflexible nature of relations between states. A new system of international relations relies more and more on the initiatives of assistance and international cooperation, resulting in new alliances and spheres of influence. (It might at times lead to instances of competition among donors deciding who is to provide assistance to this or other new beneficiary).

5.2. *Establishment of the rule of law and the primary role of judicial reform*

One of the key elements of transition to new forms of government that emerged over the past two decades has been the establishment of a liberal constitutionalisation process. It became an unquestionable benchmark of an administrative and regulatory model almost in all new countries and governments, whether they resulted from post-war or post-Soviet transformations.

In this model, the central place is taken by the rule of law,¹⁰⁹ coupled with a free market economy as a supplement to the liberal constitutional revolution which many of the steered nations are embracing today, extremely vigorously if belatedly.

¹⁰⁹ Carothers T., “*The rule of Law revival*”, in Foreign Affairs, March-April 1998, pp. 95 ss; Dahrendorf R., “*Reflections on the revolution in Europe*”, London, 1990

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The donor community consists largely of West European traditional democracies acting separately as well as through such inter-governmental or multilateral organisations as the European Union and the Council of Europe. They have resolved from the very beginning to complete a huge amount of work, impressive in the amount of raised funds and in the type of activities designed to strengthen the dimension of human rights and socio-political rights, with the associated legislation, and to ensure effective enforcement of this legislation through the authorised institutions.

These efforts were pursued within the framework of institutional, legislative and administrative reforms to support a process which was given an impressive name of *steered constitutionalisation*¹¹⁰. Post-war countries, however, proved to be rather mechanical and not very efficient recipients of this process because of the need to overcome the aftermath of war.

In contrast, in post-Soviet countries the process of liberal constitutionalisation had to face an entrenched opposition from political and cultural (sometimes also legal) elements of the past legacy. They had an advantage of a somewhat idiosyncratic interpretation of national sovereignty concept which stood in the way of spontaneous implementation of “foreign” political and legal models of the West.

Whatever the case may be, irrespective of the type of transition, most of the essential actions had to do directly with the reform of judiciary proceedings in general, as well as with more rational and better functioning justice system and courts.

The scope of assistance was in line with the course of the reforms. At the initial stage which was inevitably general and uncertain, the work was fairly simple and preliminary. It was to bridge the gap in legal and political concepts after decades of anti-liberal ideology. The scope more often than not was attributed to and defined by the infrastructural problem of the obsolete and inadequate justice system.

¹¹⁰ De Vergottini, G. “*Le transizioni Costituzionali*”, Bologna, 1998, Huntington S., “*La terza ondata. I processi di democratizzazione alla fine del XX secolo*”, Bologna, 1995

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5.3. *The Russian Federation and its legal reform*

Among the events of the two past decades, of particular interest has undoubtedly been the legal and judicial reform in the Russian Federation, the country, which, for obvious historic and political reasons, demonstrates like no other nation an ideally typical model of government in the post-Soviet transition.¹¹¹

From the very beginning of the transition aid to Russia was a perpetual element in the interests of the donor community. At different times, that aid might have differed in some specific aspects in the type of activities or in the strategy of reform support, or in the international political situation in which that aid was provided.

If we are to present an approximate timeline, we would see four stages in the support to the legal and judiciary system which coincided with phases in the post-Soviet capacity building:

1) Post-ideological escape (1992-1999), a period coinciding with the first decades of the new Russian Federation. It was typically a period of sweeping renunciation of the Soviet legacy, primarily from the point of view of its fundamental juridical concepts and certain axioms which only recently seemed immutable and deeply entrenched even in the popular culture. At this stage, the reforms suffered from the uncertainty in the political system, hierarchally unstable, not as yet properly decided on its priorities and not too predisposed to accept the supremacy of legal actions at the time when old ways no longer worked while the new ones had not properly established themselves. The work was in progress to adopt new codes (Civil, Criminal, Commercial, Tax, etc.) and the donors' support to the process was fast in coming. However, not infrequently it proved ill-conceived and was pushed to the side-lines in the typically Russian dynamics. There was an age-old mistrust in things done by multilateral actors who until recently had been competitors or even, unofficially, proper

¹¹¹ Habermas J., "La costellazione post-nazionale", Milano 1999; Clark I., "The post cold war order. The Spoils of peace", Oxford-New York, 2001

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enemies. For international cooperation projects in judicial reforms it was a politically shady period. There was some rather general, political advisory work and occasionally ill-coordinated actions on part of donors themselves, met with a rather mixed reaction by Russian recipients.

2) Return to the supremacy of politics (2000-2004), a period when Russian government institutions, traditionally strong and well-developed even back in tsarist times, and even more so in the later Soviet period, became again the main branch and the centre of gravity of the political system, having pushed aside the economic power that used to dominate the political scene in the 1990s. At the same time, the uncertainty which reigned supreme in the turbid 1990s transition gave way to the recognition of the central role of the law. Laws, the main tool at the disposal of government machinery, became accepted as a basis for all current actions and an indicator of the return to the supremacy of politics. The entire legal system moved into a purely abstract dimension, while the key priority rested with the production of regulatory by-laws. The system, having tried to address principles and rights, was now focusing on their implementation. Donors at this stage, taking into account this shift after the (post)-ideological decade of the 1990s, focused on more technical and less general assistance intended to define concrete parameters of the discipline-specific laws. At that time donors broadened the scope of their work, with frequent overloading and overlapping of various aid projects due to poor coordination of actors. The activities mostly had to do with the mechanical transfer of European experience in Russia, with no objective of integrating it into the tradition of the Russian legal thought and juridical school.

3) Emergence of lawyers (2004 – 2008). The key aspect of the next stage was the emergence of a class of new Russian lawyers, initially technocrats and later political agents of the government. This class gradually moved to the helm of the reform efforts and established itself as one of the new elements of governance in the country. At the same time, the process of the court became even more structured, and the jurisprudence of different disciplines of law acquired a normative function, prior to that unknown and allowed exclusively to formal laws. As a result, legal reforms started to

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play the central systemic role and benefited from a set of measures aimed at improving the judiciary branch and the functioning of courts in general. In the meantime, Russia started to benefit directly from the improved state of its budget, and the reform process kicked off in earnest, independently and from within. Ironically, it happened at the time when the cultural reluctance to accept aid and foreign technical cooperation vanished. Donors, in turn, focused on enhancing the throughput of the judicature, concentrating on improving the court system and judges' professional competence. They were similarly interested in defining the sequence of socio-juridical measures (from legal awareness to access to justice) which until a few years ago would have been taken as superfluous and secondary, but were now moving to the front, aiming to bridge the gap between citizens of the new Russia and the law and lawfulness in general.

4) Modernisation and liberalism. The last and the latest period, which still continues, was marked by the final consolidation in the key areas of reform launched in the early 2000s. The reform was built on an honest political attempt to complete the implementation of the rule of law believed to be a key aspiration of the local community and the main channel of political legitimisation of the incumbent powers. The central role of the law and the broad expectations of lawfulness underpinned and accompanied most of the decision-making in the government, which was unambiguously aimed at completing the modernisation of the legal, judiciary and law-enforcement systems to create certainty for foreign investments. This maturation process had a positive impact on donor cooperation, which proceeded in the same key areas supporting as never before the process of reforms, defined and implemented largely by Russian actors and lawyers with full support of local institutions. European experience remained important for the benchmarking of Russian practices as accepted by local actors instead of being just an abstract descriptive model. At this stage, political cooperation between donors, in particular the European Union and the Russian Federation achieved unprecedented levels, with a positive effect, first and foremost, for the legal reform projects launched and implemented in that period.

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5.4. *International Assistance towards the strengthening of the RF Ombudsman*

The assistance provided to the development and institutionalisation of the Ombudsman falls within this wider picture of the international assistance towards Justice reform, both under multilateral and bilateral assistance.

Therefore, a number of projects and activities targeting various aspects of the Ombudsman have been launched mainly over the last two decades – that can also be used as a reflection of the indicators that have marked the level of development of this new institution for the Russian political and legal system.

Indeed, at this regard, the same periodization proposed here above can be used to define the typology of different assistance initiatives towards the Ombudsman in the Russian Federation, both at Central and Regional Level.

Initially, the first dialogue with the International Donors Community has been characterized to tackle the very basic idea of the need to have such an institution as the Ombudsman in the RF, namely a new arrival organization in the traditionally rigid structure of the RF State Administration.

In fact, the first series of assistance was rather oriented to convince the Russian State Administration about the necessity to have such an organisation and the practical possibilities opened by the presence of an Ombudsman office.

In this phase mainly Donors such as the Council of Europe and the UNDP gave the assistance and the whole issue of the RF Ombudsman was mainly focused on the consolidation of its role and aspects related to the legal protection of fundamental rights, leaving very little space for anything else than this.

As a result, the Ombudsman was treated like an organisation purely and almost exclusively active on human rights – with almost no focus on other aspects rather than this.

Another aspect of this first phase of assistance is that the RF Ombudsman is approached through and identified by its very close relationships with the NGO sector, rather than by its relationships with the other State institutions.

This is the reason why from the beginning the RF Ombudsman interacts in the programs of international assistance with the High Commissioner for Human Rights of the Council of Europe, rather than with the European Union Ombudsman.

The Role of International cooperation for Institution building in the institutionalization the Ombudsman office in the Russian Federation

The first international conference devoted to the creation of the real Institution of Ombudsman was organised in Moscow under the auspices of UN Development Programme in 1994, and saw the participation of a wide number of European Ombudsmen representatives, while the position of RF Ombudsman was created in 1997 following Parliamentary Assembly of the Council of Europe recommendation¹¹². Parliamentary Assembly of the Council of Europe voted by 164 to 35, with 15 abstentions, to grant Russia's request for admission to the Council¹¹³.

The very first project of technical assistance coming from the European Union – the **“Policy advice to the Human Rights Commissioner of the Russian Federation”**- fell in year 2000 and was managed by the European Commission, through its TACIS Programme and the European Expertise Service Project n. 5

Main goal of the project was the preparation of a functional review and overall reorganization plan for the Federal Ombudsman's office. Despite the limited budgetary amount (200.000 Euro) this project achieved remarkable results and has been quoted by the relevant EC service at the time as one of the three best assistance projects overall launched under the EES 5 programme in year 2000-2001

The scope of this project was clearly limited to the strengthening of the central office of the RF Ombudsman and of its basic functional structures.

The second EU funded project of technical assistance under the TACIS programme has been again a Policy Advice Project but contracted under the Framework Contract AMS/451: **„Support to the Strengthening of the Ombudsman Office in the Astrakhan Region“**. Implemented in 2003-2004, the project has been shifting the focus from the Central level to the Regional dimension of the Ombudsmen institutional development, dealing with the progressive regionalization of the Ombudsmen offices, in particular in South Russia.

The third TACIS project – again a Policy Advice Project contracted under the Framework Contracts AMS/451- fell in year 2005-2006, namely the **“Coordination of the Offices of the Commissioner for Human Rights in the Russian Federation”**.

¹¹² To adopt a new law on the office of the commissioner for human rights was an accession commitment of the Russian Federation toward The council of Europe.

¹¹³ The Committee of ministers gave final approval on 8 February 1996. Russia is the 39th member of the council of Europe, and first applied for membership in May 1992. On 14th February 1996 the EU and Council of Europe signed a 1.2 million ECU (\$1,7 million) aid package for Russia designed to foster democratic institutions.

The Role of International cooperation for Institution building in the institutionalization the Ombudsman office in the Russian Federation

The general objective of the Project was to broaden the geographic breadth of ombudsman operations, and to achieve a higher degree of coordination in the network of ombudsman offices.

At that time communication between the offices was perceived to be weak. And there were currently insufficient funds available to expand the network. Nevertheless, the plan of the Federal Commissioner's office was to extend the reach of the Federal Ombudsman into the fifty seven subjects of the Federation that were at the time not serviced by offices of Regional Ombudsmen.

Resolving the issue of finding finance for the provision of new services in the regions was not within the parameters of this assignment. But in preparation for the extension of a network of Federal Ombudsman's offices, there was the need to raise the level of awareness of key issues pertinent to regional offices' future operations. This included, heightening of awareness of international standards concerning the protection of human rights, developing an understanding of procedures to make claims to the European Court on Human Rights and understanding the practices of this court, and on the processing of individuals' complaints of violations by state or other authorities.

The institutional objective of the Federal OCHR connected with this assignment was to develop means of increasing the degree of reach and coordination of new offices of the Federal OCHR. Within this aspect, the objective of the assignment was to assist the Federal OCHR to develop a plan that will achieve a higher degree of coordination of the work of the OCHR across its planned network of offices and between this network and the at the time existing Regional Ombudsman offices.

In occasion of the forth TACIS Policy Advice Project in 2006-2007, namely the **Office of the Ombudsman for Public Administration**", the attention shifted for the first time towards the need to define broader competences of the RF Ombudsman, rather than the classical actions in defense of human rights.

The global objective of the project was to support the implementation of the comprehensive legal and court reform in the Russian Federation, and therefore to contribute to the creation of an administration justice in the country, which was still at a very early stage in the country. The major focus of the assignment was therefore to conduct an examination of the comparative advantages of different forms of

The Role of International cooperation for Institution building in the institutionalization the Ombudsman office in the Russian Federation administrative ombudsman systems and develop a set of recommendations for the establishment of an analogous system that is appropriate for the Russian Federation.

The **specific objective** was to deliver a set of recommendations connected with the establishment of an ombudsman for public administration in Russia, while main project activities were related to the assessment of the needs and then recommending the most appropriate and effective operational framework and structure for this institution. Great focus was then put on the definition of general principles, rules and conditions for the most effective and close-to-the-citizens performance of public administration ombudsman services.

The last TACIS project – launched and implemented in 2011 – ideally concluded the phases of EU assistance to the development of the institution, moving towards more sophisticated and articulated levels of definition of indicators for the monitoring of rights, although again going back to focus of the classical fundamental Rights.

In other words, while the topic of assistance went back to the very beginning of the RF Ombudsman, namely the Federal level and the Human Rights, the assistance targeted the functional levels of action of the office.

With the FWC Project “**Establishment of the Human Rights Monitoring system for the Ombudsman in the Russian Federation**”, the global objective was in fact to develop an advisory facility for the Ombudsman to obtain unbiased information on the situation with human rights in Russia, while specific objectives were to Develop a system of indicators giving a fair picture of human rights observance, to Draft a list of information sources on human rights observance indicators, to Develop the most efficient method for the Ombudsman to obtain information from such sources and to Develop guidelines, subject to potential options, to get information on observance of a specific right in Russia and in some of its pilot regions. An inevitable decision, given the size of the country.

Conclusions

Conclusions

The Ombudsman represents the best intentions of governments. The Ombudsman institution allows individuals to use an independent and confidential officer to resolve complaints in a nonadversarial environment, without fee. There are several types of Ombudsmen, with peculiarities relating to their jurisdiction, mandate, and powers.

Ombudsmen have done a magnificent job in demonstrating value with the resolution of individual and systemic complaints; subsequent improvements to government; and economic savings by mitigating litigation costs.

The research provided detailed review of the constitutional framework of the Russian Federation, paying special attention to the main changes leading to current constitutional framework and making particular reference to issues that have a bearing on the Ombudsman: division of powers, territorial structure, structure of the public administration. The paper examines the rights and their guarantees in the constitutional framework of the Russian Federation. The role of international instruments for rights protection, complimentary function of the Ombudsman to other mechanisms for the protection and promotion of human rights, legislation on Ombudsman in the subjects of the Russian Federation outlined in the current research.

This research is based on the effective legislation of a number of European countries in the sphere of ombudsman offices and its relations with other public institutions, as well as the practical results achieved by ombudsmen (annual speeches and reports), and the research and methodological literature both by ombudsmen themselves and by political and legal scientists and practitioners. On the basis of the above research a review on historical origins and development of the Ombudsman in the world was prepared. It considers the main changes in the contemporary development of the Ombudsman, includes on comparison with the development of the Ombudsman in the countries with post-authoritarian countries. It outlines typologies of Ombudsman institutions, according to their competences, their relations with the state powers and

their relationships with other mechanism for the protection and promotion of fundamental rights.

Our analysis has gone through the different phases of the establishment of the Ombudsman Office in the Russian Federation. The influence of the Chancellor created under the rule of Peter the Great lingered until Soviet time, creating particular conditions and difficulties for the emergence and design of an institution in line with contemporary international experience. With the adoption of the Federal Constitutional Law of 1997, a particular and autonomous process of constitutionalisation and institutional development of the Office of the Ombudsman appeared marked by the charismatic personalities of the first figures to establish the office, the turmoil of the political moment in the Russian Federation and relevant characteristics of the territorial and jurisdictional structure of the new polity. The research follows these developments up to latest changes introduced during the mandate of the current Ombudsman, Mr. Lukin.

Institutionalization of the Ombudsman in the Russian Federation was studied starting from the development of the legislation on the Ombudsman, role and functioning of the Ombudsman office in term of competences, relations of the Ombudsman of the Russian Federation with other mechanism for the protection and promotion of fundamental rights, territorial relations. Current status of the Ombudsman in the Russian Federation outlined, including its economic impact. The most important initiatives of the Federal Ombudsman for Human Rights and the Government of the Russian Federation in the sphere of the Human Rights are listed.

A rather innovative approach to the evaluation of the development of the Ombudsman for human Rights in the Russian Federation is included. It assesses the role of international cooperation and international relations in the institutionalisation of the Federal and Regional Offices. It also assesses the intertwining of these developments with efforts regarding the strengthening of other mechanisms aimed at protecting human rights and civil liberties, such as the reinforcement of the Rule of Law and prominently the role of judicial reform, looking at the legal reform in the Russian Federation that has been supported by important projects financed by the international donors in the sector of the Ombudsman for Human rights in the Russian Federation.

The assistance provided to the development and institutionalisation of the Ombudsman falls within this wider picture of the international assistance towards Justice reform, both under multilateral and bilateral assistance.

A number of projects and activities targeting various aspects of the Ombudsman have been launched mainly over the last two decades – that can also be used as a reflection of the indicators that have marked the level of development of this new institution for the Russian political and legal system.

Indeed, at this regard, the same periodization proposed here above can be used to define the typology of different assistance initiatives towards the Ombudsman in the Russian Federation, both at Central and Regional Level.

Initially, the first dialogue with the International Donors Community has been characterized to tackle the very basic idea of the need to have such an institution as the Ombudsman in the Russian Federation, namely a new arrival organization in the traditionally rigid structure of the Russian State Administration. In this sense, the first series of assistance was rather oriented to convince the Russian State Administration about the necessity to have such an organisation and the practical possibilities opened by the presence of an Ombudsman office.

In this phase mainly Donors such as the Council of Europe and the UNDP gave the assistance and the whole issue of the Russian Federal Ombudsman was mainly focused on the consolidation of its role and aspects related to the legal protection of fundamental rights, leaving very little space for anything else than this. As a result, the Ombudsman was treated like an organisation purely and almost exclusively active on human rights – with almost no focus on other aspects traditionally associated with this institution at international level.

Another aspect of this first phase of assistance is that the Russian Federation's Ombudsman is approached through and identified by its very close relationships with the NGO sector, rather than by its relationships with the other State institutions. This has reinforced the close interaction of the Russian Federation's Ombudsman with programs of international assistance, for example, with the High Commissioner for Human Rights of the Council of Europe, rather than with the European Union Ombudsman.

The purpose of this research is to examine comprehensively the outcome of introducing offices of ombudsmen across Russia, which is arguably of scholarly and practical interest from the point of view of building a system of human rights protection compliant with international standards.

The main purpose was achieved by addressing the following objectives:

- the concept of the institution of ombudsman and its place in the system of government in Russia and other European countries analyzed;
- common and specific conditions underpinning the establishment and evolution of this institution in Russia examined;
- general constitutional legal principles in the organisation and operation of the ombudsman's institution as well as their specific implementation in the country's constitutional legislation delineated;
- a study of the regulatory framework of the ombudsman's status, the manner in which his institution is created, and specific features of this public institution's structure provided;
- key functions of the ombudsman in Russia identified, the specific powers to implement these functions considered;
- recommendations of the international organizations in the field of the Human Rights defence were summarised aiming at increasing efficiency assessment of the ombudsman in the Russian Federation, and the ways to enhance the efficiency.

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Report on the Ombudsman's activity in the Sverdlovsk Region in 2003, Ekaterinburg, 2004

Resolution On Council of Europe Commissioner for Human rights in International Acts on human rights. Collection of the documents, Norma-Infra, Moscow, 1999, p.546-550

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UN General Assembly in its Resolution A/RES/48/134 of December 20, 1993

United Nations, Commission on Human Rights Report on the Fifty-Eighth Session (18 March - 26 April 2002). E/2002/23. E/CN.4/2002/200. 25.09.2002

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3. *Key Websites*

<http://ombudsmanrf.ru> website of the Russian Federation Ombudsman for the Human Rights

<http://rfdeti.ru> website of the Russian Federation Ombudsman for children rights

<http://www.ombudsmanbiz.ru> website of the Russian Federation Plenipotentiary for the entrepreneurship sector

<http://www.law.ualberta.ca/centres/ioi/> website of the International Ombudsman Institute

<http://www.ombu.ru> website of the Regional Ombudsmen of the Russian Federation

<http://europa.eu/> website of the European Union

<http://european-convention.eu.int> website of the European Convention

<http://www.amnesty.org/> website of Amnesty International

<http://www.coe.int> website of the Council of Europe

<http://www.derechos.net> web portal with extensive Human Rights links

<http://www.echr.coe.int> website of the European Court of Human Rights

<http://euro-ombudsman.eu.int> the European Ombudsman homepage

<http://www.hrw.org> website of the association Human Rights Watch

<http://www.un.org/> website of the United Nations

<http://www.osce.org/> website of the Organization for Security and Co-operation in Europe
